



## GENERAL INFORMATION ON INCORPORATING IN HONDURAS

**PARTNERS:** A corporation requires a minimum of two partners. If the founding partners will not appear personally before the public notary to form the corporation, it is necessary that they issue a power of attorney to a third person to appear in their name (if the power of attorney is issued outside Honduras, it must be authenticated before the Honduran Consulate or Apostille must be attached if issued by a member state of the Hague Convention). An official identification (passport, residence card, social security, id) is needed from every partner or their representative and they must indicate the following: marital status, domicile, occupation or profession and nationality.

**CAPITAL:** The minimal capital needed to incorporate according to the law is Lps. 25,000.00 (aprox. US\$ 1,600.00). The corporation can be formed with fixed capital or variable capital, but always complying with the minimal indicated. The taxes, stamps and other legal charges are calculated over the upper limit of a variable capital corporation and over the amount of the capital when it's a fixed capital corporation. The capital subscribed and paid must be deposited in a local bank, through a on demand deposit without account, or each partner must exhibit a certified check to the order of the corporation being formed, for the amount of their share. At the end of the incorporation process, all the corresponding documents are submitted to the bank to recover the funds deposited through a check to the order of the corporation formed.

**CAPITAL DISTRIBUTION:** The shares represent equal parts of the capital and can have a nominal value of Lps. 100.00 or its multiples. The shares are indivisible, therefore special attention must be taken at the time of defining the distribution of capital. For example: In a corporation with a capital of Lps. 25,000.00 a total of 250 shares are issued with a nominal value of Lps. 100.00 each. Due to the indivisibility of the share, the largest shareholder can only get to own 98.4% equivalent to 246 shares, and the remaining 4 shareholders would each own 1 share, with a participation in the capital of .4%

**DURATION:** The duration of the corporation can be set for a determined amount of time or it may have an indefinite duration.

**CORPORATION NAME:** The corporation name will be formed freely, but it always must make reference to the principal activity of the corporation; it must be different to the names of other corporations formed

previously, and it must be followed by the words “Sociedad Anonima” or its abbreviation “S.A.” (equivalent of Inc.). Any person that places their given name or allows others to place it in the corporation name, will be liable, subsidiary, solidary and unlimitedly before third parties, for the operations of the corporation. In Honduras there isn't a computerized system that allows us to search for similarity of corporation names previously formed. For this reason we advise our clients not to use common corporation names with a high probability of it being used previously. If the corporation name includes a recorded trademark, there is no problem because the use by a third party of this trademark would be illegal.

**COMMERCIAL NAME:** The commercial name is the distinctive of the establishment or business operated by the corporation. If more than 1 business or establishment is operated, they can have different commercial names. The commercial name will be formed freely, but if it makes reference to the corporation it must include the complete corporation name. Commercial names in a foreign language are not protected by law. In such event we recommend to record it as a trademark to get protection. The owner of a commercial name has the right to use it, to impede the use by a third party, to prevent its imitation when used in the same line of business, and the right to transfer it according to law. The law states that the knowledge of other's commercial names is presumed if it has been published in The Gazette (official newspaper of Honduras), or if its recorded in the Registry Office of Commercial Concerns of the location were its being used.

**LINE OF BUSINESS.** The commercial activity of the corporation must be lawful according to the laws of Honduras. The corporations with a unlawful operation or that execute illegal acts, will be declared null even if they have been incorporated, and the product of its liquidation will be applied to the civil accountability of their acts. When defining the line of business of a corporation there are two ways of thought: Some prefer to define the line of business in a broad sense to avoid modifying the articles of incorporation to execute activities not taken into consideration at the moment of forming the corporation; and there are others that prefer to well define the line of business of the corporation. We consider the second variable correct because it gives the shareholders the security that the corporation will be in the line of business that they agreed in the first place. If a qualified majority decide to modify the line of business, then the shareholders that disagree have the right to separate from the corporation and demand the liquidation of their shares.

**ADMINISTRATION OF THE CORPORATION:** The administration of a corporation can be held by a board of directors or a single administrator, with the possibility of delegating certain roles to one or more managers. The administrator or members of the board may be shareholders or third parties, and will occupy their position temporarily and revocable. The judicial and extra judicial representation of the corporation will correspond to the single administrator or the president of the board of directors. The corporate signature will correspond to the administrator, the counselor or counselors determined, and if not determined to the president of the board of directors. The quorum for the board of directors is met with half of its members and the decisions are adopted with simple majority. In the event of a draw the president of the board of directors decides with a double vote.

**MANAGER OR MANAGERS:** The general shareholders assembly, the board of directors or the single administrator may name one or more general managers or special managers, which may be shareholders. The managers will have the faculties conferred to them in their designation and will also have faculties of representation and execution. If the faculties are not specified in the articles of incorporation or in the designation of the managers, they'll have the general powers of a factor.

**DOMICILE:** The domicile of the corporation can be any location of the Republic of Honduras. Due to efficiency factors of the governmental and judicial entities involved in the incorporation process, we recommend the domicile of Puerto Cortés. The corporation may operate in other locations of the country in accordance to its bylaws.

**CORPORATE DEPUTY:** The corporate deputy is the corporation's official that keeps guardianship on the management in the interests of the stockholders. There may be one or more corporate deputies, their position is temporal and revocable and its allowed for them to be shareholders of the corporation. The duration of their term can be specified in the bylaws of the corporation, if omitted they will last three years in their position. The corporate deputy is of great importance because of the faculties given to the position. Some of these faculties are: the ability to convene a general shareholders assembly, they attend to the board of directors meetings, attends the general shareholders assembly, can add activities to the agenda of these meetings, and in general is empowered with the ability to guard the corporation.

The following people can't be corporate deputies:

1. Those who according to the law aren't qualified to do business.
2. Any employee of the corporation.
3. The spouse, lineal consanguinity relatives without limitation, collateral consanguinity relatives within the fourth degree and political relatives in the second degree of the administrators.

**DOCUMENTS OR INFORMATION REQUIRED:**

1. Complete name, photocopy of official identification and legal description (marital status, profession or occupation, domicile and nationality) of shareholders. Minimum of two shareholders.
2. Corporate Capital (minimum of Lps. 25,000.00)
3. Fixed capital or variable capital.
4. Nominal value of shares.
5. Distribution of shares among the stockholders.
6. Corporation Name.
7. Commercial Name.
8. Line of Business.

9. Duration.
10. Designation of the members of the Board of Directors.
11. If there is no board, designation of the Single Administrator.
12. Designation of the manager or managers.
13. Designation of a Corporate Deputy.
14. Domicile of the Corporation.
15. Bylaws.

**PROCEDURE:**

- All the documents and information described must be sent to B & B Abogados. With the information we prepare a draft and send it to the client for approval. Once approved a date is decided to sign the articles of incorporation.
- The capital is deposited in a local bank through a on demand deposit without account or the certified checks must be issued as described.
- The articles of incorporation are signed before a notary public. The bylaws can be included in the same document. The notary public attests to have seen the certified checks or deposit certificate.
- A incorporation tax is paid equivalent to Lps. 1.50 per thousand, calculated over the capital.
- We order the publications of the formation of the corporation in a major newspaper of the country or in The Gazette, official newspaper of Honduras.
- The public notary issues a certified copy of the articles of incorporation and bylaws and adheres the legal stamps required by law.
- The file is submitted to the Registry Office of Commercial Concerns for the registration of the corporation. The notary's certification of the articles of incorporation and bylaws are recorded and the original document is returned with a stamp indicating the registration number.
- Once the corporation is recorded, the definitive shares can be issued. These are signed by the President and Secretary. If an endorsement is needed, this would be the appropriate timing for it. The shareholders are recorded in the Shareholders Registration Book.
- A copy of the recorded articles of incorporation is delivered to the Central Tax Agency for it to issue a National Tax Registration card (RTN). The representative of the corporation fills up and signs a request form and includes his National Tax Registration card and that of the major shareholders. The National Tax Registration card of the corporation is need for all taxable operations like billing, importing, exporting, opening a bank account, etc...
- With the process completed, the corporation can withdraw from the bank the capital deposited and use it for its commercial operations.

- As a final step its recommended that the corporation be recorded in the Chamber of Commerce of the same location.

\* The complete process takes approximately 40 days.