

The Law Office of Looaye M. Al-Akkas in Association with

**Vinson & Elkins**

**The New Saudi Professional Companies Law**

# Material Amendments Usher in a New Era for Professional Companies in the Kingdom

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## The New Saudi Professional Companies Law - Material Amendments Usher in a New Era For Professional Companies in the Kingdom

A new professional companies law has entered into force in Saudi Arabia and will have a direct effect on professional partnerships already existing in the Saudi Arabian market (such as those providing engineering consultancy and accounting services, to name a few) as well as on new entrants to the market. This update provides a brief insight into this development in the professional companies sphere.

### Legislative History and Scope

Saudi Arabian legislative bodies have been demonstrably active in recent years with respect to updating the Kingdom's regulatory framework to help strengthen the rule of law, stimulating the economy and attracting foreign investment.

A Royal Decree was issued on 25 September 2019 approving the issuance of the new Professional Companies Law, and the Saudi Ministry of Commerce issued the Implementing Regulations of this new law on 23 April 2020 (together, the "**New Professional Companies Law**") which marks a welcome development in the professional services field. The New Professional Companies Law has now entered into force and is in effect in the Kingdom of Saudi Arabia.

The New Professional Companies Law represents a considerable evolution of its predecessor which was issued close to 29 years ago in 1991, and the New Professional Companies Law markedly addresses some of the key limitations of the old law.

The New Professional Companies Law defines a "free profession" as "*a profession undertaken by a natural person - in a professional manner and based on experience, accreditation/qualification, and skills- by which services are provided to others, and without the association of an employment agreement with the beneficiary of such services that would result in subordination, responsibility, and management...*". The New Professional Companies Law as with the old professional companies law is widely understood to cover most prominently the accounting profession, the engineering consultancy profession, the legal services profession, and the real estate valuation profession, to name a few. A service provider, where providing professional services under the New Professional Companies Law, must be licensed by the competent authority.

### Formation

As a starting point, under the old law, professional companies could only be formed via one vehicle of incorporation, that being a general partnership with unlimited liability for their partners. Under the New Professional Companies Law, the vehicles of incorporation have been expanded and professional companies may now be formed as:

1. General Partnerships (as provided for in the old law);
2. Limited Partnerships;
3. Joint Stock Companies (including single shareholder Joint Stock Companies); and
4. Limited Liability Companies (including single shareholder Joint Stock Companies).

The new flexibility in choosing a vehicle for the intended professional company is a welcome improvement and will help those investors who would prefer to incorporate their entities in a form other than a General Partnership (which does not provide for limited liability for its partners and therefore may disincentivize highly risk-averse investors). Further, the ability to incorporate a professional company as a single shareholder limited liability company or a single shareholder joint stock company should provide investors who wish to have complete control that flexibility and autonomy.

## Participation of Separate Distinct Professions Under One Professional Company

Another major development under the New Professional Companies Law is the permissibility of professional companies to undertake more than one distinct profession, i.e. one professional consultancy may provide, for example, engineering consultancy services as well as accounting services.

Under the old law, this was not possible as professional companies were historically prohibited from engaging in more than one profession.

This new development may pave the way for strategic consortiums to be formed across different disciplines, which was not an option under the old law. That said, the New Professional Companies Law provides that the Ministry of Commerce (the “**MOC**”) has the discretion to stipulate for particular so-called “harmonious professions” that may be undertaken by one single professional company.

## Non-Professional Partners/Shareholders Now Allowed

The New Professional Companies Law also allows for a natural person who is not a licensed professional or a juristic person to be a partner/shareholder in the professional company where the professional company is incorporated as a limited liability company or a joint stock company. Here, it seems the intention is to essentially permit unlicensed parties to potentially bring strategic benefits (such as business acumen, capital and liquidity, etc.) to the professional company and partake in its ownership. Whilst the New Professional Companies Law provides that the ownership of such non-licensed natural or juristic person may not exceed 30% of the professional company’s capital, it does provide that the Minister of Commerce has the discretion to change this 30% percentage threshold.

## Foreign Investors as Shareholders/Partners in Saudi Professional Companies

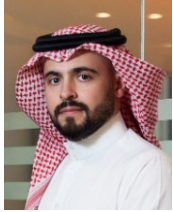
The New Professional Companies Law (as well as the old law) refers to the MOC as the regulator of professional companies. The New Professional Companies Law adds that the MOC’s regulation of professional companies is subject to the Foreign Investment Law. That said, as of this writing, the Ministry of Investment (formerly known as the Saudi Arabian General Investment Authority, or Sagia) has not published guidance on the licensing of professional companies with foreign shareholding, the sole exception being that the Ministry of Investment has issued licensing requirements for wholly owned foreign engineering consultancies, which were permitted to operate by way of a Council of Ministers resolution issued on 07 August 2017 that allowed engineering consultancies to be owned 100% by foreigners, provided that the partner(s) have been incorporated for at least ten (10) years and have presence in at least four (4) countries with the same activities intended to be undertaken in the Kingdom.

A minimum threshold of Saudi Arabian ownership in the professional company remains to be no less than 25% of the professional company’s capital. This threshold is a carry-over of the preceding regime.

The New Professional Companies Law has now entered into force, and with it comes a new age for professional companies existing in the Saudi Arabian market and looking to restructure their holdings, as well as new incentivized avenues for institutions that do not currently have a presence in the Kingdom and are looking to enter the Saudi Arabian market.

The Law Office of Looaye M. Al-Akkas in Association with Vinson & Elkins has represented clients in Saudi Arabia for more than 20 years. Our Riyadh team is made up entirely of Saudi Arabian nationals who are multi-lingual and, in addition to being Saudi licensed lawyers, are admitted to practice in the United States and in England & Wales. Our lawyers bring deep understanding of Saudi Arabian business, legal and regulatory systems and a long history of advising local, regional and international clients doing business inside and outside of the Kingdom.

**For additional information on the New Professional Companies Law or for further inquiries on your corporate operations in the Kingdom of Saudi Arabia, please contact:**



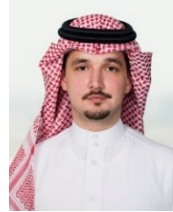
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