New Professional Companies Law in the Kingdom of Saudi Arabia: what you should know

With the Saudi national transformation plan 2020 around the corner and Vision 2030 substantively progressing, we have been witnessing significant changes in Saudi legislation through the issuance of new laws and regulations governing strategic business sectors. Among essential developments, the Saudi Council of Ministers has recently approved the new Professional Companies Law, which shall come into effect on 26 March 2020 (the Professional Companies Law). This article provides an overview of the key provisions and the practical implications of the new Professional Companies Law for all entities operating in Saudi Arabia.

Scope of Application

The Professional Companies Law will effectively replace the 1991 G professional companies law issued pursuant to the Royal Decree number M/4 dated 28 August 1991 G (the 1991 Professional Companies Law) and all provisions of any regulations that are inconsistent with the Professional Companies Law shall be voided.

In general, the Professional Companies Law shall form the regulatory framework of the professional sector and governs various regulated professions which are performed by an individual and/or professional body due to the fulfilment of specific educational qualifications, skills and/or experiences in accordance with the applied codes of conduct, registration and licensing requirements by the competent regulating authorities (the Profession(s)).
Article two of the Professional Companies Law defines professional companies as civil entities with separate juristic personalities which are established by one or more individuals who are licensed to undertake one Profession or more, or amongst them with others for the purpose of providing these specific Professions (the Professional Companies). Accordingly, the scope of the Professional Companies applies to:

1. All licensed and registered general partnership companies (GPCs) in the Kingdom of Saudi Arabia under the 1991 Professional Companies Law.
2. Saudi natural persons and/or juristic entities that are licensed to undertaking Profession(s).
3. Saudi natural persons and/or juristic entities participating in the Professional Companies as investors/shareholders. This excludes the GPCs and limited partnership companies (LPCs) participating in the Professional Companies as "general partner" shareholders with a joint liability (the Non-Licensed Saudi Investors).
4. Non-Saudi juristic entities providing specialized services that are classified under the professional sector and participating in the Professional Companies as investors/shareholders (the Juristic Foreign Investors).

**Key Provisions**

We have identified below the main elements of the Professional Companies Law:

**Corporate Form**

Under the 1991 Professional Companies Law, the establishment of professional companies were limited to only one corporate form, being the GPCs in which the shareholders are generally jointly and fully liable for all sustained operations, liabilities and debts of the relevant company without the protection of the corporate veil. This restriction is now waived and the establishment of Professional Companies under Article 3 of the Professional Companies Law could take any of the following corporate forms:

1. Limited Liabilities Companies (LLCs) with two shareholders or more;
2. Single shareholding LLCs, provided that the shareholder is licensed to undertake the relevant Profession(s) in the professional sector;
3. Joint Stock Companies; or
4. GPCs and LPCs.

(the Corporate Forms)

**Shareholding Structure**

The Professional Companies could select any of the Corporate Forms with generally one or more Saudi natural shareholder(s) that is/are licensed to undertake one or more Profession(s), noting that the Non-Licensed Saudi Investors and Juristic Foreign Investors may participate as shareholders in the Professional Companies in accordance with the:

1. Applied regulations under the selected Corporate Form as identified under the KSA Companies Law issued pursuant to the Royal Decree number M/03 dated 10 November 2015 G;
2. Specified guidelines in the Professional Companies Law and its Implementing Regulations which shall be issued within 180 days starting from the publication date of the Professional Companies Law in the Saudi official gazette (Umm Al Qura), and shall be deemed enforceable on 26 March 2020; and
3. Saudi Foreign Investment Law issued pursuant to the Royal Decree number M/1 dated 09 April 2000, in case of Juristic Foreign Investors.
The Implementing Regulations should further determine the applied shareholding minimum percentages in respect of the Juristic Foreign Investors and Non-Licensed Saudi Investors. Under the 1991 Professional Companies Law, Juristic Foreign Investors were generally permitted to own up to 75% of the Professional Company with a minimum of 25% owned by qualified Saudi national(s) or a fully owned entity by Saudi nationals to practice the relevant Profession. However, certain regulatory sectors, in particular engineering, were recently opened to full foreign ownership by the Saudi Arabian General Investment Authority (SAGIA) subject to the fulfilment of specific requirements, including the ten year experience in the engineering field and operations in at least four international markets outside the originating jurisdiction. For further details, please refer to our previously published article on the ownership of engineering companies.

Scope of Services

With the exception of certain international entities, the 1991 Professional Companies Law restricted the operations of the Professional Companies to only one sector of specialized service. However, the Professional Companies Law waived such limitation and Professional Companies may now provide more than one professional service classified under different sectors of business activities provided that the requirements under each sector are satisfied and after obtaining the required licenses from the Saudi competent government authorities (the Authorized Activities).

The Compliance Committee

The Professional Companies Law introduces the formation of a specialized committee which shall be convened by the decision of the Minister of Commerce and Investment (the Committee). The Committee shall be consistent of three members or more with at least one member specialized in the relevant applicable Saudi laws. The jurisdiction of the Committee is to oversee the violations of the Professional Companies Law and application of the penalties under Article 24 of the same law. The Committee’s operational guidelines and members along with their remunerations shall be determined by a resolution issued by the Minister of Commerce and Investment.

Practical Implications

Following the enforcement of the Professional Companies Law on 26 March 2020, operating Professional Companies in the Saudi market and new investors may:

1. Restructure the current corporate type and shareholding form of their entities by selecting any of the approved Corporate Forms and Shareholding Structure as deemed suitable for the business operations;
2. Professional Companies may now undertake and provide various types of service under the same entity in accordance with the Authorized Activities under the Professional Companies Law;
3. To the extent possible under the applicable laws in Saudi, Non-Licensed Saudi Investors and Juristic Foreign Investors may invest and participate in Professional Companies as shareholders. The applicable investment requirements shall be determined by the Implementing Regulations;
4. With the exception of the engineering sector, the Ministry of Commerce and Investment (MoCI) will be the ultimate and competent government authority to license all Professional Companies in Saudi without the involvement of the SAGIA in case of Juristic Foreign Investors; and
5. With the exception of the "high management consulting activities", all of the previously authorized and licensed management consulting services will be deemed as "professional" activities and directly licensed by MoCI in accordance with the Professional Companies Law. The licensed "management consulting" companies under the previous regulations must now amend their
Next Steps

The Implementing Regulations are expected to further set out the specific guidelines and regulatory procedural framework to ensure the sufficient application of Professional Companies Law. Prior to the Effective Date of the Professional Companies Law, we advise all of the operating professional entities to consider the available Corporate Forms, Shareholding Structure and Authorized Activities under the Professional Companies Law to model and restructure their businesses. Established management consulting entities in the Saudi market must further ensure the overall compliance of their business operations with the applicable regulations.

For additional legal and professional advisory services on your respective Saudi companies, please do not hesitate to contact Alain Sfeir.