Simulated Saudi Counsel Opinion & Scenario Analysis: Alternative Practice Structure (APS) for a Saudi CPA Firm

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Prepared for: Amr Shady, CEO — Accord Partners
Downloaded Primary Sources (saved in `/home/clawdbot/clawd/projects/saudi-aps-legal-analysis-2026-11-02/`): 1. **Saudi Companies Law (Royal Decree No. M/132 of 1443H / 2022):** Part VI (Simplified Joint-Stock Company, Arts. 138–155) & Part VIII (Professional Companies, Arts. 197–215) (`Companies-Law-2022-M132-EN.pdf`) 2. **Implementing Regulations of the Companies Law (MoC Decision No. 284):** Part Five (Professional Companies, Arts. 74–85) (`uqn_21325.txt`) 3. **Accounting and Auditing Profession Law (Royal Decree No. M/59 of 1442H, as amended by Royal Decree No. M/169 of 1446H) & Implementing Regulations (Ministerial Decision No. 00658):** Full Arabic statutory text (`Accounting_and_Auditing_Profession_Law_M59_AR.txt`) 4. **King & Spalding Precedent Shareholders' Agreement (GreenCPA / Saudi Professional SJSC):** Full text (`KS_Precedent_SHA.txt`)

Executive Summary: How Saudi Counsel (Latham / K&S) Will Respond

Question Asked to Counsel	Expected Counsel Verdict	Why & Required Drafting Fix
1. ServiceCo Fee Model: Can the MSA use a **residual profit-split** (Licensed Firm keeps a fixed 10% of combined profit; ServiceCo sweeps 90% via quarterly true-ups)?	🔴 **NO on raw "90% residual profit-sweep" wording** 🟢 **YES on a 3-Tier Commercial Fee (Cost-Plus + Per-File/Seat AI Licence + Annual Budgeted Rate Card)**	Calling the fee a "90% residual profit split" triggers three red flags: **(a)** Art. 78(1)(b) ("indirect control" via stripping 90% of profits), **(b)** Art. 78(1)(d) (impairing financial independence of licensed partners), and **(c)** unlawful audit fee-sharing with an unlicensed company under M/59 Art. 2. **Fix:** Replace the backward-solved profit-split clause with a **Cost + 15–20% back-office/staffing charge + a fixed/per-file Accord OS platform fee**, calibrated in the annual **Business Plan & Budget** (which Accord has a veto over) to achieve the same ~51% combined economics.
2. MSA Veto / Protection: Can Accord (25% unlicensed shareholder) hold a **reserved-matter consent right** in the Licensed Firm's	🟢 **YES (with one mandatory regulatory carve-out)**	Under Saudi practice (and K&S's own Precedent SHA Clause 8.3(b)), **Related-Party Transactions** and the **Annual Business Plan & Budget** are valid negative minority protections at the shareholder level and do not violate Art. 78(1)(b) or Art. 80 (which governs board/manager voting). **Mandatory carve-out:** The MSA cannot block the licensed partners from exercising

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SHA/bylaws over amending or terminating the MSA?		professional judgment on an audit file or curing a written SOCPA inspection finding, provided any regulatory modification triggers an **economic rebalancing clause** so the Founder cannot use SOCPA as an excuse to cancel ServiceCo's economics.
3. Share Stapling / Cross-Transfer Lockup: Can we enforceably **staple** the Licensed Firm (SJSC) shares and ServiceCo (LLC) shares so neither can be transferred without the other?	🟢 **YES (Strong statutory teeth in SJSC via Arts. 151–152; Pledge + ROFR on LLC side)**	Under **Art. 151(a)–(b)** of the Companies Law 2022, SJSC bylaws (adopted unanimously under Art. 154) can lock up shares for up to **10 years** and make any transfer not accompanied by the simultaneous transfer of the matching ServiceCo stake **statutorily null and void (`باطل`)**. Under **Art. 152**, the SJSC bylaws can compel share assignment at a formula price and **automatically suspend voting rights** upon breach. On the ServiceCo (LLC) side, enforceability is backed by a **Share Pledge** and Accord's 54% control of the LLC register.

Part 1 — The Exact Statutory Rules Counsel Will Cite

A. Implementing Regulations of the Companies Law — Part Five (Articles 77–80)

1. **Article 78(1) — Controls on Unlicensed Shareholders in a Professional Company (`ضوابط مشاركة شخص غير مرخص له في الشركة المهنية`):**
2. **Art. 78(1)(a) [30% Voting Cap]:** *"The ownership percentage of an unlicensed partner or shareholder in a professional company shall not exceed 30% of the capital shares or stakes that carry voting rights. The Minister — after coordination with the competent authority [SOCPA] — may amend this percentage in cases he deems appropriate."*
3. **Art. 78(1)(b) [No Direct or Indirect Control]:** *"ألا يكون للشريك أو المساهم غير المرخص له، سيطرة مباشرة أو غير مباشرة على الشركة المهنية أو إدارتها"* — **"The unlicensed partner or shareholder shall not have direct or indirect control over the professional company or its management."**
4. **Art. 78(1)(c) [Client Confidentiality Gate]:** *"المحافظة على سرية وخصوصية بيانات العملاء، وعدم الإفصاح عنها داخل الشركة المهنية إلا بالقدر اللازم والضروري لتأدية الخدمات المهنية وتحقيق مصالح العملاء"* — Client data confidentiality must be preserved and disclosed even *inside* the firm only to the extent strictly necessary to perform professional services.

5. **Art. 78(1)(d) [No Interference with Professional Independence]:** *"ألا يتدخل الشريك أو المساهم غير المرخص له، أو يكون له تأثير، على نحو يخل باستقلال أي من الشركاء أو المساهمين المرخص لهم عند ممارسة المهنة الحرة محل نشاط الشركة المهنية"* — The unlicensed shareholder may not interfere with or exert influence that prejudices the independence of any licensed shareholder when practicing the profession.

6. **Article 79 & Article 80 — Board Composition & Mandatory Licensed Majority on Management Decisions (`إدارة الشركة المهنية وقرارات الإدارة`):**

7. **Art. 79(1)–(4):** If a professional company (including a Professional SJSC) is managed by more than one person or a board, **at least 50% of the managers/directors must be licensed shareholders**.
8. **Art. 80:** Board/management resolutions require the quorum and majority set in the bylaws, **provided that at least half of the licensed managers/directors vote in favor of the resolution** (*«مع اشتراط أن يصوّت بتأييد القرار نصف الشركاء المديرين أو المساهمين أعضاء مجلس الإدارة المرخص لهم على الأقل»*).
9. **Crucial Distinction Counsel Uses:** Article 80 governs **board/management decisions** (`قرارات مديري الشركة المهنية أو مجلس إدارتها`), whereas **Shareholders' Reserved Matters** (`قرارات المساهمين` under SJSC Art. 145) operate at the general assembly / shareholder level to protect minority capital.

B. Saudi Companies Law 2022 (M/132) — Part VIII (Arts. 203–204) & Part VI (SJSC Arts. 151–154)

1. **Article 203 — Who May Perform the Professional Work:**
2. *"The professional company shall practice the liberal profession(s) involving its activities only through its duly licensed partners or shareholders. However, the professional company may, for the sake of performing its business activities, seek the assistance of persons duly licensed to practice the profession... provided that such persons shall be subject to the supervision and responsibility of the company."*
3. **Article 204 — Prohibition on Commercial Business by the Licensed Firm:**
4. The Professional Company must practice its licensed profession exclusively and may not carry on commercial business or establish commercial subsidiaries (which is why **ServiceCo must be a sister company** owned by Accord + the Family, never a subsidiary of the Licensed Firm).
5. **Articles 151, 152 & 154 — Statutory Self-Help in a Professional SJSC:**
6. **Art. 151(a):** Bylaws may prohibit disposal of shares for up to **10 years** (extendable by unanimous consent).
7. **Art. 151(b):** Bylaws may make company or shareholder approval a prerequisite to any transfer; **"Any disposition of shares in violation of the above-mentioned restrictions shall be deemed null and void."**
8. **Art. 152:** Bylaws may specify events compelling a shareholder to assign their shares (at fair value unless the bylaws specify another formula/price) and **suspend all non-financial/voting rights** attached to those shares until the transfer is completed.

C. Accounting and Auditing Profession Law (M/59, as amended by M/169 of 1446H) & SOCPA Rules

1. **Article 2 & Article 10(1)(b):** Practicing the accounting and auditing profession without a SOCPA license — or misleading the public that an unlicensed entity is practicing the profession — is a criminal offense (up to 5 years imprisonment and/or SAR 2,000,000 fine).
2. **Article 7(1) & 7(8) + Implementing Regulations Article 10:**

3. Only a licensed partner who participated in or supervised the engagement may sign audit reports.
4. The licensed partner must personally log **at least 5% of the total engagement hours** on every audit report issued (capped at 1,700 hours/year, or 2,200 hours/year if SOCPA quality conditions are met).
5. **Article 7(7) + Implementing Regulations Article 9 (Saudization of Technical Staff):**
6. The **Licensed Firm** must maintain **30% to 50% Saudi technical staff** (`السعوديين الفنيين من` 30 — `مجموع عامليه الفنيين` % for 1–20 staff, 35% for 21–30, 40% for 31–40, 45% for 41–100, 50% for 100+).
7. **Hidden Operational Trap Counsel Will Flag:** If you move **all** technical audit staff into ServiceCo and leave zero technical staff in the Licensed Firm, the Licensed Firm can trip SOCPA inspection flags on technical staffing / Saudization ratios (`قواعد الرقابة على جودة الأداء المهني` / AQI indicators) unless those staff are formally seconded/contracted under ISQM 1 or the core SOCPA-registered technical auditors remain on the Licensed Firm's GOSI/Qiwa roster while ServiceCo holds the non-licensed consultants, tech, finance, admin, and platform.
8. **Article 8(1) & IESBA Code (Adopted by SOCPA) — Network Firm Independence:**
9. Because the Sadagah family owns **75%** of the Licensed Firm and **46%** of ServiceCo, and ServiceCo provides platform/operational support to the Licensed Firm, ServiceCo is a **Network Firm / Related Entity** under the SOCPA/IESBA Independence Standards (`Section 400 / Section 520 / Section 600`).
10. **Consequence:** ServiceCo cannot provide prohibited non-assurance services (such as bookkeeping or preparing financial statements) to a client that the Licensed Firm is **simultaneously auditing** (self-review threat).

Part 2 — Detailed Theoretical Response on Each of Your 3 Questions

Question 1: ServiceCo Fee Flows (Residual Profit-Split vs. Cost-Plus + Platform Licence)

What Saudi Counsel Will Say:

> *"We strongly advise against drafting the MSA fee as a 'residual profit split where the Licensed Firm retains 10% of combined profit and ServiceCo sweeps 90%.' Under Saudi law, that wording creates severe exposure under Article 78(1)(b) and (d) of the Companies Law Implementing Regulations and Article 2 of the Accounting and Auditing Profession Law:"*
>
> 1. **Unlawful Fee-Sharing / Disguised Equity:** Audit fees belong to the SOCPA-licensed firm. A formula that explicitly strips 90% of net audit profit out of the Licensed Firm into a non-licensed LLC (54% owned by an unlicensed investor) looks like **direct sharing of regulated audit profits** with an unlicensed entity and **de facto economic control** over the Licensed Firm.
> 2. **Impairment of Partner Independence (Art. 78(1)(d)):** If the Licensed Firm is contractually capped at keeping 10% of net profits regardless of audit risk or regulatory liability (which remains 100% on the Licensed Firm and its partners under Companies Law Art. 209), a

regulator or disgruntled partner can challenge the MSA as void for stripping the professional company of its economic viability and independence.

3. **How to Achieve the Same Economics Safely:** Instead of a residual profit-split formula, split the intercompany arrangement into **two commercial schedules** that are standard in Saudi professional-firm groups:
4. **Schedule A — Shared Services & Secondment Fee:** Actual cost of personnel, premises, IT, admin, and back-office support **plus a fixed arm's-length mark-up (e.g., Cost + 15%)**.
5. **Schedule B — Accord OS Software & AI Workflow Licence:** A **fixed annual platform fee + a per-engagement / per-user technology fee** (tiered by engagement size/complexity, not a percentage of the client audit fee).
6. **Annual Rate-Card Calibration:** Set the Schedule A budget and Schedule B per-file rate card each year inside the **Annual Business Plan & Budget** (which requires Accord's shareholder consent). That delivers the target ~51% combined economics without ever writing "profit split" or "fee sharing" into the contract.

Question 2: MSA Consent Right in the Licensed Firm's SHA & Bylaws

What Saudi Counsel Will Say:

"Yes — this is enforceable if drafted as a Shareholder Reserved Matter and a Related-Party Transaction control at the General Assembly level, rather than a fetter on the licensed partners' professional management."

- **Why It Works:** Because the Founder owns 46% of ServiceCo and Accord owns 54%, the MSA between the Licensed Firm and ServiceCo is a **Related-Party Transaction (تعامل مع طرف ذي علاقة)**. In K&S's precedent SHA (`Clause 8.3(b)(9)`), *'approving or entering into any related party transaction'* and *'approving the Business Plan and Budget'* are already established Shareholders' Reserved Matters requiring Accord's affirmative vote.
- **Conflict-of-Interest Disqualification:** Furthermore, in the Licensed Firm's SJSC bylaws, you can stipulate that any decision to terminate, litigate, or materially amend a Related-Party Contract (including the MSA) is a **Shareholder Reserved Matter** requiring an **80%+ supermajority of all voting shares** (which requires both the 75% Founder and 25% Accord).
- **Required Carve-Out to Survive Art. 78 & Art. 208:** The SHA and MSA must include an express **Professional Independence & Regulatory Savings Clause** stating:
- Nothing in the MSA gives ServiceCo or Accord authority over **Licensed Activities Decisions** (client acceptance, audit scope, audit opinions, quality control, or supervision of licensed auditors — matching `Schedule 2` of the Precedent SHA).
- The Licensed Firm's partners may require replacement of any ServiceCo-supplied support personnel who fail professional/independence standards, and if SOCPA formally directs an amendment to the MSA, the parties must amend the operational terms while **adjusting the fixed/rate-card fees so neither party suffers an economic windfall or forfeiture**.

Question 3: Share Stapling / Cross-Transfer Lockup Across Both Entities

What Saudi Counsel Will Say:

> *"Yes — converting the Licensed Firm into a Professional SJSC makes share stapling legally robust on the Licensed Firm side, while a Share Pledge + ROFR/Drag/Tag secures the ServiceCo LLC side."*
>
> - **On the Licensed Firm (Professional SJSC) Side:** Under **Articles 151, 152, and 154 of the Companies Law 2022**, with unanimous shareholder consent at conversion, we embed three provisions directly into the SJSC Bylaws:
> - **10-Year Statutory Lock-Up (Art. 151(a)):** Neither party (other than Permitted Affiliate/LicensedCo Transfers by Accord) may dispose of SJSC shares for 10 years without the other's written consent.
> - **Stapled Transfer Prerequisite (Art. 151(b)):** No transfer of SJSC shares is valid unless the transferor simultaneously transfers the exact corresponding proportion of ServiceCo shares to the same transferee (or a SOCPA-licensed nominee designated for the SJSC slice). Under Art. 151(b), any transfer in breach is **statutorily null and void (باطل)** and the President/Board must refuse to record it in the Share Register.
> - **Compulsory Assignment & Automatic Suspension of Voting Rights (Art. 152):** Any breach of the ServiceCo SHA or the Stapling Deed triggers a compulsory transfer obligation over the defaulting shareholder's SJSC shares at a pre-agreed formula (e.g., 50% of Fair Value, as in `Clause 11.3(a)` of the Precedent SHA), with **automatic suspension of voting rights** until transfer completes.
> - **On the ServiceCo (LLC) Side:** Because an LLC does not have Art. 151/152 self-help in the same way as an SJSC, we either **(a) form ServiceCo as a regular (non-professional) SJSC** so both companies enjoy identical Art. 151/152 statutory stapling in their bylaws, or **(b) take a first-ranking Share Pledge** over the Founder's 46% ServiceCo shares securing his obligations under the Stapling Deed. *(Forming ServiceCo as an SJSC as well is cleaner, costs the same, and gives statutory Art. 151/152 stapling on both sides.)*

Part 3 — Scenario Analysis & Strategic Playbook for Accord

Scenario A — The "Engineered Commercial APS" (Most Likely Counsel Outcome — ~70% Probability)

- **What Counsel Approves:**
- Licensed Firm (Professional SJSC, 75% Family / 25% Accord) + ServiceCo (Commercial SJSC or LLC, 54% Accord / 46% Family).
- Share stapling in both companies' bylaws (via SJSC Arts. 151–152) + 80% Shareholder Reserved Matter veto over amending/terminating the MSA.

- **Fee Mechanism Modification:** Counsel rejects the raw "90% residual profit-split" wording and replaces it with **Cost + 15% (Staff/Back-Office) + Fixed/Per-File Accord OS Licence Fee**, reset annually via the **Business Plan & Budget** reserved matter.
- **Impact on Your Deal with Dr. Husam:**
- **Commercial substance is 95% identical** to your 51.1% APS model, provided the initial 3-year Business Plan & Budget (attached as `Schedule 6/7` to the SHA at signing) pre-locks the base platform fee and per-file rate card so neither side can deadlock the fee in Years 1–3.

Scenario B — The "Strict SOCPA / Staffing" Boundary (~20% Probability)

- **What Counsel Flags:**
- Counsel clears the APS and the Accord OS platform licence, but warns that **SOCPA-registered audit field staff** must remain on the Licensed Firm's GOSI/Qiwa payroll to satisfy **M/59 Art. 7(7) Saudization of technical staff (30–50%)** and SOCPA AQI inspection rules, while ServiceCo holds only **Accord OS, IT/AI engineers, admin/finance/HR, premises, and non-SOCPA advisory/process consultants**.
- **Impact on Your Deal:**
- Because audit field salaries stay in the Licensed Firm rather than inside ServiceCo's Cost-Plus base, ServiceCo's cost base is smaller — meaning a larger share of the extraction must flow through the **Accord OS Platform & Workflow Licence Fee** (which is still 100% domestic Saudi-to-Saudi between Licensed Firm and ServiceCo, so **0% WHT** and **0% net VAT**).

Scenario C — Full Green Light on Formulaic Profit-Split (~10% Probability)

- **What Counsel Approves:**
- Counsel accepts a formulaic "Performance & Platform True-Up Fee" capped at leaving the Licensed Firm with its agreed routine return (10% of combined profit), relying on a Transfer Pricing profit-split study and a regulatory savings clause.
- **Impact on Your Deal:**
- Matches `aps-51-structure-v2.html` verbatim, but carries higher SOCPA inspection optics if an inspector reviews the intercompany contract.

Summary of Actionable Tweaks We Can Make Before Sending to Counsel

1. **Make ServiceCo an SJSC too (not an LLC):** Since Tarek just confirmed an SJSC has no minimum capital and no JSC governance burden, forming **both** the Licensed Firm (Professional SJSC) and ServiceCo (Commercial SJSC) gives us **statutory Art. 151/152 share-stapling and automatic voting-right suspension on both sides**.
2. **Frame Question 1 to Give Counsel Both Fee Options:** In the email we already drafted, we explicitly ask *"Can the MSA price ServiceCo's delivery and platform services on a residual profit-split basis... or must the MSA fee be structured strictly as cost-plus + a fixed/per-file technology licence fee?"* — which invites counsel to hand us Scenario A's exact safe-harbor drafting rather than a flat "no."