Investigative powers of the Egyptian Competition Authority: A guide for companies in the Egyptian market

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Investigative powers of the Egyptian Competition Authority: A guide for companies in the Egyptian market

By

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Introduction

Competition law is a relatively new field in the Middle Eastern region. Negotiations pertaining to the adoption of competition law in Egypt commenced during the mid 1990s. It was not until February 15, 2005 that Law 3 of 2005 promulgating the Law on Protection of Competition and Prohibition of Monopolistic Practices ("Law 3/2005") was issued. This was followed by the issuance of Prime Ministerial Decree 1316 of 2005 issuing the Executive Regulations of Protection of Competition and Prohibition of Monopolistic Practices Law 3 of 2005 ("Executive Regulations") on August 16, 2005.

Determining the investigative powers granted to competition authorities pertaining to enforcement of the law is a concern of paramount importance to any company. It is vital to understand the rights and obligations of the competition authority vis-à-vis the company subject to analysis—for instance, the authority’s right to make unannounced visits to a company’s premises and inspect them and the situation with respect to the documents in the possession of its in-house legal department and external consultant(s). Unlike competition law regimes such as that of the European Union, neither Law 3/2005 nor its Executive Regulations adequately regulate this matter. Moreover, the Egyptian Competition Authority ("the Authority") did not adopt any guidelines in this respect, nor has it provided any clarification as to how it intends to enforce the law and its Executive Regulations. Apart from the necessary guidelines and cases addressing this particular matter, the system lacks the relevant literature, whether it is from an academic perspective or a practitioner’s one; all of which combine and add to the importance of the present article.

The aim of this article is to explore the Authority’s investigation powers vis-à-vis companies under scrutiny pursuant to Law 3/2005, its Executive Regulations and other relevant laws and regulations. The article will start off by defining the status of the Authority’s employees as judicial enforcement officers ("JEOs") under the relevant Egyptian laws and regulations. It will then move on to explore the powers granted to JEOs while applying them in the field of competition law. The article will then determine whether or not the documents and correspondences between a given company and its in-house legal department and external consultant(s) are legally privileged.

Investigative powers of the Egyptian Competition Authority

The investigative powers of the Authority are regulated under the Law 3/2005 and its Executive Regulations. However, while the rules stipulated therein do not provide a sufficient understanding, the author believes that they should be read in conjunction with Law 17 of 1983 issuing the Law on Bar Association Law ("BAL"), Law 150 of 1950 issuing the Law on Criminal Procedures ("CPL") and the General Instructions for Prosecution Offices ("Al-Taalemat Al-Ama Lil-Niyabat") of 2002 ("GIPO"). For illustration purposes, this article will refer to some of the Court of Cassation’s judgments.

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1 For general but notable literature on competition law in this region, see M.M. Dabbah, Competition Law and Policy in the Middle East, 1st edn (Cambridge University Press, 2007).

2 See Official Gazette No.6 (Bis) (February 15, 2005). Note that art.4 of Law 3/2005 provides that such law shall come into force after three months of its publication. This means that Law 3/2005 came into force on May 16, 2005.

3 See Official Gazette No.32 (Bis) (August 17, 2005). Note that art.2 of the Executive Regulations provides such that the Decree issuing these regulations shall come into force on the day following its publication. This means that the executive regulations came into force on August 18, 2005.

4 Note that this does not encompass only the Treaty on the Functioning of the European Union itself; but includes Council Regulations, Commission Regulations and case law.

5 Note that the authority’s board of directors was formed on August 20, 2005 by virtue of Prime Ministerial Decree 1342 of 2005.


7 Note that provisions of the BAL, CPL, GIPO, Penal Law and the Egyptian Constitution incorporated in this article were translated on an unofficial basis by the author.
The status of judicial enforcement officers ("Sifat Maamour El-Dabt Al-Qadaii")

Law 3/2005 and its Executive Regulations grant some of the Authority’s employees the status of JEOs in respect of its application. Article 17 of Law 3/2005 sets forth the Authority’s employees who are empowered to enforce the rules of the law:

“[T]he employees of the authority, who shall be specified by virtue of a decree issued by the Minister of Justice, in agreement with the Competent Minister and upon the recommendation of the Board, shall be granted the status of judicial enforcement officers in applying the provisions of this law. Such employees shall have the right to review records and documents, as well as obtain any information or data from any governmental or non-governmental authority for the purpose of handling cases submitted to the authority.”

Article 23(b) of the CPL conforms to art.17. It provides that:

“[T]he Minister of Justice, in agreement with the Competent Minister, shall grant some employees the status of judicial enforcement officers with respect to the contraventions committed within their competency and in relation to their field of work. The provisions stipulated in different laws, protocols and decrees granting some employees the competency of judicial enforcement officers shall amount to decrees issued by the Minister of Justice, in agreement with the Competent Minister.”

In application of the aforementioned, the Minister of Justice issued Decree 8483 of 2006 granting some employees of the Authority the status of JEOs. Article 1 of the Decree of the Minister of Justice identifies the Authority’s employees who are granted the status of JEOs in respect of contraventions to the Law 3/2005 (“Authority’s JEOs”) as follows:

- Executive Director of the Authority;
- managers of both the legal and economic departments of the Authority;
- legal researchers of the Authority;
- economic researchers of the Authority; and
- information-technology specialists.

However, neither Law 3/2005 nor its Executive Regulations define the status of JEOs. This status is originally regulated under the CPL and further elaborated in the GIPO. Although these sources are addressed therein from a criminal-law perspective, such matter is not regulated under civil or commercial laws, it may be able to apply some of these rules on the enforcement of competition rules.

Article 21 of the CPL briefly defines the role of JEOs as that which pertains to the examination of (competition-law) contraventions and their contraveners as well as gathering evidence necessary to undergo an investigation in a given case. While this definition appears to be a very general one, Law 3/2005 and its Executive Regulations have gone further in terms of JEOs’ role and powers.

The powers of judicial enforcement officers

Inspection of the company’s premises

Article 11(1) of Law 3/2005 grants the Authority the powers to, “receive requests for inquiry, inspection, collect information or issue orders to initiate such actions in relation to anti-competitive agreements and practices”.

While, as it appears, besides not much different than art.21 of the CPL, art.11(1) is merely an abstract statement of the role and powers, it is advisable to focus more on the Executive Regulations for a more detailed elaboration.

Article 38 of the Executive Regulations provides that:

“[E]mployees of the authority who have been granted the status of judicial enforcement officers, shall, upon identifying themselves to the concerned parties, carry out the following procedures:

1. Review books and documents, as well as obtain all necessary information and data from any governmental or
non-governmental authority, for the purpose of examining those cases presented to the authority;
2. Enter any work places or offices of those entities subject to examination during the official working hours, upon obtaining a written approval from the executive officer, as well as employ the assistance of public authority officers, if required; and
3. Take any procedures necessary to collect and examine the required evidence and interrogate any entity who is suspected of breaching the provisions of the law. 16

Apart from the basic and general stipulation of art.38(1)—which we believe is sufficiently clear—our reading of art.38 implies that the Authority’s JEOs are entitled to the following:

- To make unannounced or surprise visits to a given company’s premises; as long as this is made within the “official working hours” period. 17
- In an event where the company does not properly co-operate with the Authority and/or the latter deems the situation as such—presume that they have validly identified themselves upon the attempted entry 18—the Authority may request assistance from public authority officers. In fact, the Authority, in its Annual Report 2006–2007, has already raised this matter. It made clear that co-ordination with the Ministry of Interior is imminent in situations of this sort. 19

Inspection of houses of company personnel

Neither Law 3/2005 nor its Executive Regulations regulate the inspection of properties other than a company’s premises. However, this does not necessarily exclude the likelihood of such procedure; given the possibility that the Authority’s JEOs may invoke provisions of the CPL which do regulate the matter. 20 The inspection of houses in general is permitted only under very tight restrictions. This is clear from art.45 of the CPL which provides that, “public authority officers shall not enter any house, unless otherwise permitted by the law”. 21 It is vital, however, in this respect to distinguish the rules pertaining to the inspection of the house of a given company’s responsible manager and/or employee believed to have committed or to have been involved in the competition-related contravention from the rules addressing the inspection of the house of that company’s manager and/or employee believed to have not been involved in such contravention. 22

—Inspection of houses of accused company personnel

The CPL explicitly permits the inspection of houses conditional on the satisfaction of some prerequisites. Article 91 provides that the:

“[
][I]nspection of houses is one of the procedures of investigation and there shall not be a resort thereto except by virtue of an order from the investigation judge” 23 based on a suspicion that a person to whom his/her house is the intended has committed a felony or misdemeanor or assisted in committing either of them or if there is evidence that proves that he/she possess items which relate to the contravention. The investigation judge may inspect any place and papers … and all of which may have been used in committing the contravention or resulting from it.

15 See art.38(2) of the Executive Regulations (as stipulated above).
16 However, art.24(bis) of the CPL provides that violating the prerequisite that the JEO and the Public Authority officer should identify his/herself does not annul the procedure carried out.
18 The Ministry of Interior identified the Public Administration for Supply and Internal Trade as the competent department in the Ministry to assist the Authority; should it request assistance pursuant to art.38(2) of the Executive Regulations.
19 In the same vein, the Prosecutor-General specified the competency of the Prosecution for Financial and Commercial Affairs to investigate competition-related disputes. The investigation may be carried out by a Chief Prosecutor. See Periodic Book No.9 of 2007 pertaining to the Application of the Rules of Law on Protection of Competition and Prohibition of Monopolistic Practices (March 25, 2007).
20 Furthermore, competition-related disputes are subject to the exclusive jurisdiction of economic courts. See art.4 of Law 120 of 2008 Promulgating the Law Establishing Economic Courts in Official Gazette (May 22, 2008), Vol.21 (subsequent). Note that this law came into force on October 1, 2008.
21 Some may reasonably argue that the inspection of houses of company personnel in general (i.e. whether houses of accused or other than accused personnel) in competition-related contraventions is not a pragmatic scenario; as opposed to criminal offences. However, the relevant Egyptian laws addressing this matter—as will be delineated below—seem to stipulate such procedure in relation to misdemeanours in generic terms (i.e. in no unequivocal terms only applicable to criminal offences). In turn, this implies that the procedure of inspection of company personnel’s houses may not necessarily be an implausible scenario.
22 Law 150 of 1950 issuing the Law on Criminal Procedures art.45.
23 Note that in accordance with the general criminal rules in Egypt, only natural persons (i.e. company personnel) are criminally liable. Hence, juristic persons (i.e. companies) are not liable for criminal acts—competition-related contraventions—except jointly with natural persons and only in respect of payment of any inflicted fines. Article 22 of Law 3/2005 criminalises the acts of natural persons; who may be a company’s marketing manager, financial manager, sales manager, executive director and/or chairperson. Article 25 of Law 3/2005 addresses the event where the anti-competitive practice is committed by an employee other than the person responsible for management of the company. This necessitates that the person responsible for management is aware of the contravention and that the employee commits the contravention in the name or on behalf of the company. In Public Prosecution v National Cement Co & Others, while nine companies were convicted over price-fixing and limiting production, 20 of these companies’ personnel were criminally liable; all of which rested on their involvement in such practices (or awareness of such contraventions in the case of personnel responsible for management). Among those 20 personnel were nine of the management team of each company (responsible managers, chief executive officers or chairmen) and the remaining 11 personnel were the managers/employees involved in the cartel. See Misdemeanours Near City (2990/2008) August 25, 2008 Court of First Instance. Note that this judgment was upheld on appeal; making it the first case to be finalised under Egyptian Competition Law with positive findings until current. See appeal in East Cairo (22622/2008).
24 “Investigation judge” is a term that was used in the early stages of enforcement of the CPL (1950s). Investigation judges share the same characteristics as prosecutors in terms of role. Nowadays, there is no existence to the terminology “investigation judge”; whether in theory or practice. It is the competent prosecutor in question who takes charge of the procedure of investigation. For more detail, see M.M. Salama, Al-Diyyat Al-Ginaiah Fi Al-Tashrea Al-Masry (Criminal Procedures in Egyptian Legislation) (Dar El-Nahda El-Arabia [book in Arabic], 2001), P 11, pp.180–181.

along with all what is beneficial for disclosing facts. In all circumstances, the inspection order shall be reasoned.22

Given that art.11 of Law 169 of 1981 amending some of the rules of Penal Law 58 of 1937 provides that fines where maximum amounts exceed 100 Egyptian pounds shall be considered misdemeanours, and while art.22 of Law 190 of 2008 amending some of the provisions of the Law 3 of 2005 provides that:

“the breach of any of the provision of Articles 6, 7 and 8 of this law shall be sanctioned by a fine not less than one hundred thousand Egyptian pounds and not exceeding three million Egyptian pounds,”23

one may observe that contraventions to any of the terms of arts 6, 7 and 8 of the Law 3/2005 are sufficient for the issuance of judicial orders for the inspection of houses per se.24

Although art.91 of the CPL provides that houses shall not be entered or inspected except by a reasoned judicial order, they do not regulate the level of reasoning adequate to satisfy such pre-requisite.25 Clearly this is an equivocal part to which the CPL did not elaborate. Article 320 of the GIPO, however, emphasises that the reasoning of judicial orders should identify the nature of the contravention, the evidence on which it is based and must be conclusive in terms of nature.26

To ensure legitimacy of the procedure itself and, perhaps, with a view to avoiding any hindrance to the credibility of the evidence resulting from the inspection, the CPL provides for some procedures to be put in place. More specifically, art.51 states that:

“[I]nspection shall take place with attendance of the accused person or a person who represents him/her; otherwise it shall be carried out with attendance of two witnesses.”27

The CPL, indispensably, regulates the event where the accused person possesses sealed documents and whether or not the inspecting JEOs are entitled to unseal them. Article 52 provides that:

“[I]f the house of the accused person contains sealed documents or documents closed up in any other way, the judicial enforcement officer shall not unseal them.”28

This signifies that the Authority’s JEOs are only entitled to gain access to documents that are not sealed by any means.

Moreover, art.55 of the CPL provides that:

“[J]udicial enforcement officers shall detain the papers … and all of which may have been used in committing the contravention or resulted from its execution or have been based on it and all what is beneficial for disclosing the facts. The mentioned shall then be supplied to the accused person for his/her remarks and a summons shall be written on this and the accused person shall be asked to sign it or otherwise it shall indicate his/her refusal to sign.”29

Indeed one assumes that the application of art.55 shall be without prejudice to art.52 of the CPL; otherwise the procedure of detaining the relevant documents pursuant to art.55 will consequently be deemed as void. This is based on a well-established procedural principle which provides that when evidence is based on or extracted from a void procedure, it becomes subsequently void.30

To put the aforementioned rules on inspection of houses more into a competition-law perspective, the Authority’s JEOs may—upon obtaining a reasoned judicial order from the competent prosecutor—inspect the house of a company’s responsible manager and/or employee acting in the name or on behalf of the company and believed to have committed or to have been involved in a given competition-law contravention in the presence of any of the following events:

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22 Law 150 of 1950 issuing the Law on Criminal Procedures, art.91. Note that this article represents one of the amendments incorporated by the Law 37 of 1972 amending some of the provisions of the Law 150 of 1950 issuing the Law on Criminal Procedures.

23 It is worth noting that art.91 (as such) was initially drafted to comply with art.44 of the Egyptian Constitution which provides that, “for privacy purposes, houses shall not be entered or inspected except with a reasoned judicial order issued in accordance with the law”. Constitution of the Arab Republic of Egypt, published in the Official Gazette on September 12, 1971.

24 By contrast to the procedure of the inspection of houses, the procedure of gathering information and evidence may be carried out by JEOs prior to/without any judicial order from the competent prosecutor—inspect houses more into a competition-law perspective, the Authority’s JEOs may—upon obtaining a reasoned judicial order from the competent prosecutor—inspect the house of a company’s responsible manager and/or employee acting in the name or on behalf of the company and believed to have committed or to have been involved in a given competition-law contravention in the presence of any of the following events:

25 Law 190 of 2008 amending some of the provisions of the Law 3 of 2005 on the Protection of Competition and Prohibition of Monopolistic Practices art.22, Official Gazette 2582(a), June 22, 2008. Note that arts 6, 7 and 8 of the Law 3 of 2005 prohibit horizontal agreements (ex agreements between competitors) which are anti-competitive, vertical agreements (ex agreement between producer and distributor or wholesaler) which are restrictive of competition and abuse of dominance practices respectively.


27 It should be noted that the decision of whether or not to issue a judicial order, in the first place, is subject to the discretionary power of the investigating authority (i.e. competent prosecutor) scrutinised thereafter by the court of the subject matter. This usually depends on the seriousness and credibility of the preceding procedure (gathering evidence and information) as carried out by the JEO. See Appeal No.21148 of Judicial Year 64 (Session dated April 22, 1997) Egyptian Court of Cassation.


29 Law 15 of 1950 issuing the Law on Criminal Procedures, art.52.

30 Law 15 of 1950 issuing the Law on Criminal Procedures, art.55. It may be worth adding that art.59 of the CPL provides that, in the event where the captured papers provide to the person where they were captured, a compelling interest, an approved copy of them shall be handed to him or her.

31 For instance, the Egyptian Court of Cassation held that while the procedure of inspection was in itself void, all evidences extracted shall not be contemplated. See Appeal No.6858 of Judicial Year 53 (Session dated April 18, 1984) Egyptian Court of Cassation.

32 Even more interestingly, the Court of Cassation voids judgments on the basis of a void procedure. See Appeal No.410 of Judicial Year 56 (Session dated December 12, 1991) Egyptian Court of Cassation.
where there is a suspicion that his/her company contravened any of the terms of arts 6, 7 or 8 of the Law 3/2005 or even participated in contravening them;

• where there is evidence that proves that he/she possess documents which relate to a contravention to any of the terms of arts 6, 7 or 8 of the Law 3/2005.

—Inspection of houses other than that of the accused company personnel The law, under tighter prerequisites than the preceding category, permits the inspection of houses of companies’ personnel believed to have not been involved in a competition-law contravention, i.e. inspection of the house other than the accused person’s, as the CPL may term. Article 206 of the CPL provides that:

“[I]nspection shall not be carried out by the public prosecution … in a house other than the accused person’s unless recognised that he/she possess items which relate to a contravention.”

Article 330 of the GIPO adds to this that a procedure as such shall not be carried out except by obtaining a reasoned order from the competent judge who issues it following a review of the documents of the case. 32

Despite the fact that art.206 specifically empowers a member of the public prosecution to implement this procedure, i.e. with no explicit reference to JEOs, this does not necessarily mean that they are not entitled to undertake such procedure. This is because art.200 of the CPL provides that members of the public prosecution may assign JEOs to carry out some of their roles in the investigation process.

This may mean that the Authority’s JEOs may, having obtained evidence that one of a given company’s managers and/or employees believed to have not been involved in the contravention in question possesses documents which prove that the company exercises anti-competitive practices, ask the competent prosecutor to request an inspection order from the judge in jurisdiction in accordance with art.206 of the CPL.

However, in the event where the investigation process is carried out by a chief prosecutor, the judicial order may be issued directly by the public prosecution. In other words, the public prosecution may not need to refer the matter to the judge in jurisdiction. The chief prosecutor may, after issuing the inspection order, assign the Authority’s JEOs to carry out such procedure.

To recap, the Authority’s JEOs may—upon obtaining a reasoned judicial order from the judge in jurisdiction through the competent prosecutor (unless investigation is carried out by a chief prosecutor) and provided that the latter assigns them to carry out such a procedure—inspect the house of a company’s manager and/or employee believed not to have been involved in the contravention at stake. This is conditional on the understanding that he/she possess documents which relate to a contravention to any of the terms of arts 6, 7 or 8 of Law 3/2005.

Legal privilege

The concept of legal privilege—whether in relation to the documents and correspondences provided to the company by its legal department or vice versa; or those provided to the company by its external consultant or vice versa—is neither regulated under the Law 3/2005 nor its Executive Regulations. This matter rather gains attention under the BAL, the CPL and, in some respects, the GIPO. This part will distinguish between two situations: external consultancy and legal-department consultancy.

External consultancy

At the outset, it is important to determine whether or not a JEO is entitled to inspect the office of a given company’s external consultant. Article 313 of the GIPO, while defining the scope of houses for the purposes of inspections, addressed the rules pertaining to lawyers’ offices. It provides that:

“[T]he house is every private place which accommodates a person whether it is on a permanent or temporary basis … Private places shall extend to those places where a person resides; even though for a limited period throughout the day; such as … a lawyer’s office.”

In this sense, art.313 may imply that an office of lawyers shares the same rules of inspection as that of the houses of accused personnel (see the section on “Inspection of houses of accused company personnel” in this article). It is indeed assumed that the office of a company’s external consultant amounts to the meaning of a “lawyer’s office” stipulated under art.313. However, this requires providing a definition for the term “lawyer” under the relevant laws and regulations. According to art.2 of the BAL, any person who is listed under the Egyptian Lawyers’ Chart shall be named as a “mohamy”, i.e. “lawyer”. 33 On this basis, art.313 of the GIPO shall not be applicable to the office of an external consultant of a given company unless its managing partner or responsible manager is listed under the Lawyers’ Chart.

The difference, however, between the procedures pertaining to the inspection of houses of companies’ personnel believed to have committed or to have been involved in a contravention and those regarding a lawyer’s office is as art.51 of the BAL provides:

31 Law 150 of 1950 issuing the Law on Criminal Procedures art.206. This article represents one of the amendments incorporated by the Law 37 of 1972.
33 The General Instructions for Prosecution Offices, 2002, art.313.
“[I]t is not permitted to interrogate a lawyer or inspect his/her office except by one of the members of the public prosecution.” The Public Prosecution shall notify the Sub-Divisional Bar Association Committee prior to investigating any complaint against a lawyer. The chief of the Sub-Divisional Bar Association Committee or whoever represents him/her shall attend the investigation process in the event where the lawyer is accused of committing a … misdemeanour in relation to his/her work.”37

Article 51 of the BAL as such raises the debate over the applicability of art.200 of the CPL—permitting the assignment of JEOs to some of the roles of the competent prosecutor. In other words, are the Authority’s JEOs entitled to inspect the office of a company’s external consultant by virtue of an assignment by the competent prosecutor in application to art.200 of the CPL?

The wording of art.51 seems to exclude the competence of JEOs in this respect. Otherwise, it would have added, “unless otherwise permitted by other laws and regulations”. However, the author believes that there is no reason to exclude the possibility where the competent prosecutor may request from the Authority’s JEOs—who are initially handling the matter—to accompany him in such procedure. Thus, the Authority’s JEOs are not entitled to inspect the office of a company’s external consultant without the competent prosecutor’s request to accompany him in such procedure. In other words, the Authority’s JEOs are not entitled to undergo this form of inspection on their own.

Having established that JEOs are not entitled to inspect the office of a company’s external consultant voluntarily, we shall then move to the accessibility of the documents/correspondences provided to a company by its external consultant or vice versa. Article 96 of the CPL provides that:

“[T]he investigation judge shall not gain access to the papers and documents in the possession of the lawyer or expertise consultant provided by the accused [client] to carry out the assigned work, as well as to the exchanged correspondences between them in relation to the case.”38

Article 96 as such clearly demonstrates that the competent prosecutor is not entitled to access documents or correspondences provided to a lawyer by his/her client. On this basis, one may imply that while a competent prosecutor, in his capacity as the chief of the judicial enforcement process is not empowered to such level, the Authority’s JEOs a priori shall not be entitled to such procedure.

In-house consultancy

Article 3(4) para.2 of the BAL recognises a given company’s in-house legal department as one of the categories of consultancy. Hence, any person employed in the legal department and listed under the Lawyers’ Chart, pursuant to art.2 of the BAL, shall be named as a “lawyer”. However, there are no explicit rules on in-house consultancy under the BAL. This may, at first sight, signify that such category of consultancy is subject to the rules stipulated under Law 3/2005 and its Executive Regulations. One may, nonetheless, distinguish between two events in this respect.

The first event assumes that the legal department is located at the company’s business premises; or otherwise shares the same premises with the company itself. In this circumstance, the legal department may be contemplated as part of the company—in which case the Authority’s JEOs are entitled to the powers of inspection of a company’s premises, as stipulated under art.38 of the Executive Regulations and discussed earlier under “Inspection of the company’s premises” of this article (i.e. make unannounced visits in official hours, review documents, etc.).

The second event presupposes that the legal department is located at different premises than that of the company’s business premises. Debate may arise particularly in this event. While, on the one hand, the Authority’s JEOs may invoke arts 11(1) and 38 of Law 3/2005 and its Executive Regulations respectively to argue that the legal department, despite not sharing the same premises with the company’s business, remains part of the company and should thus be subject to the same inspection procedures, the company’s legal department, on the other hand, may invoke the terms of art.96 of the CPL to decline access to the company’s documents in its possession. Depending on the success in invoking art.96, the inspection of the legal department’s office in such event may be subject to the same rules of an external consultant’s office (i.e. in resemblance to the procedures discussed in the section on “External consultancy” in this article).

As for the accessibility of correspondences/documents communicated by external counsels to the company which may be found by the Authority at the business premises, Egyptian laws and regulations do not directly address this matter. Article 96 of the CPL only prohibits the Authority’s JEOs from gaining access to documents/correspondences in the possession of a company’s external consultant (i.e. no statement to the vice versa event). On this basis, one may observe that this restriction may not extend to the

35 Note that art.586 of the GIPO indicates that the investigation process with lawyers—which indeed includes inspection of their offices—shall be carried out by the most senior member of the competent public-prosecution office.
36 Note that inspections usually constitute part of the investigation process.
37 BAL art.51.
38 Law 150 of 1950 issuing the Law on Criminal Procedures art.96. Needless to mention that art.65 of the BAL provides that, “the lawyer shall refrain from performing a witness on the events or information which comes to his/her knowledge through the profession”.
39 It is worth noting that the capacity of a prosecutor as the chief of the judicial enforcement process is a well-known custom in criminal proceedings in Egypt. This is also implied from art.200 of the CPL, which provides that members of the public prosecution may assign any JEO to carry out some of his roles in the investigation process.
40 See arts 2, 3(4) para.2 of Law 17 of 1983 issuing the Law on Bar Association Law, Official Gazette 13, March 31, 1983.
documents/correspondences provided by the external consultant to the company. This, hence, means that legal privilege may not be applicable to this latter case.\footnote{Note that following completion of inspection, collection of information and inquiry procedure, the competent department in the Authority shall submit a report to its Executive Director who refers the complaint to the Board of Directors accompanied by his opinion. The Authority’s Board of Directors then decides whether or not to refer the matter to the competent Minister. For more information on procedural aspects, see arts 33–43 of the Executive Regulations.}

Conclusion

The Egyptian system clearly lacks transparency in respect of the Authority’s investigative powers pertaining to the enforcement of competition law and regulation. In fact, the Authority shows no intention of going into detail on procedural aspects as such (i.e. how it gathered documentation/correspondences from the company under investigation) in any of its future reports.

Moreover, the Egyptian competition-law regime does not seem to address all procedural aspects on this matter. This becomes specifically evident from the fact that the procedures pertaining to the inspection of properties other than the company’s and the issue of legal privilege were neither tackled by Law 3/2005 nor its Executive Regulations. The only transparent matter in this respect is where art.38 of the Executive Regulations sets out the Authority’s powers to inspect business premises (review books and documents, enter work places in working hours, etc.).

To sum up this article, the Authority’s JEOs are only entitled to the following procedures:

- making unannounced visits to a company’s premises within the official working hours and gaining access to documents and correspondences. This includes the legal department—arguably as long as it shares the same premises with that of the business one;
- requesting assistance from public-authority officers in case of a declined entry to the premises;
- following the issuance of a reasoned judicial order by the competent prosecutor, the inspection of the house of a company’s personnel believed to have committed or to have been involved in the competition-related contravention. This category of inspection, however, requires the existence of either of two events:
  - where there is suspicion that the personnel in question contravened any of the terms of arts 6, 7 or 8 of Law 3/2005 or even participated in contravening them;
  - where there is evidence that proves that he/she possesses documents which relate to a contravention to any of the terms of arts 6, 7 or 8 of Law 3/2005;
- upon obtaining a reasoned judicial order from the judge in jurisdiction through the competent prosecutor—provided that the latter assigns them to such task—inspecting the house of any of the company’s managers or employees believed to have not been involved in the contravention\footnote{Recall, however, that it suffices for a company’s responsible manager to be aware of the competition-law contravention for him/her to be held as criminally liable, pursuant to art.25 of Law 3/2005. In other words, if the company manager responsible is aware of the contravention—a plausible scenario—he or she shall be held as criminally liable and thus, be classified under Criminal Procedures Rules as an “accused person”. In this event, the procedures on inspection of the houses of accused company personnel shall be followed.};

conditional on the recognition that he/she possess documents which relate to a contravention to any of the terms of arts 6, 7 or 8 of Law 3/2005. However, the judicial order may be issued directly by the public prosecution in jurisdiction where the investigation is carried out by a chief prosecutor; in which case the latter may assign the Authority’s JEOs to undertake such procedure.