

**Guide for Witnesses appearing before  
the Public Accounts Committee of the House of Representatives,  
Parliament of Malta**

**October 2011**

---

**Clearly, the underlying principle must be that all protection afforded to witnesses under the Criminal Code CAP 9, the Code of Organisation and Civil Procedure CAP 12 and the Civil Code CAP 16, including protection from incrimination, shall be applicable to witnesses appearing before the Public Accounts Committee.**

## **Guidelines**

### *Power to summon Witnesses*

1. Any Standing Committee and any Select Committee shall have power to summon witnesses and to order the production of documents and reports before it, at such time and place as may be indicated in the relative warrant and at such place and time to which the meeting of the Committee may be adjourned. Witnesses may be ordered to attend by means of a warrant issued by the Chairman of the relative Committee and signed by the Clerk; any oath or affirmation taken or made by any witness may be administered by the Chairman or by the Clerk attending such Committee (SO 132).
2. The House shall have power and authority to summon before the House itself or before any Committee thereof any person to give evidence or advice with regard to any matter within the jurisdiction of the House, subject to the provisions of the House of Representatives (Privileges and Powers) Ordinance (Cap. 179) (SO 164).

### *Invitation to appear before a Committee*

3. The final determination as to who will be invited to appear rests with the Committee.<sup>1</sup> The request is formally signed and sent out by the Clerk of the Committee.<sup>2</sup>
4. A person who, having been duly served with a copy of the warrant as prescribed in article 4 above, fails, without lawful excuse, to appear before the Committee, or having appeared before the Committee refuses to be sworn or, subject to guideline 19 below, to answer questions shall be guilty of contempt of the House and shall be liable to the penalties prescribed in article 11 of the House of Representatives (Powers and Privileges) Ordinance (CAP 113).<sup>3</sup>
5. A person who fails to attend before the Committee when so required as aforesaid may be compelled to attend by warrant of arrest issued by order of the House, signed by the Clerk thereof and executed by the Police, or by a messenger of the House.

---

<sup>1</sup> Rulings by Speaker Michael Frendo of 11 October 2010 and 8 November 2010.

<sup>2</sup> House of Representatives (Powers and Privileges) Ordinance – CAP 113 (Art 5(1))

<sup>3</sup> House of Representatives (Powers and Privileges) Ordinance – CAP 113 (Art 8(1))

6. Whenever a witness or an expert is for any just cause unable to attend before the Committee, the Committee may appoint a person or persons, under such conditions or directions as in each particular case it may consider necessary or expedient, to receive, on behalf of the Committee, the evidence or opinion required. Such person or one of such persons shall be vested by the Committee with the power to administer the oath or affirmation.<sup>4</sup>
7. An oath or affirmation taken or made by a witness or by an expert before the Committee shall for the purposes of the Criminal Code be comparable to an oath or affirmation taken or made before a court in civil matters.<sup>5</sup>
8. Any questions concerning the procedural and administrative rules of the Committee are to be addressed to the Clerk of the Committee.

#### *Swearing-in of Witnesses*

9. Any witness appearing before the Committee may be required to take an oath or make a solemn affirmation, if the Committee so decides.<sup>6</sup>
10. The form of oath to be administered to witnesses shall be the following:

*You [A. B.] do swear (or do solemnly affirm) that the evidence which you shall give, shall be the truth, the whole truth, and nothing but the truth. So help you God.*<sup>7</sup>

11. Any oath or affirmation shall be administered by the Clerk of the Committee.

#### *Hearing of Witnesses*

12. All evidence is taken in public and members of the press can be present during these sessions. These sessions are streamed live on the Parliament's website and a transcript of the sessions are published.
13. Witnesses may make an oral presentation and/or present a written statement to the Committee concerning the subject being debated by the Committee. The Committee can decide that a written brief be read out in its entirety in order to be part of the session's record. A written statement, in any case, is to be appended to the minutes of the relevant Committee meeting.<sup>8</sup>
14. After the presentation by the Witness, the Members of the Committee may ask questions, as directed by the Committee Chair. Witnesses must answer all questions put by the Committee, subject to the protection granted to witnesses under the Laws of Malta, and in particular, without prejudice to guideline 19.

---

<sup>4</sup> House of Representatives (Powers and Privileges) Ordinance – CAP 113 (Art 6)

<sup>5</sup> House of Representatives (Powers and Privileges) Ordinance – CAP 113 (9)

<sup>6</sup> Guide for Witnesses appearing before committees of the House of Commons (Canada), October 2008

<sup>7</sup> Criminal Code – CAP 9 (Art 632)

<sup>8</sup> Guide for Witnesses appearing before committees of the House of Commons (Canada), October 2008

15. The Committee can provide an informal indication of the possible lines of inquiry to Witnesses in order to assist them in preparing for the session, however, the questions actually put by the Members are not restricted to the lines indicated.
16. Subject to guideline 19 below, if a Witness, personally, or through his/her legal counsel, objects to a question asked by an individual Committee member, he/she is obliged to reply unless any one Member requests that the issue of admissibility be referred to the Speaker for his/her decision which decision shall bind the Committee.

A witness who, subject to guideline 19 below, refuses to answer questions may be reported to the House.

17. If the information requested is not immediately at hand, the Committee can ask for this information to be submitted in writing after the session.

#### *Parliamentary Privilege*

18. Members of the House, including Ministers, may refuse to appear as witnesses and thus may not be formally summoned to attend as witnesses before the Committee. The House shall be informed of such a refusal.<sup>9</sup>
19. No Witness is to be compelled to answer a question which might incriminate him/her.

#### *Evidence by the witnesses*

20. Witnesses are to answer questions put to them carefully, fully and honestly.
21. Witnesses shall be entitled to legal representation but questions will be put to the witness and answers shall be given by the witness and not by the lawyer representing him/her. The lawyer may only reply on behalf of the client on legal points that may arise.<sup>10</sup>
22. A question put to a witness may be objected to by a Member. In such a case, the witness and any strangers present at the proceedings are to withdraw until the matter is considered and a decision on how to proceed is arrived at.<sup>11</sup>
23. The Committee may concede for certain evidence to be taken *in camera* when the evidence relates to confidential matters of State or sensitive commercial information.<sup>12</sup>
24. Tampering with evidence given by a witness, somehow deterring him/her from giving evidence, or threatening a Witness who has appeared before a Committee may constitute a breach of privilege and may be treated as such by the House.<sup>13</sup>

---

<sup>9</sup> Erskine May p 759 (23<sup>rd</sup> Edition). This was also confirmed by the Clerk of the PAC, House of Commons (UK) – email dated 21 February 2011.

<sup>10</sup> This is over and above the provision in the COCP (Article 577(2)) which states that ‘Witnesses may not be assisted or advised by any person.’

<sup>11</sup> Erskine May p 762 (23<sup>rd</sup> Edition)

<sup>12</sup> Guide for Witnesses appearing before committees of the House of Commons (Canada), October 2008

<sup>13</sup> Guide for Witnesses appearing before committees of the House of Commons (Canada), October 2008

25. Subject to guideline 19 above, refusing to be sworn or make a solemn affirmation, refusal to answer questions, refusal to produce or destruction of documents in their possession and deliberately attempting to mislead a Committee is a contempt of the House which the House has the power to punish.<sup>14</sup>
26. False evidence given to the Committee is considered by the House as contempt, and as perjury if given under oath.<sup>15</sup>
27. The procedure established by Article 11 of the House of Representatives (Privileges and Powers) CAP 113 shall be followed in proceedings for contempt against any witnesses.

October 2011

---

<sup>14</sup> Erskine May, p 130 (23<sup>rd</sup> Edition)

<sup>15</sup> Erskine May, p 725 (23<sup>rd</sup> Edition)