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**GIVING EVIDENCE TO SELECT COMMITTEES  
OF THE DEWAN RAKYAT:  
GUIDELINES FOR PUBLIC OFFICERS**

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# 1 INTRODUCTION

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## 1.1 Application and scope of the Guidelines

1.1.1 These Guidelines are designed to provide clarification and guidance to public officers in their preparation and provision of information and evidence to select committees of the Dewan Rakyat. “Public officers” in this context include persons employed or appointed by the Government of Malaysia who undertake or perform duties within a government ministry, department or agency falling within the domain of public services as described under Article 132(1) of the Federal Constitution.

1.1.2 The Federal Constitution and various written laws and rules impose obligations on, and afford protections for, anyone who provides information to the Dewan Rakyat. These Guidelines explain these obligations and protections. These Guidelines also describe in general terms the vital processes relating to committee proceedings, responding to a committee’s requests and providing representations and evidence before a committee.

1.1.3 Although these Guidelines are produced primarily for public officers, it is important to bear in mind that the Dewan Rakyat’s powers and privileges apply equally to all persons. The purpose of these Guidelines is merely to provide clarification and guidance to a select group of individuals who, because of the nature of their duties and responsibilities and/or the statutory powers and discretion vested in them, are likely to be required to appear before Dewan Rakyat committees to represent or speak on behalf of any government ministry, department or agency, regarding the government’s policies or programmes, or regarding the administration of public assets or federal resources.

## 1.2 Parliament and government accountability

1.2.1 Under the Federal Constitution, Malaysia is a constitutional democracy with power divided between different governing institutions. The three branches of government are the Executive,<sup>1</sup> the Legislature (or Parliament)<sup>2</sup> and the Judiciary.<sup>3</sup> As a Federation of States, executive and legislative power in Malaysia is further distributed between the Federation, the States of Peninsular Malaysia, Sabah and Sarawak. The division of power is intended to preserve important democratic doctrines, namely:

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<sup>1</sup> Federal Constitution, Art. 39.

<sup>2</sup> Federal Constitution, Art. 44.

<sup>3</sup> Federal Constitution, Art. 121(1).

- **separation of powers and checks and balances**, which ensures that power is not concentrated in the hands of a single individual or branch of government, and excesses of power of one institution may be curbed by another; and
- **the rule of law**, which ensures that the system of law must be fair and that all individuals and institutions must obey, and have equal access to, the law.

1.2.2 Along with the Dewan Negara, the Dewan Rakyat's main functions are to enact laws, oversee the administration of government, and approve and oversee the allocation of the budget and public funds to the government. The Dewan Rakyat is the only body within the three principal arms of government whose members are elected by the Malaysian electorate. Therefore, the members of the Dewan Rakyat serve as the direct representatives of the Malaysian people in its government.

1.2.3 The fundamental principle of responsible government is embodied in the constitutional relationship between the Executive and Parliament, namely that those who exercise constitutional authority must be part of and responsible to Parliament. Under Article 43 of the Federal Constitution, the Prime Minister who is appointed by the Yang di-Pertuan Agong must be a Member of the Dewan Rakyat and must retain the confidence of a majority of its Members, while Cabinet Ministers appointed by the Yang di-Pertuan Agong on the advice of the Prime Minister must be either Members of the Dewan Rakyat or the Dewan Negara.<sup>4</sup> Constitutionally, the Cabinet is collectively responsible to Parliament.<sup>5</sup> Therefore, the powers of the Executive are exercised by Ministers who are in turn accountable to Parliament, as the government of the day must retain the confidence and support of the Dewan Rakyat. Ministers are answerable to the Dewan Rakyat for the policies, programmes and activities of the government.<sup>6</sup>

1.2.4 Ministerial functions and responsibilities are vested in Ministers through orders that are made by the Yang di-Pertuan Agong and gazetted from time to time under the Ministerial Functions Act 1969.<sup>7</sup> Ministers bear overall responsibility for the execution and effectiveness of the policies of their respective ministries.<sup>8</sup> Ministers are supported in the exercise of their functions by among others, public servants and other officials who fall within the description in paragraph 1.1.1 above. In particular, the Secretary-General of a ministry is tasked with the overall responsibility of achieving the aims and objectives of the ministry concerned. Secretaries-General are the principal advisers to their Ministers.<sup>9</sup> They are the chief executives with regulatory and accounting authority over their respective ministries and agencies,<sup>10</sup> and provide guidance and leadership in the development and execution of their ministry's policies and programmes.<sup>11</sup> Public servants and other related officials are accountable to their superiors and ultimately to the relevant Minister for the proper and

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<sup>4</sup> Federal Constitution, Arts. 43(2) & (4).

<sup>5</sup> Federal Constitution, Art. 43(3).

<sup>6</sup> See also the General Circular No. 2 of 1982 (*Pekeliling Am Bil. 2 Tahun 1982*), r. 6(a).

<sup>7</sup> Ministerial Function Act 1969, ss. 2-4, read together with Federal Constitution, Art. 43(1).

<sup>8</sup> See: General Circular No. 2 of 1982 (*Pekeliling Am Bil. 2 Tahun 1982*), r. 7 read together with rr. 4(a) & 6.

<sup>9</sup> See: General Circular No. 2 of 1982 (*Pekeliling Am Bil. 2 Tahun 1982*), rr. 6(d), 7, 9, 10 & 11.

<sup>10</sup> See: General Circular No. 2 of 1982 (*Pekeliling Am Bil. 2 Tahun 1982*), rr. 2, 4(d), 8, 10 & 11.

<sup>11</sup> See: General Circular No. 2 of 1982 (*Pekeliling Am Bil. 2 Tahun 1982*), rr. 7, 8, 9, 10 & 11.

competent execution of their duties in the administration of government policies, programmes, public assets and federal resources. Their accountability includes the obligation to provide full and accurate information to Parliament and its committees about the factual and technical background to such policies, programmes and administrative actions.

1.2.5 In discharging their constitutional powers and functions, the Members of the Dewan Rakyat have been accorded certain protections and privileges. Under Article 63(1) of the Federal Constitution, the validity of any proceedings in a House or any committee cannot be questioned in a court. Article 63(2) accords immunity from proceedings to any person in respect of anything said by him/her when taking part in any proceedings of the Dewan Rakyat or of its committees. However, this immunity does not extend to violations of the laws enacted by Parliament under Article 10(4) of the Constitution, or any provision of the Sedition Act 1948<sup>12</sup> or of the Houses of Parliament (Privileges and Powers) Act 1952 [Act 347] or the Standing Orders of the Dewan Rakyat (**Standing Orders**).

1.2.6 Parliament is constitutionally empowered to regulate its own procedures.<sup>13</sup> In that regard, the powers and privileges of the Dewan Rakyat, its committees and its Members are enshrined primarily in the Houses of Parliament (Privileges and Powers) Act 1952 and in the Standing Orders.

### 1.3 Powers and functions of Dewan Rakyat select committees

1.3.1 There are different types of committees that are or may be established by the Dewan Rakyat, and they perform different functions.<sup>14</sup> The Standing Orders establishes five **fixed (or standing) select committees**:

- a. the **Committee of Selection** comprises the Speaker of the Dewan Rakyat (**Speaker**) as Chair, and six other Members of the Dewan Rakyat elected by the Dewan Rakyat. Its primary function is to nominate members of other committees and to report these nominations to the Dewan Rakyat. It also deals with other matters referred to it by the Dewan Rakyat from time to time;<sup>15</sup>
- b. the **Standing Orders Committee** comprises the Speaker as Chair, and six other Members of the Dewan Rakyat nominated by the Committee of Selection. Any proposal to amend the Standing Orders must originate from, or be referred to, this committee, and the Dewan Rakyat will only deliberate on a proposed amendment to the Standing Orders once it receives the committee's report;<sup>16</sup>

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<sup>12</sup> Federal Constitution, Arts. 63(4) & (5).

<sup>13</sup> Federal Constitution, Art. 62(1).

<sup>14</sup> Standing Orders of the Dewan Rakyat, SOs 76-82.

<sup>15</sup> Standing Orders of the Dewan Rakyat, SO 76.

<sup>16</sup> Standing Orders of the Dewan Rakyat, SO 78.

- c. the **House Committee** comprises the Speaker as Chair, and six other Members of the Dewan Rakyat nominated by the Committee of Selection. It advises the Speaker on all matters connected with the comfort and convenience of, and services and amenities available to, Members of the Dewan Rakyat;<sup>17</sup>
- d. the **Committee of Privileges** comprises the Speaker as Chair, and six other Members of the Dewan Rakyat nominated by the Committee of Selection. Any matter that appears to affect the powers and privileges of the Dewan Rakyat are referred to this committee, which the committee will consider and report back to the Dewan Rakyat; and<sup>18</sup>
- e. the **Public Accounts Committee (PAC)** comprises a Chair, a Vice-Chair, and between six to twelve other Members of the Dewan Rakyat nominated by the Committee of Selection. A Minister cannot be a member of this committee. The PAC is broadly tasked with examining the accounts and appropriations of the Federal Government and other public authorities.<sup>19</sup>

1.3.2 Apart from the fixed select committees, the Dewan Rakyat also has the power to establish **special select committees** within the lifetime of each Parliament. The Dewan Rakyat determines a special select committee's tenure and the scope of the matters that are to be considered by the committee.<sup>20</sup> Members of a special select committee are nominated by the Committee of Selection.<sup>21</sup> Generally, special select committees are established to scrutinise matters of policy and/or administration by the government, associated statutory authorities and other public bodies. Special select committees may also review bills, reports and matters referred to it by the Dewan Rakyat or a Minister. A special select committee set up to review a Bill can only deliberate the Bill committed to it and relevant amendments to that Bill.<sup>22</sup> Each of the current special select committees of the Dewan Rakyat has a purview over different ministerial or thematic clusters.

1.3.3 The membership of every select committee must, as far as practicable, reflect the balance of the parties within the Dewan Rakyat.<sup>23</sup> Each select committee has a Chair. The Speaker is the Chair of all the fixed select committees except for the PAC. The Chair and Vice-Chair of the PAC are appointed by the Dewan Rakyat.<sup>24</sup> Special select committees have the power to elect their own Chairs, unless the Dewan Rakyat directs otherwise.<sup>25</sup>

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<sup>17</sup> Standing Orders of the Dewan Rakyat, SO 79.

<sup>18</sup> Standing Orders of the Dewan Rakyat, SO 80.

<sup>19</sup> Standing Orders of the Dewan Rakyat, SO 77.

<sup>20</sup> Standing Orders of the Dewan Rakyat, SOs 81(1) & 83(4).

<sup>21</sup> Standing Orders of the Dewan Rakyat, SO 81(1).

<sup>22</sup> Standing Orders of the Dewan Rakyat, SO 83(4).

<sup>23</sup> Standing Orders of the Dewan Rakyat, SO 82(1).

<sup>24</sup> Standing Orders of the Dewan Rakyat, SO 77(2).

<sup>25</sup> Standing Orders of the Dewan Rakyat, SO 81(2).

1.3.4 The Secretary (or “Clerk”) of the Dewan Rakyat (**Secretary**) also serves as secretary of the select committees of the Dewan Rakyat, unless another person is appointed by the Secretary to do so.<sup>26</sup>

1.3.5 Committees of the House are entitled to exercise all or any of the powers delegated to them under the law. Special select committees, the PAC and the Committee of Privileges have the power to send for persons, documents or papers<sup>27</sup> in order to verify or ascertain any facts and matters relating to the subject of any inquiry before the committee.<sup>28</sup> The Committee of Selection, the Standing Orders Committee and the House Committee do not have the power to send for persons, documents or papers unless the Dewan Rakyat directs otherwise.<sup>29</sup> A committee that has the power to send for witnesses and documents can call witnesses to appear before it.<sup>30</sup> If necessary, witnesses can also be compelled to appear before a committee through the issuance of a summons.<sup>31</sup> Committees also have the power to examine witnesses under oath.<sup>32</sup>

1.3.6 Additionally, in relation to the PAC, government rules and regulations directly impose obligations on the public officers concerned to provide information to the PAC and facilitate its inquiries. In this regard, the Secretary-General of a ministry is its Regulatory Officer and Chief Accounting Officer and is responsible to the PAC over matters relating to the ministry’s expenditure and accounts.<sup>33</sup>

1.3.7 The privileges and powers of the Dewan Rakyat and its committees to compel the attendance of witnesses, the answering of questions and the production of evidence, are enforceable (among others) by the Dewan Rakyat through contempt proceedings.<sup>34</sup>

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<sup>26</sup> Standing Orders of the Dewan Rakyat, SO 83(8).

<sup>27</sup> Standing Orders of the Dewan Rakyat, SOs 83(2), 77(5) & 80(3).

<sup>28</sup> Houses of Parliament (Privileges and Powers) Act 1952, s. 18.

<sup>29</sup> Standing Orders of the Dewan Rakyat, SOs 76(2), 78(1) & 79(1).

<sup>30</sup> Standing Orders of the Dewan Rakyat, SO 83(2).

<sup>31</sup> Houses of Parliament (Privileges and Powers) Act 1952, ss. 16 & 17.

<sup>32</sup> Houses of Parliament (Privileges and Powers) Act 1952, s. 18.

<sup>33</sup> General Circular No. 2 of 1982 (*Pekeliling Am Bil. 2 Tahun 1982*), rr. 8 & 11(b); Treasury Instructions (*Arahan Perbendaharaan*), 304(b).

<sup>34</sup> Houses of Parliament (Privileges and Powers) Act 1952, s. 9.



## 2 SCOPE AND NATURE OF EVIDENCE

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### 2.1 General principles

#### Obligation to provide full and accurate disclosure

2.1.1 Just as public officers are obligated to convey information truthfully to their Ministers, they are equally obligated, on the Ministers' behalf, to convey information truthfully to Parliament; that is, information which they may properly convey within the limitations imposed by law. This duty extends to those who are directly or indirectly employed or appointed by the government to statutory authorities, or to government-linked investment or commercial enterprises, where Parliament is empowered to require these entities to report to it through the Minister concerned, in particular where the entity draws on federal revenues or exerts control over public assets or utilities.

2.1.2 This duty to provide full disclosure before a committee is enforceable by law, through for example, the ability of a committee to require public officers to provide information and evidence under oath.<sup>35</sup> The law also makes it an offence punishable as contempt of the Dewan Rakyat for any person to disobey an order to attend or produce papers, books, records or other documents before a committee,<sup>36</sup> or to refuse to answer lawful and relevant questions put by a committee,<sup>37</sup> unless the law clearly exempts the information or evidence from being adduced [see [Section 2.3](#) and [Section 2.4](#)].

2.1.3 It is the duty of any person who appears before a committee not simply to provide full disclosure but also to provide honest and accurate information to the best of his/her ability. This duty is underpinned by the fact that the presentation of any false, untrue, fabricated or falsified document to a committee with intent to deceive a committee is an offence punishable as contempt of the Dewan Rakyat.<sup>38</sup> Furthermore, any witness who prevaricates or misconducts themselves before a committee is also liable for contempt.<sup>39</sup>

2.1.4 In addition, any person who wilfully and corruptly gives a false answer to any material question posed by the committee relating to the subject of its inquiry (whether or not the examination is conducted under oath or affirmation) will be guilty of the offence of giving false evidence, and liable on conviction to the penalties under section 193 of the Penal Code.<sup>40</sup>

#### Parliamentary privilege and the protection of freedom of speech

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<sup>35</sup> Houses of Parliament (Privileges and Powers) Act 1952, ss. 16 & 18.

<sup>36</sup> Houses of Parliament (Privileges and Powers) Act 1952, s. 9(a).

<sup>37</sup> Houses of Parliament (Privileges and Powers) Act 1952, s. 9(b).

<sup>38</sup> Houses of Parliament (Privileges and Powers) Act 1952, s. 9(j).

<sup>39</sup> Houses of Parliament (Privileges and Powers) Act 1952, s. 9(k).

<sup>40</sup> Houses of Parliament (Privileges and Powers) Act 1952, s. 20.

2.1.5 The law not only imposes obligations, but also protects a person's ability to provide full and accurate information before a committee. Any person who participates in proceedings before a committee shall not be liable to be questioned in any court on the evidence he/she gives to such a committee. This is because the freedom of speech and debate in Parliament, including in its committees, is protected by parliamentary privilege.<sup>41</sup> This immunity covers statements and evidence provided directly to a committee. It also extends to representations submitted to the Secretary for the committee's consideration and in response to the committee's invitation to provide such representations, whether or not the person making and submitting the representations proceeds to give evidence in person before the committee.

2.1.6 Therefore, witnesses before a select committee, including public officers, can provide information and evidence without fear of external consequences. Public officers who provide evidence before a select committee are protected by parliamentary privilege and must not be penalised for giving evidence. Any act or attempt to tamper with, deter, threaten, beguile or unduly influence any witness with regard to the evidence to be given before a committee may amount to an offence of contempt<sup>42</sup> [see [Section 5.2](#)].

## 2.2 Privileged evidence and other restricted information

2.2.1 Notwithstanding the general duty to provide full and accurate disclosure before a committee, public officers should be mindful of their obligation as public servants not to adduce information and documents the disclosure of which is restricted under secrecy and national security laws, without first obtaining the approval and consent of the competent authority. In that regard, the rules relating to privileged evidence in the Evidence Act 1950 [*Act 56*] apply in the case of evidence given before a committee<sup>43</sup> [see [Section 2.3](#) and [Section 2.7](#) below].

2.2.2 It is to the benefit of the committees in carrying out their role of scrutinising government policies and programmes, and to the benefit of the government in demonstrating transparency and accountability of its actions and decisions, for public officers to make all information available to the committee as far as reasonably possible.

2.2.3 Depending on the circumstances of each case, disclosure of classified or restricted information may be done under certain conditions. It is important that any conditions restricting disclosure and access to information should be reasonable and agreed upon by the committee, bearing in mind that the Dewan Rakyat and its committees (where they are so authorised) have broad powers to compel the compliance of witnesses and the production of documents, and to restrict or permit publication of evidence received in the course of its proceedings.

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<sup>41</sup> Federal Constitution, Arts. 63(1) & (2); See also Houses of Parliament (Privileges and Powers) Act 1952, s. 3.

<sup>42</sup> Houses of Parliament (Privileges and Powers) Act 1952, s. 9(i).

<sup>43</sup> Houses of Parliament (Privileges and Powers) Act 1952, s. 21.

## 2.3 Affairs of state, public interest and official secrets

### Affairs of state [section 123, Evidence Act 1950]

2.3.1 Under section 123 of the Evidence Act 1950, unpublished official records relating to affairs of state are protected information; however, they may be disclosed with the permission of the appropriate head of department, subject at all times to the overall control of the Minister or Chief Minister concerned.<sup>44</sup>

2.3.2 Therefore, where information that has been requested by a committee or is otherwise relevant to the subject of the committee's inquiry is contained in an unpublished official record relating to affairs of state, the public officer from whom the information is sought must promptly inform the committee, and seek permission from the head of the department concerned to disclose the document or information to the committee. Further details of the procedure that should be adopted for the handling of such evidence is set out in [Section 2.6](#) below.

### Public interest [section 124, Evidence Act 1950]

2.3.3 The law also protects a public officer from being compelled to disclose communications made to him/her in official confidence if he/she considers that the public interest would suffer by the disclosure. However, the head of department of the officer concerned has the power to certify in writing whether or not the disclosure of the communications would be detrimental to the public interest. If the disclosure is certified not to be prejudicial to the public interest, the officer must disclose the communications.<sup>45</sup>

2.3.4 Therefore, where information that has been requested by a committee or is otherwise relevant to the subject of the committee's inquiry includes communications made to a public officer in official confidence, and if he/she considers that disclosing the communications would be detrimental to the public interest, the witness must promptly inform the committee, and should seek certification from the head of the department concerned on whether or not the disclosure would be prejudicial to the public interest. Further details of the procedure that should be adopted for the handling of such evidence is set out in [Section 2.6](#) below.

### Official secrets

2.3.5 Under the Official Secrets Act 1972 [*Act 88*], restrictions are imposed on who can have access to documents, information and material classified as an "official secret" under the Act.<sup>46</sup> Approval or declassification of the documents by the Minister concerned, or by the official empowered under the Act, would be required before access to such documents (or to

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<sup>44</sup> Evidence Act 1950, s. 123 read together with Houses of Parliament (Privileges and Powers) Act 1952, s. 21.

<sup>45</sup> Evidence Act 1950, s. 124 read together with Houses of Parliament (Privileges and Powers) Act 1952, s. 21.

<sup>46</sup> Official Secrets Act 1972, s. 2 (the definition of "official secret" and related terms).

the information derived from those documents) can be given to a person without the appropriate security approval or authority.<sup>47</sup>

2.3.6 Therefore, where a document, information or material that has been requested by a committee or is otherwise relevant to the subject of the committee's inquiry is classified as an "official secret" under the Act, the committee should be promptly informed, and declassification of, or approval to disclose, the document should be sought from the Minister concerned or from the official empowered under the Act. Further details of the procedure that should be adopted for the handling of such evidence is set out in [Section 2.6](#) below.

## 2.4 *Sub judice*

2.4.1 The principle of *sub judice* may apply to a committee's proceedings. Where the subject of an inquiry before a committee may refer to or involve legal cases that are pending adjudication before the courts, the public officer concerned should inform the committee (through the Secretary of the committee).

## 2.5 Personal data and privacy

2.5.1 Where information provided to a committee contains or may contain personal or confidential data as defined under the Personal Data Protection Act 2010 (PDPA) [Act 709] or under any other laws relating to privacy or confidential information, the public officer adducing the information should inform the committee before the information is disclosed.

2.5.2 Notwithstanding this, the Dewan Rakyat and its committees are empowered to restrict or permit publication and disclosure of information and evidence received in the course of its proceedings. In addition, where a person ordered to attend or produce documents before a committee refuses to answer any question or produce any document on the ground that the same is of a private nature and does not affect the subject of the enquiry, the Chair of the committee may report this to the Dewan Rakyat, and the Dewan Rakyat can either excuse the answering of the question or the production of the document, or issue an order requiring the person to answer the question or produce the document.<sup>48</sup>

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<sup>47</sup> Official Secrets Act 1972, ss. 2B & 2C.

<sup>48</sup> Houses of Parliament (Privileges and Powers) Act 1952, s. 19.

## 2.6 Procedure for handling classified information before a committee

2.6.1 Where information or evidence that is requested by the committee or that is relevant to the subject matter of the inquiry before the committee contains classified information the disclosure of which is restricted under privileged evidence or national security laws including but not limited to the following:

- a. section 123 of the Evidence Act 1950;
- b. section 124 of the Evidence Act 1950; and
- c. the Official Secrets Act 1972,

the public officer concerned should promptly take all necessary steps in accordance with existing laws and regulations to seek approval, permission, certification or declassification (as the case may be) from the designated authority concerned to enable the disclosure of the information or evidence to the committee.

2.6.2 In so doing, the public officer should keep the committee informed in a timely manner about:

- a. the nature of the legal restrictions imposed on disclosure of the said information or evidence;
- b. whether, and if so what steps have been taken to seek approval, permission, certification or declassification (as the case may be) from the designated authority concerned to enable the information or evidence to be disclosed to the committee;
- c. whether or not such approval, permission, certification or declassification has been granted, and if not granted the reasons for the rejection; and
- d. whether any conditions have been required to be imposed relating to the disclosure of the information or evidence.

2.6.3 Notwithstanding the actions described in paragraphs 2.6.1 and 2.6.2 above or their outcomes, the Dewan Rakyat and its committees have the authority to summon the relevant parties or to otherwise take action in order to ascertain the relevant facts and circumstances, and to obtain access to relevant information or evidence. However, the preference is to achieve a mutual agreement between the committee and the parties concerned regarding the disclosure of information or evidence.

## 2.7 Self-incrimination

2.7.1 A witness cannot refuse to answer a question on the grounds that the answer will incriminate him/her.<sup>49</sup>

2.7.2 However, an answer which a witness is compelled to provide before a committee cannot be the basis to arrest or prosecute the witness or used as proof against the witness in any criminal proceedings, except where the answer forms the basis for proceedings for perjury.<sup>50</sup>

2.7.3 A public officer who believes that the answers he/she may be compelled to provide on the matter in issue before a committee will or may tend to incriminate him/her should seek legal advice before appearing to give evidence before the committee.

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<sup>49</sup> Evidence Act 1950, s. 132(1) read with Houses of Parliament (Privileges and Powers) Act 1952, s. 21.

<sup>50</sup> Evidence Act 1950, s. 132(2) read with Houses of Parliament (Privileges and Powers) Act 1952, s. 21.

## 3 PRELIMINARIES TO A COMMITTEE INQUIRY

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### 3.1 General rules

3.1.1 In conducting an inquiry over the matters that have been referred to it by the Dewan Rakyat<sup>51</sup> or entrusted to it under the Standing Orders, a committee is granted express power to call for witnesses, documents and papers<sup>52</sup> and this includes the power to receive expert opinion and representations [see [Section 1.3](#), para. 1.3.5].

3.1.2 Under the law, a person required to attend or produce information before a committee can be ordered to do so through the issuance of a summons under the Houses of Parliament (Privileges and Powers) Act 1952.<sup>53</sup> In practice however, a person is first issued a letter by the Secretary of the committee calling him/her to give evidence or produce documents (**Call Letter**).

3.1.3 It is incumbent on any person who is ordered to attend or produce documents before a committee to obey the order, and in doing so, provide full and accurate disclosure [see [Section 2.1](#)] unless an exception to such disclosure applies [see [Section 2.3](#) and [Section 2.4](#)]. These obligations are enforceable through contempt proceedings [see [Section 5.2](#)]. Those who provide full and frank disclosure of information to a committee are also protected through a general immunity from legal action [see [Section 2.1](#) and [Section 2.7](#)].

### 3.2 The request from the committee for evidence and representations

#### The call to attend and produce information before a committee

3.2.1 A call to a person to attend or produce information before a committee is made by a Call Letter issued through the Secretary of the committee.

3.2.2 A Call Letter may contain one or more of the following requests:

- a. a request for one or more public officers' attendance to an inquiry before the committee; and

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<sup>51</sup> Standing Orders of the Dewan Rakyat, SO 83(4).

<sup>52</sup> Standing Orders of the Dewan Rakyat, SO 83(2).

<sup>53</sup> Houses of Parliament (Privileges and Powers) Act 1952, ss. 16 & 17.

- b. a request for the provision of written representations and evidence on the subject of the inquiry.

3.2.3 While a Call Letter may be addressed to any person, it is ordinarily addressed to one of the following according to relevance:

- a. the relevant Minister; or
- b. the relevant Secretary-General of the ministry concerned or the head of the agency concerned.

3.2.4 A Call Letter (or follow up Call Letter as the case may be) may be issued directly to a specific public officer where:

- a. the public officer had previously appeared before the committee in relation to the matter being considered; or
- b. the public officer has been identified by a committee as a person who could assist the committee in establishing facts about a particular event.

3.2.5 A Call Letter will ordinarily contain the following requests and information:

- a. the subject matter of the inquiry before the committee, and the date, time, venue and agenda of/for the inquiry;
- b. a request to the public officer or witnesses to attend the inquiry before the committee in order to produce evidence and answer questions pertaining to the subject matter of the inquiry;
- c. a request to the public officer to present or submit representations and evidence pertaining to the subject matter of the inquiry in written form;
- d. general directions relating to the manner and format of presenting or submitting representations and evidence before the committee;
- e. a requirement to confirm the attendance and provide designation details of the public officers and other witnesses attending the inquiry; and
- f. contact details for the committee secretariat should clarification be required.

#### A summons to attend and produce information before a committee

3.2.6 The issuance of a summons to a public officer under Section 17 of the Houses of Parliament (Privileges and Powers) Act 1952 to attend and produce information before a



committee is a rare occurrence. A summons will be issued when there has been a prior failure or refusal to fully and properly respond to a Call Letter, or when a formal order is deemed appropriate in the circumstances.

3.2.7 A summons is issued by the Secretary at the direction of the Speaker on the authority of the Dewan Rakyat. Every summons will state the time and place for the person's attendance and the documents he/she is required to produce. The summons will be served on the person mentioned in it either by delivering it to the person, or leaving a copy with an adult person at the person's usual or last known residence in Malaysia.<sup>54</sup>

### **3.3 Responding to a committee's request for evidence and representations**

3.3.1 Generally, it is for the Minister concerned, or the Secretary-General of the ministry under the Minister's authority, to identify and secure the persons most appropriate to provide the information sought by the committee. As a general rule, the persons with responsibility over, and relevant information regarding, the subject matter of the inquiry should be identified and appear before the committee.

3.3.2 The witnesses selected must have sufficient knowledge and authority to be able to satisfy the committee's requirements. When a committee is inquiring into a particular event and the evidence and representations of individual witnesses are required to allow the committee to ascertain the facts surrounding the event, those witnesses should be identified and made available to the committee. Where the matter before the committee involves the interests of several departments or agencies, the Secretary of the committee should be informed so that the Secretary of the committee can take the necessary measures to arrange for the relevant witnesses from those departments or agencies to appear if required.

3.3.3 When a committee specifically requests a witness to appear and the witness is unavailable or the department considers it more appropriate that another witness appear in his/her place, the committee should be informed in advance and the reasons given.

3.3.4 If any information or evidence requested in the Call Letter contains classified information the disclosure of which is restricted under secrecy or national security laws, or if it appears from the Call Letter that the subject matter of the inquiry before the committee may involve information or evidence that is restricted under privileged evidence or national security laws, it is recommended that the public officer concerned follow the procedure outlined in [Section 2.6](#).

3.3.5 A Call Letter may contain a request to submit representations and evidence in written form ahead of oral evidence before the committee, or a Call Letter may only request the

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<sup>54</sup> Houses of Parliament (Privileges and Powers) Act 1952, s. 17.

submission of representations and evidence in written form without an invitation to provide oral evidence. In either case:

- a. the written submission must be submitted to the Secretary of the committee within the prescribed deadline;
- b. the paragraphs and pages in a submission should be sequentially numbered;
- c. it is recommended that the submission include an executive summary of the main points made in the submission;
- d. the submission should be submitted in softcopy by email to the email address provided in the Call Letter. A hardcopy of the submission should also be sent to the address provided in the Call Letter: and
- e. annexes and appendices may be included with the submission, but such annexes and appendices must be attached to the submission so that the entirety comprises a single document or file. The softcopy of the submission should be in pdf format. If any annexes or appendices are in audio or video format, contact the Secretary to obtain further directions.

3.3.6 If the oral submission of evidence before the committee will require special technical equipment, or if any witness has a particular requirement, for example, if he/she has a physical disability, or is in need of a translator or interpreter, the Secretary should be informed in advance of the date of attendance so that arrangements can be made.

3.3.7 On receiving a Call Letter, there may be occasions where the public officer or ministerial entity that is requested to attend and provide information before a committee may have reasonable grounds to decline to do so, for example, where the officer or entity is of the view that they are not the appropriate party to provide the information sought by the committee. In such cases, the public officer or entity must inform the committee in writing and provide their reasons. However, if the committee remains of the view that the public officer or entity should attend the inquiry, then the officer or entity shall attend the inquiry. In that regard, it is important to bear in mind that the committee has broad powers to summon the attendance of witnesses and the answering of questions, which powers are enforceable through contempt proceedings.

## 4 CONDUCT OF COMMITTEE HEARINGS

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### 4.1 General rules

4.1.1 Committees have the power to send for persons, documents or papers.<sup>55</sup> Committees also have a discretion to examine any witness under oath. The oath will be administered by the Speaker or Chair of the committee or a person specially appointed for that purpose.<sup>56</sup>

4.1.2 It is wholly within a committee's discretion to refuse to hear a witness if it deems that the evidence is irrelevant or the witness is recalcitrant.<sup>57</sup>

4.1.3 Any person whose rights or interests are directly affected by the matter under enquiry before a committee may ask for permission from the committee to appear in person or to be represented by a counsel at the enquiry.<sup>58</sup>

4.1.4 There is a provision that entitles a person who has fully and faithfully answered any questions put to him/her by a committee to its satisfaction to receive a certificate signed by the Speaker or Chair of the committee stating that he/she was required to answer, and did so answer, such questions.<sup>59</sup>

4.1.5 A committee may meet and hold inquiries even when the Dewan Rakyat is in adjournment.<sup>60</sup>

### 4.2 Presentation of evidence and process of questioning witnesses

4.2.1 In the ordinary course of proceedings, the Chair of the committee will begin the inquiry by making a statement summarising the purpose of the inquiry and introducing the witnesses who are present to give evidence before the committee.

4.2.2 Once the examination commences, the members of the committee will take turns to put questions to the witness, normally beginning with the Chair. In certain circumstances, the witness may be invited to make an opening statement before questioning commences. If the

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<sup>55</sup> Standing Orders of the Dewan Rakyat, SO 83(2). See also: Houses of Parliament (Privileges and Powers) Act 1952, ss. 16 & 17.

<sup>56</sup> Houses of Parliament (Privileges and Powers) Act 1952, s. 18.

<sup>57</sup> Standing Orders of the Dewan Rakyat, SO 83(11).

<sup>58</sup> Standing Orders of the Dewan Rakyat, SO 83(7A).

<sup>59</sup> Houses of Parliament (Privileges and Powers) Act 1952, s. 22.

<sup>60</sup> Standing Orders of the Dewan Rakyat, SO 83(7).

questioning of the witness cannot be completed within the time scheduled, the examination of the witness may be postponed and continued on another date.

4.2.3 If a public officer considers that he/she is not the appropriate person to answer a particular question, or if he/she would like time to consider the answer or seek advice, the officer may make the request to the Chair of the committee. However, if the committee considers that the question was properly posed to the officer, he/she must attempt to answer it.

4.2.4 If a public officer does not have the information at hand to answer a question immediately, he/she should qualify the answer as necessary to avoid misleading the committee, and may offer to come back to the committee on another date with an additional response either in writing or in person. The committee will decide whether to allow the witness to provide a delayed response. Any further response or information must be provided to the committee through the Secretary at the earliest possible opportunity, but in any event no later than the date set by the committee.

4.2.5 Where a public officer becomes aware of the need to correct or clarify his/her representations or evidence after they have been presented or submitted to a committee, he/she should communicate any corrections or clarifications to the Secretary of the committee at the earliest opportunity.

### **4.3 Accessibility of proceedings**

4.3.1 Committee hearings and inquiries are conducted as closed proceedings. However, it is within the discretion of each committee, subject to any limitations imposed by the Dewan Rakyat, to make a general call for submissions to an inquiry, hold Town Hall style meeting(s) or conduct field visits or inspections, where the committee deems it beneficial or necessary to do so.

### **4.4 Publication of evidence**

4.4.1 Evidence provided to committees during an inquiry are published in the committee's official record of proceedings.

4.4.2 Ordinarily, the evidence of a witness before a committee will be recorded verbatim, and a copy of the transcript will be sent to the witness.<sup>61</sup> However, the Chair of the committee has a discretion to order to the contrary. Every witness should examine the transcript of his/her evidence to ascertain whether any statements made need to be corrected or clarified. A

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<sup>61</sup> Standing Orders of the Dewan Rakyat, SO 83(10).

witness has seven days to communicate any corrections to the Secretary of the committee. It is at the discretion of the Chair of the committee whether to accept any such corrections to the transcript before it is published.<sup>62</sup>

4.4.3 Any evidence or document that has been presented to a committee shall not be published until the committee has presented its report to the Dewan Rakyat<sup>63</sup> [see [Section 4.5](#)].

## 4.5 Committee reports

4.5.1 Upon the completion of an inquiry, a committee will ordinarily produce a report containing a summary of the evidence produced before the committee, and the committee's conclusions and recommendations. The report is normally presented or tabled to the Dewan Rakyat by the Chair of the committee. It is common for committees to hold press conferences to announce the tabling of a report.

4.5.2 Committee reports are treated as confidential until they are presented to the Dewan Rakyat<sup>64</sup> [see [Chapter 5](#)].

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<sup>62</sup> Standing Orders of the Dewan Rakyat, SO 83(10).

<sup>63</sup> Standing Orders of the Dewan Rakyat, SO 85; Houses of Parliament (Privileges and Powers) Act 1952, ss. 9(m) & 23.

<sup>64</sup> Standing Orders of the Dewan Rakyat, SO 85; Houses of Parliament (Privileges and Powers) Act 1952, s. 9(m).

## 5 CONFIDENTIALITY AND CONTEMPT

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### 5.1 Confidentiality of committee proceedings

5.1.1 The publication of a committee's report, or of any evidence or documents presented to a committee, or any extracts from such materials, before the committee has presented its report to the Dewan Rakyat is potentially an offence of contempt of the Dewan Rakyat.<sup>65</sup>

### 5.2 Offences in contempt of the Dewan Rakyat

5.2.1 Section 9 of the Houses of Parliament (Privileges and Powers) Act 1952 sets out several offences for which a person may be summarily punished for contempt in relation to the conduct of committee proceedings, including:

- a. disobeying an order by a committee or the Dewan Rakyat to attend or produce documents, unless an exception to such attendance or production applies [see Section 2.3 and Section 2.4];<sup>66</sup>
- b. refusing to be examined or answer lawful and relevant questions by a committee, unless an exception to such examination applies [see Section 2.3 and Section 2.4];<sup>67</sup>
- c. tampering with, deterring, threatening, beguiling, or in any way unduly influencing any witness who may give evidence before a committee;<sup>68</sup>
- d. presenting any false, untrue, fabricated or falsified document to a committee with the intent to deceive the committee;<sup>69</sup>
- e. prevaricating or committing other misconduct as a witness before a committee;<sup>70</sup>

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<sup>65</sup> Houses of Parliament (Privileges and Powers) Act 1952, s. 9(m); Standing Orders of the Dewan Rakyat, SO 85.

<sup>66</sup> Houses of Parliament (Privileges and Powers) Act 1952, s. 9(a).

<sup>67</sup> Houses of Parliament (Privileges and Powers) Act 1952, s. 9(b).

<sup>68</sup> Houses of Parliament (Privileges and Powers) Act 1952, s. 9(i).

<sup>69</sup> Houses of Parliament (Privileges and Powers) Act 1952, s. 9(j).

<sup>70</sup> Houses of Parliament (Privileges and Powers) Act 1952, s. 9(k).

- f. publishing a report of a committee or any evidence or documents presented to a committee (including any extracts of such evidence or documents) before the committee has presented its report to the Dewan Rakyat.<sup>71</sup>

5.2.2 The procedure to cite a person for contempt for an offence that takes place during committee proceedings requires the tabling of a motion and a resolution by the Dewan Rakyat. In that regard, the Dewan Rakyat may refer the matter to the Committee of Privileges or to a specially constituted committee for this purpose. Such a committee will enquire into the matter and report its findings to the Dewan Rakyat along with the appropriate action to be taken.<sup>72</sup>

5.2.3 Contempt of the Dewan Rakyat is punishable by a fine not exceeding RM1,000.00. If the fine is not paid, the offender may be taken into custody until the fine is paid or until the House is dissolved or prorogued (whichever is earlier).<sup>73</sup>

5.2.4 In that regard, the Speaker may, on a resolution of the House, issue a warrant for the apprehension and imprisonment of a person found to have committed contempt under section 9 of the Houses of Parliament (Privileges and Powers) Act 1952 who have been sentenced to pay a fine, fails to do so.<sup>74</sup> A person charged with the execution of such a warrant has the power to enter and search any premises to apprehend the person against whom the warrant is issued.<sup>75</sup> A person who is found guilty of contempt under the said section 9 and who has failed to pay the fine imposed on him/her and against whom a warrant has been issued by the Speaker, may, in addition, be sentenced by the House to imprisonment for a period not exceeding 60 days.<sup>76</sup>

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<sup>71</sup> Houses of Parliament (Privileges and Powers) Act 1952, s. 9(m).

<sup>72</sup> Standing Orders of the Dewan Rakyat, SOs 80 & 80A.

<sup>73</sup> Houses of Parliament (Privileges and Powers) Act 1952, s. 9.

<sup>74</sup> Houses of Parliament (Privileges and Powers) Act 1952, s. 11.

<sup>75</sup> Houses of Parliament (Privileges and Powers) Act 1952, s. 15.

<sup>76</sup> Houses of Parliament (Privileges and Powers) Act 1952, ss. 9 and 11 read together with s. 29.