

A summary of the Sarawak Cultural Heritage Ordinance 1993 (including amendments up to 30 June 2007) ¹

The ordinance has 8 parts : I Preliminary ; II Discovery/property of antiquities ; III Excavation ; IV Prohibition of export and sale of antiquities and historical objects ; V Historical monuments/sites ; VI Traditional arts and handicrafts ; VII Penalties ; VIII Miscellaneous.

It was gazetted on 13/12/1993 and came into force on 01/07/1994 (amendment Swk. L.N. 38/94)

I - Preliminary

The scope is « *all antiquities, ancient and historical monuments and records and archaeological sites and remains other than those declared to be Federal by or under Federal law* “. (Art.1)

Following definitions are provided for the purpose of the Ordinance (Art.2.1) :

antiquity : any object or part of object *produced or modified by human agency, reasonably believed to be at least one hundred years old, including human, plant or animal remains or impressions, and any other object which in the opinion of the Director of the Sarawak Museum [DSM] is of outstanding historic, artistic, cultural or traditional interest or value and ought to be preserved.*

historical monument : monument *reasonably believed to be at least 100 years old or declared (or deemed to be) a historical monument under Part V.*

historical object : *any artefact or object with religious, traditional, cultural, artistic or historical interest or value, including ethnographic material ; work of art or craft ; manuscript ; coin ; currency note ; medal ; badge ; flag ; etc. ; any article of symbolic significance and importance; vehicle whose production has ceased, which in the opinion of the DSM is to be preserved for its cultural, religious, traditional, artistic or historic interest of value.*

historical site : *site/place which in the opinion of the DSM is to be preserved for its archaeological, paleontological, cultural, religious, traditional or historic interest of value and declared under section 21 to be a historical site.*

monument : *any building, earthwork, cave, tomb, tumulus, etc. which ought to be preserved for its heritage value, including adjoining land required for protection, and means of access.*

The decision of the DSM on whether an object is or is not an antiquity or an historical object is final without prejudice to the provisions for appeal of Art.30. (Art.2.3)

II - Discovery & property of Antiquities

Every **antiquity** found after 1 October 1954 is property of the Government, subject to clauses 9 and 10, which allow for a division of finds in certain circumstances. (Art.3.1)

¹Based on the Ordinance as published at http://lawnet.sarawak.gov.my/lawnet_file/Ordinance/ORD_CAP6hwm.pdf

Disclaimer: this summary has been prepared to provide an easy overview to readers not familiar with the Ordinance in an effort to highlight its main provisions, not to replace it. Every effort has been made to present a fair image of the Ordinance. Any failure to do so is unintentional.

Every **historical monument** not owned, or controlled by a person (as a trustee or a manager), on or after the entry in force of the Ordinance [01/07/1994] is deemed to be property of the Government.

Discovery (Art.4) : any discovery of an object or a **monument** for which there is reason to believe it is an **antiquity** has to be notified to the authorities.

Registration (Art.5) : any **antiquity** possessed by persons other than natives of Sarawak has to be registered with the authorities. The certificates of registration are proof of ownership until contrary is proofed.

Sale/disposal (Art.6) : any intention to sell or dispose of an **antiquity** (including by a native) has to be notified to the authorities. The **DSM** may, by notice, subject any antiquity transaction to prior notification to him. **Antiquities** or **historical objects** that have been subject to such notice cannot be transacted for a period of 30 days during which the **DSM** can acquire the item « *at a reasonable price, notwithstanding any agreement which the owner may have entered into with another person.* ». In case of disagreement over the price, an arbitration procedure can be called.

Compensation to finders of antiquities (Art.7) : The **DSM** may compensate (at the value of the item) or return to the finder (against a certificate of discovery), a discovered antiquity except (i) if the discovery was made in contravention to the ordinance, (ii) if the **DSM** requests the item to remain on the discovery site and (iii) if the item was discovered on state land.

III - Excavation

Licences to excavate (Art.8-10) Any excavation for **antiquities** or **historical objects** is subject to a licence to excavate, issued by the **DSM**. Licensees are subject to specific conditions, which include the right by the **DSM** to retain, against a monetary compensation, items which he deems desirable for their scientific or heritage value. He may renounce ownership of the others.

IV - Prohibition of export and sale of antiquities

Licence to export antiquities (Art.11) Any **antiquity** export from Sarawak is subject to a licence issued by the **DSM**. The certificate of registration or of discovery has to be presented to obtain the licence to export.

An object to be exported can be detained by the authorities if they have "*reason to believe that (...) [it] is an historical object*". The **DSM** may then prohibits its export. (Art.12)

An Export prohibition can be issued on some **antiquities** (Art.14)

If a licence to export an **antiquity** or a **historical object** has been refused or if the export of an antiquity is prohibited, "*on the ground that (...) [it] should be acquired on behalf of the Government*", the **DSM** will pay a "*reasonable compensation*" and the owner has to forfeit the item. In case of disagreement over the amount, an arbitration procedure can be called. (Art.15)

Right to inspect (Art.16) : the authorities have the right to access any **antiquity** or **historical objects** for inspection, documentation or for making replicas.

Sale of Government-owned items (Art.17): The authorities may sell some Government-owned **antiquities** or **historical objects**.

Dealers (Art.18): dealers in **antiquities** or **historical objects** require a licence, unless specifically exempted by the **DSM**). The application includes a stock inventory. Inventory movements have to be recorded and open to inspection. A fee is charged for the licence.

Loan of Government antiquities or historical objects (Art.19) : The Government may lend or exchange antiquities or historical objects to societies or museums.

V - Historical monument and sites

Register of buildings (Art.20) :The **DSM** compiles a register of buildings

- built before 1940 and of historical significance, warranting preservation;
- of special architectural, artistic or cultural interest or beauty,
- closely associated to Sarawak's history.

The registered buildings are deemed **historical monuments** and their land **historical sites**.

The register is open to the public (a fee may be charged to access it).

Upon entering a building into the register, the **DSM** issues a preservation notice to (i) the owner/occupier, (ii) the local authority and (iii) Lands and Surveys, stating "*that the building shall not be demolished, dismantled, altered, defaced or interfered with except in accordance with a permit granted by the [DSM].*" This notice has "*effect of a special condition of title*".

The **DSM** examines the applications for permits (for demolishing, dismantling, altering, defacing or interfering with the building). If granted, the permits may stipulate specific terms and conditions.

If the DSM refuses such application,

- (?) the **DSM** may allocate funds to assist the owner/occupier in maintenance, preservation, restoration works these works if the owner/occupier agrees to his duty to undertake these works;
- the owner/occupant can appeal to the Minister, whose decision is final.

Schedule of historical monuments and sites (Art.21)

A schedule of **historical monuments** and **historical sites** is gazetted. This schedule can be amended.

The DSM is empowered to determine the limits of **historical monuments** or **historical sites**.

If private land is involved, the **DSM** serves the owner or occupier of the land a notice of intention to declare a **historical site**. The latter can appeal to the minister within 14 days. If the Minister affirms the **DSM's** decision, the land is then declared an historical site and gazetted accordingly. The declaration has the effect of a special condition of title.

The Authorities may acquire any land, site or monument declared **historical monument** or **historical site**, under the provisions of the land code on compulsory acquisition for public interest.

Acts prohibited on historical monuments and sites (Art.22) : Digging excavating, felling trees, irrigating, demolishing, making alterations, erecting buildings etc... are prohibited unless permission is given by the DSM *or other lawful authority*.

Care of historical monuments and sites (Art.23) : If a **historical monument** or **historical site** is on private property, the authorities may

- make arrangements with the owner or occupier for the preservation, inspection and maintenance and
- mobilise public funds towards the costs of necessary repairs/conservation works that the owner may be willing to undertake;
- purchase or lease the site by private treaty.
- remove whole or part of a monument, with in this case, financial compensation. In case of disagreement over the amount, an arbitration procedure can be called.

Access : The authorities have right to access the **historical monuments** or **sites** for inspection of study.

VI Traditional art and handicrafts

The **DSM** may take measure to promote, develop or preserve traditional arts and handicrafts, including by way of financial incentives (Art.25).

VII Penalties (Art. 26-29)

This part lists the applicable penalties. For example:

- exporting **antiquity** without a licence to export: 5 years imprisonment and MYR 20,000 fine;
- altering or demolishing a **historical monument** without permission : 1 year imprisonment and MYR 3,000 fine;
- failing to register an **antiquity** as required by the Ordinance: 2 years imprisonment and MYR 10,000 fine;
- unlawfully selling or disposing of **antiquity** or **historical object**: 5 years imprisonment and MYR 20,000 fine;
- Failing to comply to the requirements of a notice to act or to do works under the ordinance: liable, on conviction, to a fine of MYR 3,000, + additional MYR 5,000 for each day that the offence continues after conviction.

VIII :Miscellaneous (Art.30-36)

Appeal ; possibility for appeal to the Minister for categories of **DSM** decisions for which there is no provision for an arbitration procedure.

Exemptions (Art.34) : *“The **Director** may, with the approval of the Minister, by order direct that any person or class or description of persons specified in the order shall be exempted from the operation of this Ordinance or any rules made hereunder or any part thereof.”*

Rules (Art.35): The Minister may, with the approval of the Yang di-Pertua Negeri, make rules (by-laws) for the implementation of the Ordinance. Among others, the rules may provide for the setting-up of a special fund for maintenance, preservation or restoration or other expenses to be incurred in relation to the Ordinance.

Repeal of Antiquities ordinance (Art.36) : The ordinance repeals the Antiquities Ordinance (1958) but notifications, licences or permits issued under it remain in force as if made or issued under this Ordinance.