

A summary of the [Malaysia] National Heritage Act (2005)
(including . amendments to June 2006)¹

The Act was gazetted on 31 December 2005

Art.1.2 specifies that « (...) *the Minister may appoint different dates for the coming into operation of this Act to different parts of Malaysia* ». The Act came into operation on 1st March 2006 [Federal Gazette PU(B)53/2006].

It has 16 parts: I *Interpretation*, II *Policy*, III *Administration*, IV *National Heritage Council*, IV *Heritage Fund*, VI *National Heritage Register*, VII *Heritage Site*, VIII *Heritage object*, IX *Underwater Cultural Heritage*, X *National Heritage*, XI *Treasure Trove*, XII *Licencing*, XIII *Appeal*, XIV *Enforcement*, XV *Offences*, XVI *Miscellaneous*.

Part I defines the vocabulary: *National Heritage*, *cultural heritage (tangible and intangible)*, *natural heritage*, *heritage conservation (restoration, preservation, rehabilitation)*. For example :

“*antiquity*” : « (a) any moveable object which is or is reasonably believed to be at least fifty years old; (b) any part of any such object which has at any later date been added or re-constructed or restored; and (c) any human, plant or animal remains which is or is reasonably believed to be at least one hundred years old;

“*heritage object*” : object declared or registered as a heritage object;

Policies, statements or directives on heritage are issued under the responsibility of the Federal Minister in charge of Heritage, except « *where the matter (...) concerns the power or jurisdiction of a State unless the relevant State Authority has been consulted* ». (Part II).

The administration comes under the *Commissioner of Heritage* (hereafter « Com »). It includes designation of sites ; registration of objects ; maintenance of the Heritage Register ; control, maintenance and operation of the Heritage Fund ; specification of categories of heritage to be listed ; supervision of conservation activities ; authorisation of excavations ; maintenance of related documents ; liaison and co-operation with State Authority in respect of conservation and preservation of heritage matters; advice and co-ordination with local planning bodies ; promotion / regulation of best standards and practices in conservation and preservation of heritage. (Part III)

The *National Heritage Council* is an advisor to the Minister and the Com. It has 12 members, 1 appointed chairman, 4 ex-officio members from Government entities, the Com and 6 other appointed members. (Part IV)

The *Heritage Fund* is constituted from funds from the Government budget, from donations, from levies imposed under the Act, interest from deposited funds or revenue from assets, loans, etc. The Fund can purchase heritage and conservation areas; finance costs related to conservation and preservation of heritage and conservation areas « whether they are

¹ Based on the version of the Act available at <http://www.agc.gov.my/Akta/Vol.%2013/Act%20645.pdf>. Disclaimer ; This summary has been prepared to provide an easy overview to readers not familiar with the Act in an effort to highlight its main provisions, not to replace it. Every effort has been made to present a fair image of the Act. Any failure to do so is unintentional.

owned by the Government or otherwise »; finance campaigns, research, studies, publications, conservation and preservation of heritage items and activities. (Part V)

The National Heritage Register lists the registered heritage items. The public can access it and get copies subject to payment of a fee. (Part VI)

Heritage sites (Part VII)

Designation of heritage sites

The process: right to inspection of envisaged site; notice to owner, of intention to register ; publication of intention to register (Gazette and local newspaper) ; right to notice of objection by owner or other stakeholder; hearing (if applicable) ; State consent ; decision, publication, notification to relevant authorities (land , planning). (Chap.1)

An interim protection order can be issued to the owner of a site pending the outcome of the designation process. During that period, works or activity on the site need to be approved by the Com. (Chap.2)

Sale of the whole or part of the site and change of ownership have to be notified to the Com. (Chap.3)

Care of heritage sites

For sites located on alienated land, the Com may after consultation with the State, (i) make arrangements with the owner for inspection, maintenance, conservation and preservation – the Com can in this case contribute to costs of agreed repair and conservation works or (ii) purchase or lease the site, or (iii) acquire the site according to the regulations on acquisition for public purposes, or (iv) remove the whole or part of a building or monument of the site, with compensation to the owner. Dispute on the amount of compensation being referred to the Minister whose decision is final.

Authorized officers have right to inspect heritage sites subject to prior notice.

Planning permission or development orders relating to heritage sites are subject to the Com's advice to the Planning authority based on application dossiers containing particulars relating to the heritage status of the site and its neighbouring land. Upon grant of permission by the Planning Authority, the Com participates in the monitoring and supervision of the imposed terms and conditions.

The Com can issue to an owner a *Monument Preservation Order* when a site potentially qualifying as a heritage site is threatened, pending approval of registration.

The owner of a heritage site must ensure that the site is in a state of good repair. Failing this, the Commissioner may carry out repair works, costs of which « shall be reimbursed » by the owner.

Financing

Owners of heritage sites may apply to the Com for grants or loans for conservation and preservation works.

« The Com may, in consultation with the Council and the State Authority, make arrangements with the owner of a heritage site to carry out any conservation and preservation works ».

When grants or loans from the Heritage Fund are allocated, conditions may be imposed on the proposed works.

Entrance fees can be charged by the owner subject to approval by the Com. The latter may in this case impose a levy on the entrance fee in favour of the Heritage Fund, if conservation and preservation has benefitted from above-mentioned funding (Chap 4)

Heritage sites are treated as **conservation areas**, to be conserved and preserved according to **conservation management plans**. These may incorporate a buffer zone around a central core or around the heritage site. They are prepared by the Com in consultation with the Heritage Council and are submitted to the State or the local planning authority. The Com « shall (...) advise and coordinate » with the latter for the implementation of the plans. (Chap.5)

Heritage objects (Part VIII)

Discovery and property rights (Chap.1)

« Any person who discovers any object which he has reason to believe has cultural heritage significance shall immediately notify » the authorities. The authorities may require the object to be delivered to them (written acknowledgements).

« Any object discovered after the date of the coming into operation of this Act shall be the absolute property of the Federal Government ». If the object is discovered on alienated land, compensation may be paid to the land owner based on valuation by a competent heritage valuer appointed by the Com.

« Every object which before the date of the coming into operation of this Act is not owned by any person or the control of which is not vested in any person as a trustee or manager, shall be deemed to be the absolute property of the Federal Government »

« All undiscovered objects (...) shall be deemed to be the absolute property of the Federal Government but if the said object is at a later date found to be discovered on or in an alienated land », the provisions on compensation apply.

In disputes on dates of discovery « it shall be presumed until the contrary is proved that it was discovered after the date of the coming into operation of this Act. »

Registration (end of Chap.1 and Chap.2)

Objects may be gazetted by the Com as heritage objects, listed in the Register, after obtaining the owners' consent.

« Any person may apply for an object to be registered as a heritage object ». The application, approval and notification process is then presented. Registration decisions are published in the Gazette.

Management (Chap.3)

The Com is entitled to the custody and possession of discovered objects on behalf of the Federal Government. He may « return the object to the person who delivered it » subject to conditions.

And : « *When an object is retained by the Com or where in the opinion of the Com that object should be safeguarded at the place where it was found, the Com shall at his discretion pay a reasonable amount of compensation to (a) the finder; (b) the owner of an alienated land in or on which the object was discovered; or (c) the informant* ».

The Com and the owner of a heritage object may agree on an apportionment of share of the object (art.55).

The Com may require a person in possession of an object deemed of national importance or interest, not to sell or dispose of it without his prior consent. The Com has then the first right to purchase the object «at an agreeable value » within thirty days (art.56).

Change of ownership of a heritage object has to be notified to the Com by the seller (art.57) and by the buyer (art.58).

The owner or custodian is required to keep the heritage object in good condition and in a secure place and report any loss or damage (art.59).

Clauses similar to the above apply to intangible cultural objects (art.60)

Part IX deals with **underwater cultural heritage**. Discovery, declaration, registration, conservation, transfer, etc. of underwater cultural heritage are subject to specific clauses, similar to those applicable to heritage objects. Specifically :

- An area containing an underwater cultural heritage may be declared a protected zone (art.64).
- Salvation or excavation requires a licence. (art.65); ownership of the objects found rests with the Com. and these are to be registered. (art.66)

National Heritage (Part X)

A listed site, object, underwater cultural heritage, or any living person may be declared as a National Heritage, subject to prior consultation or notification or, in the case of a living person, his consent. (art.67). Such declaration does not affect ownership (art.69) but the Com intervenes in case of sale (art.70).

“Any person may nominate to the Minister (...) any natural heritage, tangible or intangible cultural heritage, living person or underwater cultural heritage to be declared as a National Heritage”. (art. 68)

Procedures and guidelines may be imposed for the conservation of National Heritage. Financial assistance may be provided in this relation (art.72).

Treasure trove (Part XI)

The discovery of a treasure trove has to be notified immediately (art.74).Pursuant to an enquiry, a treasure trove may be declared as ownerless (art.75-77). The latter vests then in the State Government (art.78). The State may pay a reward to the finder of a treasure trove

and to the owner of the concerned land (art.79). The Com has the right to inspect and study the treasure trove (art.80)².

Licensing (Part XII)

Export of any heritage item requires a licence failing which the item can be seized. The penalty is up to 10 years of imprisonment and/or one hundred thousand RM (art.83).

Import of foreign heritage items is subject to clauses to ascertain that they were lawfully exported from abroad (art.84).

Excavation

A licence is required to undertake excavation for the purpose of discovering heritage objects (art.86). Art. 87-90 present the process of application for a licence and conditions that may be attached to it.

Dealers

Dealers in heritage items have to be licensed (art.91).

Stolen heritage items (art. 92-95)

The Com holds a list of stolen heritage items and notifies it to the heritage dealers. The latter are required to report of stolen items that may be offered or shown to them, and « may detain the person offering or showing such item to him until the arrival of the police.»

Powers relating to enforcement (Part XIII)

Enforcement officers, carrying *authority cards*, may be appointed. They, and the police, have power to investigate offences committed under the Act.

Offences (Part XIV)

Art.112 list activities or actions likely to affect **heritage sites**, which are subject to approval by the Com. This includes, for example, to « *erect any building or structure abutting upon a monument in any heritage site*» and to “*destroy the relationship of a building and its environment that is incompatible with the character of the neighbourhood*”. And : “*Any person who has in his possession or custody or under his control, any material originating from the land which constitutes a natural heritage or cultural heritage, shall be presumed to have extracted, removed or transported or permitted the extraction, removal or transportation of natural heritage or cultural heritage without lawful authority.*”

Similar clauses apply to **heritage objects** (art. 113) and **National Heritage** (art.114).

Summary prepared for the Sarawak Heritage Society, June 2015

² Art. 73 states : “*This Part is made pursuant to Clause 1(b) of Article 76 of the Federal Constitution for the purpose of promoting uniformity of the laws of the States of Malaysia relating to treasure trove.*”