

Summary of the Sarawak Heritage Ordinance 2019 ¹

The ordinance comprises 10 parts, 81 sections and 2 Schedules: I Preliminary; II Administration; III Discovery/property of antiquities; IV Excavation; V Prohibition of export or sale of antiquities or historical objects; VI Historical monuments/sites and heritage sites; VII Underwater heritage; VIII Penalties; IX Enforcement; X Miscellaneous. It has been gazetted on 13/12/2019.

I - Preliminary

This part is on definitions and interpretation matters, among which following key ones:

“antiquity”:

- a) “Any object, movable or immovable, [...] within the territory of Sarawak, [...] constructed, shaped, painted, carved, inscribed, erected or otherwise produced or modified by human, non-human agency and which is or is reasonably believed to be at least 50 years old”;
- b) “any part of any such object [...] which has been “excavated, modified, added to, reconstructed or restored”.

categorised as follows:

- . **Class I antiquity**: items with documented history or records, and (being or reasonably believed to be) over 100 years old;
- . **Class II antiquity**: items deemed to be over 100 years old “but do not contain any documented history or records;”
- . **Class III antiquity**: “contemporary items [...] which may or may not have documented history or records and are at least 50 years old but less than 100 years old”.

- c) “human, plant or animal remains or impressions which is or is reasonably believed to be at least 100 years old”;
- d) “any other object which in the opinion of the Director is of outstanding historic, artistic, cultural or traditional interest or value and ought to be preserved [...]”

“Director” means the Director of the Sarawak Museum Department (SMD).

“heritage buildings”: “means classes of buildings categorised as follows in the first schedule of the ordinance:

- **Class I**: Historical buildings which are over one hundred years old, have well documented history either public or private, and are declared as such before the date of coming into force of this Ordinance amendment. The subsequent

¹This is a working document by the Sarawak Heritage Society, based on the ordinance as published at http://lawnet.sarawak.gov.my/lawnet_file/Ordinance/ORD_Sarawak%20Heritage%20Ord,%202019%20lawnet.pdf (accessed July 2020).

To facilitate understanding, the order of paragraphs below does not always follow the order of the sections of the ordinance.

Disclaimer: this summary has been prepared to provide a condensed presentation, in an as simple as possible wording, of what the new ordinance provides for. Every effort has been made to present a fair and complete image of the ordinance. Any failure to do so is unintentional.

conservation and use of such buildings can only be approved by *Dewan Undangan Negeri*²;

- “Class II: Historical buildings which are over 100 years old, which are over one hundred years old, have documented records, been in continuous use [...] and are not declared as such on the date of this amendment. The conservation and use of such building shall be decided by *Majlis Mesyuarat Kerajaan Negeri*³ on the recommendation of the Sarawak Museum Department”;

- “Class III: “Historical buildings which are less than one hundred years old, have documented history and of great significance.”

“historical monument” : monument reasonably believed to be at least 100 years old and declared 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. or any article of symbolic significance and importance; vehicle whose production has ceased, which in the opinion of the *Director* is to be preserved for its cultural, religious, traditional, artistic or historic interest of value.

“historical site” : place/site/area which in the opinion of the *Director* is to be preserved for its archaeological, paleontological, religious, traditional or historic interest or value, entered in the *Sarawak Heritage Register* (cf. sect. 32) and declared a *historical site* (cf. sect. 33).

“monument” : 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 *Director* on whether an object is or is not an *antiquity* or an *historical object* is final subject to provisions of sections 50 and 75 on appeals. (sect. 2.2)

II - Administration

The ordinance establishes (sect.3) a *Sarawak Heritage Council* (SHC), comprising

. 6 members: the *Minister* (Chairman), a Deputy Chairman, the State Secretary, the State Attorney General, the State Financial Secretary, the Permanent Secretary of Ministry responsible for heritage; and

. up to 5 other persons with “wide and established knowledge, experience and expertise in the field of safeguarding, preservation and conservation of heritage”.

The latter and the deputy chairman are appointed by the Minister with the approval of the *Majlis Mesyuarat Kerajaan Negeri* for tenures of up to 3 years. The *Director* is secretary of the SHC. The SHC meets at least 2 times a year. It may request non-members to attend meetings or deliberations, with no voting right. The SHC sets its own procedures. It may establish committees to assist it.

The functions of the SHC are defined as follows:

. to advise the Government on policy, strategy, action plans and heritage management matters;

² Sarawak State legislative Assembly.

³ ‘*Majlis Mesyuarat Kerajaan Negeri*’ designates the Sarawak Government cabinet.

- . to “engage public participation in the identification and protection of heritage and conservation areas and in the preparation, adoption and implementation of management plans under [the] Ordinance”;
- . to “advise on the preservation, protection, augmentation and enhancement of *historical monuments, historical sites* or other conservation areas”;
- . to “stimulate public interest and support in the preservation or conservation of heritage;”
- . to “give direction to the *Director* [...] “to preserve all records, documents and data” etc. relating to “all forms of heritage registered, approved, declared or published under the Ordinance;”
- . other heritage-related functions that may be assigned to it by the Sarawak Government.

The ordinance also establishes a *Sarawak Heritage Trust Fund* [under the Financial Procedure (Contingencies and Trust Funds) Ordinance 1963], managed under the responsibility of the *Director* [under the provisions of the Statutory Bodies (Financial and Accounting Procedures ordinance 1995] (sect.7).

The overall administration of the ordinance comes under the *Director*, assisted by Deputy Directors, curators, assistant curators and enforcement officers, all appointed by the Minister by notification in the gazette (Sect. 8), under the authority of the Minister (sect. 9-11).

Subject to directions by the *Majlis Mesyuarat Kerajaan Negeri* and approval of the *Minister*, the *Director* may appoint managing agents “to build, manage or maintain” buildings and facilities of State Government Museums or *declared historical sites/monuments* or to provide services “within the State Government Museums” (sect.12).

The *Director* may delegate some of his powers to any person subject to approval of the Minister and gazette notification (sect.13).

III - Discovery & property of Antiquities

Ownership (sect.14): 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.

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

Discovery (sect.15): any discovery of an object or a *monument* for which there is reason to believe it is an *antiquity* has *to be* notified immediately by the finder to the authorities. The latter are required to act to protect the integrity of the site of the discovery and if the discovery is an object, may require it to be delivered to the authorities.

Registration (sect.16): any *antiquity* possessed by persons other than natives of Sarawak has *to be registered* with the authorities “in such manner and at such times as may be prescribed by rules” under the Ordinance. Contravening this requirement is an offense (penalty upon conviction: fine of up to RM 20,000 or up to 5 years imprisonment or both). *Certificates of registration* “shall, until contrary is proved, be proof of ownership”.

Sale/disposal (Sect. 17): any intention to sell or dispose of an *antiquity* (including by a native) has to be notified to the authorities. The *Director* may, by notice, require any person

in possession of an *antiquity* or *historical object* “not to sell or otherwise dispose of (it) without giving notice in writing to him of such proposed transaction.” *Antiquities* or *historical objects* that have been subject to such notice cannot be transacted for a period of 30 days during which the *Director* may 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.

Contravening these provisions is an offence (penalty upon conviction: fine of up to RM 50,000 or up to 5 years prison or both); and “any person who maliciously or negligently destroys, injures, defaces, displaces, disturbs or disfigures any *antiquity* in his possession or registered or any *antiquity* or *historical object* subject to a notice as provided above is an offence (penalty upon conviction: fine of up to RM 10,000 or 2 years imprisonment or both).

Compensation to finders of *antiquities* (Sect. 18): The *Director* 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 *Director* requests the item to remain on the discovery site and (iii) if the item was discovered on State land.

IV - Excavation (Sect. 19-22)

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

Digging for *antiquity* or *historical objects* or demolition of “any ancient walls or other structures or objects which are *antiquities* or *historical objects* without *licence* [...] even upon own land is an offence (penalty upon conviction: fine of up to RM 20,000 or up to 5 years imprisonment or both).

Any search for *antiquity* or *historical objects* in public areas, using a detecting device (metal detector, ground penetrating radar,...) requires a *permit* issued by the *Director*. The issuance of permits is assorted to conditions aiming at best archaeological practice.

V - Prohibition of export/sale of *antiquities/historical objects*

Export licence (sect. 23-25): Any export of *antiquity* from Sarawak is subject to a valid *licence* to export issued by the *Director*. The certificate of registration or of discovery has to be presented to obtain the *licence*. Export or attempted export of an *antiquity* without *licence* is an offence (fine up to RM 50,000 or up to 5 years imprisonment or both).

A prohibition of export can be issued for any *antiquity*.

An object to be exported can be detained by enforcement officers, police or customs if they have “reason to believe that [...] [it] is a *historical object*”. The *Director* may then prohibits its export. (sect. 26)

If “a *licence to export* any *antiquity* has been refused or a *historical object* is prohibited from being exported, “on the ground that [...] [it] should be acquired on behalf of the Government”, the *Director* 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. (sect. 27)

Right to inspect (sect.28): the authorities have the right to access any *antiquity* or *historical object* for inspection, documentation or for making replicas.

Sale of Government-owned items (sect. 29): The authorities may sell some Government-owned *antiquities* or *historical objects*.

Dealers (sect. 30): dealers in *antiquities* or *historical objects* require a *licence* issued by the *Director*, unless specifically exempted by him. The application includes a stock inventory, to be inspected and stamped by the *Director*. Inventory movements have to be recorded and open to inspection. A fee is charged for the *licence*.

Loan of Government antiquities or historical objects (sect. 31): The Government may lend or exchange *antiquities* or *historical objects* to societies or museums.

VI - *Historical monuments/ sites and heritage sites*

Sarawak Heritage Register: the *Director* compiles and maintains a *Sarawak Heritage Register* containing

- buildings
 - . built before 1940 and of historical significance, warranting preservation
 - . “of special architectural, artistic or cultural interest or beauty, or”
 - . “closely associated to Sarawak’s history”,
 - “underwater heritage objects or sites”,
 - “heritage buildings and sites”
 - “*historical sites* having natural or cultural heritage, or”
 - “traditional knowledge or traditional cultural expression”
- “that in the opinion of the *Director* ought to be retained as a heritage”.

The *Register* is open to the public inspection subject to terms / conditions deemed fit by the *Director*. Fees may be charged for access, making copies or taking extracts from the *Register*.

Entries in the Register (sect. 33)

“Where the *Director* is of the opinion that a building or site falls (in the above categories), he shall”

- . *declare* it as *underwater heritage site, heritage building or site or historical site*”;
- . *enter* it in the *Register* and
- . *publish* the entry in the *Gazette*”.

Buildings entered in the *Register* are deemed *historical monuments* and their land *historical sites*.

Declaration in case of private land (sect. 41.4 and 50.1): “If any land or site (without any building) intended by the *Director* to be *declared* as a *heritage site* [...] is within a private land”, the *Director* serves the owner/ occupier of the land a *notice of intention to declare* the heritage site. The latter can appeal to the *Minister* within 14 days (41.5, 50.1). If the *Minister* affirms the *Director*’s decision the land is then *declared* an *historical site* and *gazetted* accordingly. “The *declaration* shall bind all subsequent owners or occupiers of the land and shall have as the effect of a special condition of title”.

Notice to preserve (sect.34): Upon entering a building or site into the *Register*, the *Director* issues, as soon as practicable, a *notice*⁴ to (a) the owner/occupier, (b) the *State Planning Authority*, (c) *Lands and Surveys* and (d) the *local authority*, “that the building shall not be demolished, dismantled, altered, defaced or interfered with, except in accordance with a *permit* granted by the *Director*.”

Acts prohibited on registered buildings or sites (sect. 39): Digging excavating, felling trees, irrigating, demolishing, making alterations, erecting buildings etc... are prohibited unless a *permit* is granted by the *Director*.

Permits (sect. 36): The *Director* 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.

When the *Director* refuses an application,

- he may, with the consent of the owner/occupier, “carry out the work for the maintenance, preservation or restoration”, or if the owner agrees to carry it out “pay such sum of money as may be approved by the *Minister*” to assist the owner/occupier to carry out such work;
- the local authority, *Lands and Surveys* and the *State Planning Authority* are informed of the refusal and “they shall give effect to such refusal”.

[Penalty for non-compliance to prohibited acts on *registered* buildings or sites: upon conviction, fine of up to RM 20,000 or up to 5 years imprisonment or both.]

Sect. 42 further states: “No application under part X of the Land Code [Cap. 81 (1958 Ed.0)] in respect of a *heritage site* shall be made without first obtaining a *permit* in accordance with sect. 36” (i.e. permit for demolishing, dismantling, altering, defacing or interfering with the building)⁵.

Duty to keep building/ site in good repair (sect. 45): Owners of buildings or sites listed in the *Register* (hereinafter: “*Registered*”) shall ensure that they are always in state of good repair. The *Director* may otherwise, upon giving 2 weeks’ notice to the person appearing to be the owner, carry out repair works “and all costs and expenses reasonably incurred to carry out the works shall be reimbursed by such person”.

Care of Registered buildings/sites on private property (sect. 40): If a building/site is on private property, the *Director* may

- make arrangements with the owner or occupier for the preservation, inspection and maintenance and
- mobilise, subject to conditions, a contribution from the *Sarawak Heritage Fund* 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.

Change of ownership (sect. 37-38): Owners are required to notify to the *Director* *agreements of sale* of *Registered* buildings or sites (or parts of) within 30 days from the date of the agreement (sect.37). Purchasers/ acquirers are required to notify to the *Director*,

⁴ Sect. 34 provides for a “*notice*” whereas sect. 51 (which deals with the *Minister*’s decision in case of appeal), mentions that the *Director* issues an “*order*” (that the building shall not be demolished, dismantled, etc.) which has “effect of special condition of title” and specifies that, “as soon as possible”, the *Director* causes the gazettelement of the decision to *register* the item.

⁵ Part X of the Land Code deals with applications for development and subdivision of land
Working document, Sarawak Heritage Society (V.02/08/2020)

within 30 days of the purchase, their name, address and whether they intend to occupy the site.

Extent of sites / adjacent/nearby sites (sect.41): The *Director* is empowered to determine the limits of *declared* buildings/ sites including a buffer zone around it (41.3). Sites in proximity of a *heritage site* may, for its protection and enhancement, be declared *heritage sites* (41.1-2).

Power to acquire (sect. 35, repeated in sect. 41.8): The *Director* may acquire land, sites or monuments under the provisions of the land code on compulsory acquisition for public interest

Access (sect.43): The authorities have right to access *Registered* buildings/sites for inspection, study or maintenance/ conservation work.

Preservation orders (sect. 44): The *Director* may serve a *preservation order* on the owners of *Registered* buildings that are “dilapidated or in imminent danger of demolition, destruction, damage or alteration.”

Funding of conservation works (sect.46):

. Owners of *Registered buildings/ sites* may apply for grants or loans. The *Sarawak Heritage Fund* may be mobilised for that purpose with the approval of the *Minister* (46.1&3).

. “The *Director* may, in consultation with the *Minister*, make arrangements with the owner (...) to carry out any conservation and preservation works” (46.2)⁶

Entry fees (sect.47): Owners of registered buildings / sites may charge entrance fees as approved by the *Director*. Where the *Director* contributed financially to the conservation / preservation, he may impose a levy on the entrance fees.

Conservation areas / management plans (sect. 48) *Declared heritage sites* “become” *conservation areas*, to be conserved and preserved according to *conservation management plans*, as prescribed in rules. *Conservation areas* may incorporate *buffer zones*.

VII - Underwater heritage

This part deals with the discovery; possession / custody / control of underwater heritage; protected (underwater heritage) zones; licensing of salvage / excavation works; and ownership of finds. (sect. 52)

The provisions on discovery mirror broadly those provided for the discovery of antiquities on land. (sect. 53)

Protected zones may be declared by the *Minister* and *gazetted*. “No person shall carry out any activity in the protected zone, except with the approval [...] from the *Director*.” (sect. 54)

Licences for salvage and excavation: “No person shall carry on any salvage or excavation work in waters with the *territory of Sarawak*⁷ for the purpose of finding any underwater heritage, except with a licence approved by the *Director*” (sect. 55)

⁶ This section appears to be overlapping with sect. 40.a

⁷ The ordinance defines “*Territory of Sarawak*” as follows: “*all areas within the boundaries of the State which comprised the territory of Sarawak immediately before Malaysia Day, and includes, by virtue of the Sarawak (Alteration of Boundaries) Order in Council, 1954* Working document, Sarawak Heritage Society (V.02/08/2020)

Ownership: “*Underwater heritage* discovered during any survey, salvage or excavations shall vest in the *Director* and shall be listed in the *Register*”. The list of any *underwater heritage* taken possession of by the *Director* is posted in the concerned district. “Upon establishing (a) claim to the satisfaction of the *Director* within 180 days from the date (of the posting) the owner is entitled to have possession of the item(s) upon paying the salvage fees and expenses dues”. In the absence of claim the *underwater heritage* is the absolute property of the State Government.

VIII - Penalties (sect. 57-58)

Where no penalty is specified elsewhere in the ordinance or under rules made under it, the penalty is, upon conviction, up to RM 50,000 or 5 years imprisonment or both.

IX - Enforcement

This new, quite extensive part, comprises 15 sections. Below are some salient points:

Enforcement officers are appointed by the *Minister* by notification in the *Gazette* to assist the *Director* in the administration of the ordinance. (sect.8)

Search, seizure, arrests (sect.61-65): Warrants may be issued by Magistrates empowering designated *enforcement officers* or police or custom officers to search premises and seize items when there are reasonable suspicions of an offence under the ordinance. (sect. 60) Such action may be undertaken by an enforcement officer or public servant authorised by the *Director* or by any police or custom officer when the object of the search is likely to be frustrated by delays in obtaining a warrant. “Any *enforcement officer* or public servant authorised by the *Director* or any police or custom officer may arrest without warrant any person whom he reasonably believes has committed or is attempting to commit an offence under this ordinance”. The arrest is subsequently handled by the Police

Investigations, trials (sect.66-69) When carrying out investigations into offences under the ordinance, *enforcement officers* or public servants authorised by the *Director*, Police or Custom officers (“investigating officers”) may exercise the special powers of Police for Police investigation. Sect. 70 deals with prosecution.

Compounding of offences (sect.73): “The *Director* or any officer authorised in writing in that behalf by the *Director* may compound any offence committed under the ordinance (...) by accepting from the person reasonably suspected of having committed such offence a sum of money not exceeding one half of the maximum amount of the fine provided for the offence committed. The manner of compounding the offences shall be prescribed by rules.”

[Vol VI, p.1025] *the continental shelf being the seabed and its subsoil which lies between the high seas contiguous to the territorial waters of Sarawak* (sect.2).

X - Miscellaneous

Appeals: Sect.75 allows for appeal to the *Minister* for categories of decisions by the Director for which the ordinance does not provide reference to an arbitration procedure ⁸.

Exemptions (sect.78): “The *Director* may, with the approval of the *Minister*, by notification published in the *Gazette*, exempt any specified person or class or description of persons from the operation of this ordinance or any rules made hereunder or any part thereof.”

Rules: Sect. 80 provides for the making of rules by the *Minister* with the approval of the *Majlis Mesyuarat Kerajaan Negeri*, for the implementation of the ordinance ⁹.

Repeal: The Sarawak Cultural Heritage Ordinance 1993 is repealed. Rules, notifications, licences or permits etc. made/ issued under it remain however in force until amended, revoked or replaced.

⁸ This section allows for appeal to the Minister within 30 days from the date of notification of a decision, whereas sect. 50 of part VI (on declarations and registration of buildings and sites) allows for appeals within 14 days after notification of the decision. Section 75.2 appears to be redundant with sect. 51.

⁹ Sect. 80 mentions, inter alia, following topics that may be addressed by rules:

- . fees / procedures for licences, permits, compounding of offences;
- . the registration of heritage assets;
- . “incentives or due recognition to traditional craftsmen;
- . to “develop, preserve, safeguard and perpetuate traditional arts, handicraft, traditional knowledge and traditional cultural expression;”
- . to “prescribe the procedures for the registration and authorization of the exploitation of the traditional knowledge and traditional cultural expression;
- . conservation management plans;
- . to “regulate the demolition, dismantlement, alteration, defacement of or interference with any building operation approved under sect. 36 and 42;”
- . “to “regulate (...) excavations, searches for antiquities and surface findings”
- . the “management and control of antiquities, historical objects, buildings, underwater heritage sites, heritage buildings or sites and historical sites, including buffer zones”