

STATE OF SABAH

I assent,

TUN DATUK SERI PANGLIMA (DR) HAJI JUHAR
HAJI MAHIRUDDIN,
Yang di-Pertua Negeri.

28 December 2017

No. 7 of 2017

An Enactment to make provisions for the conservation and preservation of State Heritage, heritage site and heritage object, tangible and intangible, cultural heritage and for related matters.

ENACTED by the Legislature of State of Sabah as follows:

PART I PRELIMINARY

Short title and commencement

1. (1) This Enactment may be cited as the State Heritage Enactment 2017.
- (2) This Enactment comes into operation on 18 December 2017.

Provisions and Enactment to prevail

2. In the event of any inconsistencies between the provisions of this Enactment and the provisions of the Antiquities and Treasure Trove Enactment 1977 [No. 11 of 1977], the provisions of this Enactment shall prevail.

Interpretation

3. In this Enactment, unless the context otherwise requires –
“antiquity” has the same meaning assigned to it in section 2 of the Antiquities and Treasure Trove Enactment 1977 [No.11 of 1977];

“area” includes works of man or the combined works of nature and man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view;

“archaeological relic” means –

- (a) any archaeological deposit; or
 - (b) any artefact, remains or material evidence associated with an archaeological deposit,
- in any part of Sabah and is fifty or more years old;

“archaeological reserve” means an area in which archaeological relics are situated;

“building” means a building or groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science;

“conservation” includes maintenance, preservation, restoration, reconstruction, rehabilitation and adaptation or any combination;

“conveyance” means any vehicle, vessel, ship, aircraft or any other mode of transportation whether by air, sea or land;

“Council” means the State Heritage Council established under section 7;

“cultural heritage” includes tangible or intangible form of cultural property, structure or artefact and may include a heritage matter, object, item, artefact, fabric, formation structure, performance, dance, song or music that is pertinent to the historical or contemporary way of life of the community of Sabah, on or in land or in the sea of tangible form but excluding natural heritage;

“cultural heritage significance” means cultural heritage having aesthetic, archaeological, architectural, historical, cultural, scientific, social, environmental, spiritual, linguistic or technological value or any other value;

“Director” means the Director of the Sabah Museum;

“enforcement office” means any officer appointed by the Director under section 64;

“Fund” means the State Heritage Fund established under section 19;

“Government” means the Government of the State of Sabah;

“heritage” imports the generic meaning of a State Heritage, sites and object whether listed or not in the Register;

“heritage item” means any State Heritage, heritage site and heritage object listed in the Register;

“heritage object” means and object declared under section 43 or registered under section 45 as a heritage object;

“heritage site” means a site designated as a heritage site under section 22;

“historical object” means any artefact or other object to which religious, traditional, artistic or historic interest is attached and includes any –

- (a) ethnographic material such as a household or agricultural implement, decorative article or personal ornament;
- (b) work of art such as carving, sculpture, painting, architecture, textile, musical instrument, weapon and any other handicraft;

- (c) manuscript, coin, currency note, medal, badge insignia, coat of arm, crest flag, arm or armour; or
- (d) vehicle, ship and boat, in part or in whole, whose production has been ceased;

“historical site” has the meaning assigned to it in section 2 of the Antiquities and Treasure Trove Enactment 1977 [No. 11 of 1977];

“intangible cultural heritage” includes any form of knowledge, expressions, languages, lingual utterances, sayings, musically produced tunes, notes, audible lyrics, songs, folksongs, oral traditions, poetry, music, dances as produced by the performing arts, theatrical plays, audible compositions of sounds and music, martial arts, traditional customs and culture, handicrafts architectural skills, that may have existed or exist in relation to the heritage of Sabah community;

“member” includes the Chairman;

“Minister” means the Minister charge with the responsibility for cultural heritage;

“monument” means architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science;

“natural heritage” includes natural features of any are which may consist of earthly physical or biological formations or group of such formations, geological or physiographical features, mountains, rivers, streams, rock formation, sea shore or any natural sites of outstanding value form the point of view of nature, science, history conservation or natural beauty including flora and fauna;

“object” includes antiquity, tangible cultural heritage, intangible cultural heritage and historical object;

“occupier” means any person in actual possession, management or control of any movable or immovable property;

“owner”, in relation to any land, means the registered owner;

“premises” includes any hut, structure, house, building, conveyance and land whether or not enclosed or built upon;

“preservation” means aiming to halt further deterioration, decay or a state of dilapidation and providing structural safety and well being but does not contemplate significant rebuilding and includes –

- (a) techniques of arresting or slowing the process of deterioration, decay or state of dilapidation of an item or structure;
- (b) improvement of structural conditions to make a structure safe, habitable, or otherwise useful; and
- (c) normal maintenance and minor repairs that do not change or adversely affect the fabric or historic appearance of a structure;

“reconstruction” means the process of accurately reproducing by new construction, the form and detail of a vanished structure, or part of it, as it appeared at some period in time and includes full or partial reconstruction;

“Register” means the State Heritage Register established and maintained under section 21 containing lists of heritage items;

“rehabilitation” means the process of returning a property to a state of utility through repair or alteration, which makes possible an efficient contemporary use while preserving those portions and features of the property which are significant to its historic architecture;

“restoration” means the process of accurately recovering the form and details of a structure or part of a structure and its setting, as it appeared at some period in time, by removing the latter work and replacing the missing original work, and includes –

- (a) full restoration which involves both exterior and interior;
- (b) partial restoration which involves the exterior, interior, or any partial combination and is adopted when only parts of a structure are important in illustrating cultural values at its level of

historic significance, or contribute to the values for which the area was designated; and

- (c) adaptive restoration which involves all or a portion of the exterior restoration with the interior adapted to a modern functional use;

“site” includes any area, place, zone, historical site, natural heritage, monument or building attached to land, archaeological reserve and any land with building, garden, tree or archaeological reserve;

“State Heritage” means any heritage site, heritage object or any living person declared as State Heritage under section 55;

“tangible cultural heritage” includes area, building and monument;

“zone” means an area or part of an area for the purpose of preservation and restoration in respect of rural and urban landscapes whether natural or man-made, which embraces any cultural heritage significance.

PART II

FUNCTIONS AND POWERS OF THE DIRECTORS

Functions of the Director

- 4. The Director shall have the following functions:
 - (a) to determine the designation of sites and declaration of objects;
 - (b) to coordinate with the Council in relation to the conservation and preservation of heritage;
 - (c) to establish and maintain a State Heritage Register;
 - (d) to supervise and oversee the conservation, preservation, restoration and maintenance, promotion, exhibition and accessibility of heritage;
 - (e) to promote and facilitate any research relating to heritage;

- (f) to advise and coordinate with the local planning authority, any body or other agencies in relation to the administration, conservation and preservation of heritage;
- (g) to perform such other functions under this Enactment as the Minister may assign from time to time; and
- (h) to do all such things as may be incidental to or consequential upon the discharge of his function and powers.

Power of the Director

5. The Director shall have all such powers as may be necessary for, or in connection with, or incidental to, the performance of his functions under this Enactment.

Power to delegate

6. (1) The Director may, in writing, delegate any of his functions or powers subject to such conditions, limitations or restrictions as he thinks fit, to any officers and such person to whom the functions or powers is delegated shall perform the functions or powers in the same manner and with the same effect as if the functions or powers had been conferred on him under this Enactment.

(2) A person purporting to act pursuant to a delegation made under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.

(3) A delegation made under this section may at any time be revoked by the Director.

(4) A delegation made under this section shall not preclude the Director himself from carrying out at any time the delegated functions or powers.

PART III
STATE HERITAGE COUNCIL

Establishment of State Heritage Council

7. There shall be established a State Heritage Council.

Functions of Council

8. The Council shall have the following functions:
- (a) to advise the Director on any matters relating to the conservation, preservation and protection of heritage, and the due administration and enforcement of laws relating to heritage;
 - (b) to formulate policies on heritage; and
 - (c) to monitor and propose any improvement to the guidelines and conservation management plan for heritage item.

Membership of Council

9. The Council shall consist of the following members:
- (a) Chairman, who shall be the Minister;
 - (b) the permanent Secretary of the Ministry of Tourism, Culture and Environment;
 - (c) the Permanent Secretary of the Ministry Local Government and Housing or his representative;
 - (d) the Director;
 - (e) the Secretary of Natural Resources or his representative;
 - (f) the Director of State Town and Regional Planning or his representative;
 - (g) the Mayor of City of Kota Kinabalu or his representative;
 - (h) the General Manager of Sabah Cultural Board or his representative; and
 - (i) not more than five other members who possess experience or expertise in relation to the management, conservation or preservation of sites and objects of natural or cultural heritage significance, to be appointed by the Minister.

Secretary

10. There shall be a secretary to the Council who shall be appointed by the Director.

Tenure of office

11. Subject to section 12, any member of the Council appointed under paragraph 9(i) shall, unless he sooner resigns his office or his appointment is sooner revoked, hold office for such period not exceeding three years as may be specified in his instrument of appointment and shall be eligible for reappointment.

Revocation of appointment and resignation of members

12. (1) The appointment of any member under paragraph 9(i) may, at any time, be revoked by the Minister without assigning any reasons for the revocation.

(2) A member appointed under paragraph 9(i) may, at any time, resign his office by giving a written notice to the Minister.

Vacation of office

13. The office of a member appointed under paragraph 9(i) shall be vacated if –

- (a) he dies;
- (b) there has been proved against him, or he has been convicted of, a charge in respect of –
 - (i) an offence involving fraud, dishonesty or moral turpitude;
 - (ii) an offence under any law relating to corruption; or
 - (iii) any other offence punishable with imprisonment (in itself only or in addition to or in lieu of a fine) for more than two years;
- (c) he becomes a bankrupt;
- (d) he is of unsound mind or is otherwise incapable of discharging his duties;
- (e) he absents himself from three consecutive meetings of the Council without leave in writing of the Chairman;
- (f) his resignation is accepted by the Minister; or
- (g) his appointment is revoked by the Minister.

Filling or vacancies

14. Where a member appointed under paragraph 9(i) ceases to be a member of the Council, the Minister may appoint another person to fill the vacancy for the remainder of the term for which the vacating member was appointed.

Meetings

15. (1) The Council shall convene its meeting as often as may be necessary but which shall not be less than once in every three months.

(2) The Chairman shall preside at all meetings of the Council or in the absence of the chairman, the members present at the meeting shall appoint a chairman from amongst them.

(3) The quorum of the Council shall be seven.

(4) The decision of the Council shall be by majority votes, and where there is an equality of votes, the Chairman shall have the casting vote.

Procedures

16. Subject to this Enactment, the Council shall determine its own procedure.

Council may establish committees

17. The Council may establish any committee, consisting of members of the Council or persons who are not members of the Council or a combination of both, as it considers necessary or expedient to assist it in the performance of its functions.

Allowances

18. Members of the Council or a committee may be paid from the Fund such allowances or other expenses as the Minister may determine.

PART IV
STATE HERITAGE FUND

Establishment of the State Heritage Fund

19. (1) For the purpose of this Enactment, a fund to be known as the “State Heritage Fund” is established.

(2) The Fund shall be administered, controlled and maintained by the Director.

(3) The Fund shall consist of –

- (a) such sums as may be appropriated by the State Legislative Assembly from the State Consolidated Fund and otherwise for the purposes of this Enactment;
- (b) grants from the Federal Government;
- (c) all monies received by way of donations or contribution;
- (d) all monies derived from levy imposed under this Enactment; and
- (e) all other monies which may in any manner become payable to the Director in respect of any matter incidental to his functions powers or duties.

(4) The Fund shall be operated in accordance with the Financial Procedure Act 1957 [Act 61] and any subsidiary legislation made under the Act.

Expenditure to be charged on the Fund

20. The fund shall be expended for the following purposes:

- (a) payment for the purchase of heritage in accordance with this Enactment;
- (b) payment of the expenses incurred for –
 - (i) maintenance, conservation, preservation and restoration of any heritage whether they are owned by the Government or otherwise;

- (ii) organizing campaigns, research, study or publication of materials for the protection of heritage; and
 - (iii) maintenance, conservation and preservation of any heritage item and activities incidental to it;
- (c) any disbursement of grant or loan under this Enactment; and
- (d) any other payment for the purpose of this Enactment.

PART V
STATE HERITAGE REGISTER

State Heritage Register

21. (1) The Director shall establish and maintain a register known as the State Heritage Register as may be prescribed containing the list of heritage item registered under this Enactment.

(2) The Director shall make the Register available for public inspection subject to such conditions as he thinks fit.

- (3) Any person may on payment of a fee to be prescribed by the Minister –
- (a) inspect the Register, and
 - (b) make a copy of, or take extracts from, the Register.

PART VI
HERITAGE SITE
Designation of Heritage Site

Designation of heritage site

22. The Director may, in consultation with the Council, designate any site which has natural heritage or cultural heritage significance to be a heritage site.

Adjacent and nearby site

23. (1) Where a site has no natural heritage or cultural heritage significance but the Director is satisfied that it should be designated as a heritage site because of its proximity to and for the protection and enhancement of another site designated as a heritage site under section 22, the Director may so designate such site as a heritage site.

(2) Any designation made under subsection (1) shall be revoked in the event the designation of that other site is revoked.

Inspection of site

24. (1) The Director may at any time enter upon a site to inspect, survey, investigate or to carry out any work necessary for the purpose of determining whether to designate the site as a heritage site.

(2) The owner or occupier of the site shall be given a notice in writing of not less than seven days of any proposed entry.

(3) Where any person objects to such entry under subsection (1) on conscientious or religious grounds, such entry shall not be effected except with the permission in writing of the Minister.

(4) The Director may enter into any arrangements with the owner or occupier of the site for any loss or damage suffered or alleged to have been suffered by the owner or occupier by reason of such entry under subsection (1).

(5) Any person who obstructs the Director or refuses entry into any site for inspection, survey, investigation, or to carry out any work under subsection (1) commits an offence.

Notice to owner, etc.

25. (1) Upon determining to designate a site as a heritage site, the Director shall, at least sixty days before making the designation, give a written notice in the form and manner as prescribed by the Director to the owner or the site of the intention to register the site as a heritage site.

- (2) As soon as possible after giving notice under subsection (1), the Director shall –
- (a) cause to be published in the *Gazette* and a local newspaper –
 - (i) a notice of intention to designate the site as a heritage site; and
 - (ii) any other matters constituting or relating to the designation which in his opinion is desirable to publish; and
 - (b) file a notice of intention to designate the site as a heritage site at the land office where the site is situated.

Objection

26. An owner of the site or any other person affected or likely to be affected by the designation of the site as a heritage site may make an objection to the designation of the site by serving a notice of objection on the Director within thirty days from the date of the publication of the notice under paragraph 25(2)(a).

Hearing

27. Where a notice of objection to the designation of the site is served in accordance with section 26 the Director shall set a date, time and place for the hearing of the objection and shall, at least twenty one days before the date of the hearing serve a notice of hearing in the form and manner as prescribed by the Director, upon the objecting party and the owner of the site.

Decision of the Director

- 28.** (1) Where the Director, after hearing the parties, if any, is satisfied that the site is of natural heritage or cultural significance, he shall –
- (a) designate the site as heritage site;
 - (b) record the heritage site in the Register; and
 - (c) give the owner a written notice of his decision.

(2) As soon as possible after the decision in subsection (1), the Director shall-

- (a) cause to be published in the *Gazette* and a local newspaper –
 - (i) a notice that the site has been designated as a heritage site; and
 - (ii) any other matters constituting or relating to the heritage site which in his opinion is desirable to publish; and
- (b) file a notice in the land office where the heritage site is situated notifying that the site has been designated as a heritage site.

(3) Where the Director makes a decision not to proceed with the proposed designation of a site, he shall immediately notify the owner of the site and the land office where the site is situated in writing of such decision, with or without assigning any reason.

Notice to local planning authority

29. The director shall notify the local planning authority for the area of the local authority where the heritage site is situated of the designation of the heritage site so that the local planning authority shall take into consideration any matter, policy, strategy or plan of action pertaining to the interest of the heritage site in preparing any development plan in that local authority area under the Town and Country Planning Ordinance [*Cap. 141*].

Dealings involving heritage site

Notice of Intention to sell heritage site

30. The owner of a heritage site who enters into an agreement of sale the whole or any part of the heritage site, shall notify the Director in writing in the prescribed form of the information about the existence of that agreement within twenty eight days of the date of the agreement.

Change of owner of a heritage site

31. (1) Any person who purchases or acquires any heritage site shall within twenty eight days of the date of the completion of the purchase or acquisition, notify the Director in writing of –

- (a) that person's name and address; and
- (b) whether the person intends to occupy the site.

(2) A person who has notified the Director of information under subsection (1) shall, within twenty eight days of any change to the information provided, notify the Director in writing of the change.

Conservation and preservation of heritage site

Monument Preservation Order

32. (1) Where the Director, with the concurrence of the Council, is satisfied that any monument regarded as suitable to be registered as a heritage site is in dilapidation or in imminent danger of demolition, destruction, damage or alteration, the Director shall serve on the owner of the monument a Monument Preservation Order pending approval of its registration.

(2) The Monument Preservation Order shall contain such condition as may be specified.

(3) A Monument Preservation Order shall come into operation as soon as it is served on the owner of the monument.

(4) A Monument Preservation order shall remain in operation for a period of ninety days from the date it is served and may be extended by the Director for such period of time as he may think fit.

(5) Notwithstanding subsection (4), the Monument Preservation Order shall cease to be in force –

- (a) if the monument is designated as a heritage site; or

(b) if the Director has decided not to designate the monument as a heritage site.

(6) Any person who contravenes the Monument Preservation Order commits an offence.

Arrangements or removal, and care of heritage site

33. (1) Where a heritage site is situated on an alienated land, the Director may, in consultation with the Council –

- (a) make arrangements with the owner or occupier for the inspection, maintenance, conservation and preservation of the heritage site;
- (b) purchase or lease the heritage site;
- (c) acquire the heritage site in accordance with the provisions of the Land Acquisition Ordinance 1969 [*Cap. 69*], for a public purpose; or
- (d) remove the whole or any part of a building or monument on the heritage site.

(2) Where the owner or occupier agrees to such arrangements under paragraph (1)(a), the Director may make a contribution towards the costs of carrying out any works of repair or conservation which is deemed necessary.

(3) Where a contribution towards the costs of carrying out the works is made, such works shall be carried out in accordance with the direction of the Director.

(4) The Director shall make good any damage done to the site or monument by the removal of any building or monument under paragraph 1(d) and may agree to the payment of any compensation to the owner of the site.

(5) Any dispute as to the amount of compensation shall be referred to the Minister whose decision shall be final.

Inspection of heritage site

34. (1) The owner or occupier of a heritage site situated on an alienated land shall permit the Director or any officer authorized by him to enter upon the site to inspect or to carry out any work necessary for the conservation, repair, maintenance and cleanliness as is deemed expedient or necessary.

(2) The owner or occupier shall be given a notice in writing or not less than seven days of any proposed entry.

(3) The owner or occupier shall be entitled to claim compensation for any loss or damage suffered or alleged to have been suffered by him by reason of such entry under subsection (1).

(4) Any dispute as to the amount of compensation shall be referred to the Minister whose decision shall be final.

Duty to keep heritage site in good repair

35. (1) The owner of a heritage site shall ensure that the heritage site is always in a state of good repair.

(2) Where the Director is satisfied that reasonable steps are not being taken for properly preserving the monument, he may carry out such repair works, after giving any person appearing to the Director the owner of the monument fourteen days notice of his intention to do so, and all costs and expenses reasonably incurred to carry out the works shall be reimbursed by such person.

Application for planning permission for heritage site

36. (1) The local planning authority shall coordinate and seek the advice of the Director before giving any planning permission or development order involving a heritage site.

(2) Where the local planning authority refers any application by any person for planning permissions or development order to the Director, such application shall contain-

- (a) sufficient particulars to identify the monument to which the application relates, including its layout plan, measured building plan and photographs of its every angle, including the exterior and interior of such monument;
 - (b) such other plans and drawings as are necessary to describe the work which is the subject of the application;
 - (c) measures that have been taken to secure the safety of the heritage site and the neighbouring land; and
 - (d) such other particulars as may be required by the Director.
- (3) For the purpose of paragraph (2)(c), neighbouring land means –
- (a) any land adjoining within a distance of two hundred metres from the boundary of the land to which an application under this section relates;
 - (b) any land separated from the land to which an application made under this section relates by any road, lane, drain or reserved land, the width of which does not exceed twenty metres and which would be adjoining the land to which the application relates had they not been separated by such road, lane, drain or reserved land; or
 - (c) any land located within distance of two hundred metres from the boundary of the land to which an application under this section relates.
- (4) The director shall advise the local planning authority to impose conditions when approving planning permission or a development order involving a heritage site which may include –
- (a) requiring compliance with any conservation guidelines and procedures issued by the Minister;

- (b) requiring the making good of any damage caused to any heritage site after the works authorized by the planning permission or a development order are completed; or
- (c) requiring the protection and retention of any specified feature of the heritage site.

(5) Where the planning permission is approved, the Director shall liaise, cooperate and coordinate with the local planning authority to monitor and supervise that the terms and conditions imposed relating to the conservation of heritage are complied with.

(6) Any person who contravenes any condition imposed under subsection (4) commits an offence.

Financing conservation work

37. (1) An owner of a heritage site may, for the purpose of carrying out any conservation and preservation works on the heritage site, apply to the Director for any grant or loan.

(2) The Director may, in consultation with the Council, make arrangements with the owner of a heritage site to carry out any conservation and preservation works as the Director deems appropriate.

(3) The Director may, with the approval of the Council, issue a grant or loan which is to be disbursed from the Fund for such conservation and preservation works.

(4) The Director may, when giving the grant or loan, impose such conditions as he deems appropriate on the owner.

Power to impose entry fee

38. (1) An owner of a heritage site may, with the approval and subject to such conditions as the Director may impose, charge an entrance fee into the heritage site.

(2) Where the Director has contributed towards the expense of conservation and preservation of any heritage site, the Director may impose a levy on the entrance fee

received by the owner of that heritage site and any levy paid by such owner shall be paid into the Fund.

Conservation area and conservation management plan

Conservation area

39. (1) Where a site is designated as a heritage site, that site shall on the date of the designation become a conservation area and shall be conserved and preserved according to a conservation management plan.

(2) A conservation area may –

- (a) incorporate a buffer zone around a central core; or
- (b) incorporate a buffer zone around a site that has been designated as a heritage site.

(3) The Director may, in consultation with the Council, determine the buffer zone and the central core.

Conservation management plan

40. (1) The Director shall, in consultation with the Council. Prepare a conservation management plan for the purpose of –

- (a) promoting the conservation, preservation, rehabilitation, restoration or reconstruction of a heritage site;
- (b) ensuring the proper management of a heritage site including the use and development of all buildings and land in the heritage site and the preservation of the environment including measures for the improvement of the physical living environment, communications, socio economic well being, the management of traffic and the promotion of economic growth; and

- (c) promoting schemes for the educations of, or for practical and financial assistance to, owners and occupiers, and for community involvement in decision making.
- (2) The Director shall from time to time –
- (a) submit such conservation management plan to the local planning authority;
 - (b) advise and coordinate with the local planning authority for the implementation of the conservation management plan and its guidelines; and
 - (c) review any conservation management plan.

PART VII
HERITAGE OBJECT
Discovery of object

Discovery of object

41. (1) Any person who discovers any object which he has reason to believe has cultural heritage significance shall immediately notify the Director or any officer authorized by him, or the Mayor, President or District Officer of the area where the object was discovered, as the case may be, and where practicable, deliver the object to the Director, any officer authorized by the Director, Mayor, President or District Officer who shall give a written acknowledgement thereof.

(2) Where the Mayor, President or District Officer has reason to believe that any object discovered in his area has cultural heritage significance, he may by notice in writing require the person having possession of it to deliver the object immediately to him, and the Mayor, President or District Officer on receiving such object shall give a written acknowledgement and shall keep safely the said object.

(3) The officer authorized by the Director, Mayor, President or District Officer, as the case may be, shall communicate the notification under subsection (1) or the written notice under subsection (2) to the Director as soon as practicable.

(4) Any agent, contractor or executor of a Federal Government or Government or an owner of an alienated land who discovers at the project site any object which he has reason to believe that the object has cultural heritage significance, such agent, contractor, executor or owner shall report to the Director who shall immediately inspect the object.

(5) Any person who contravenes subsection (1) or (4) or fails to comply with the notice given by the Mayor, President or District Officer under subsection (2) commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.

Proprietary right in the object

42. (1) Any object discovered after the date of the coming into operation of this Enactment shall be the absolute property of the Government provided that where the object is discovered on an alienated land, compensation may be paid to the owner of the land.

(2) A competent heritage valuer may be appointed by the Director to decide on the value of the object for the purposes of ascertaining the amount of compensation, and the decision of the competent heritage valuer shall be final.

(3) Every object which before the date of the coming into operation of this Enactment 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 Government.

(4) All undiscovered objects whether lying on or hidden beneath the surface of the ground or in any river or in the sea, shall be deemed to be the absolute property of the Government but if the said object is at a late date found to be discovered on or in an alienated land the provisions of subsections (1) and (2) shall apply.

(5) In any legal proceedings relating to the date of discovery of an object of cultural heritage significance, it shall be presumed until the contrary is proved that it was discovered after the date of the coming into operation of this Enactment.

Declaration of heritage object

43. (1) The Director may, in consultation with the Council, declare in the *Gazette* any object which has a cultural heritage significance to be a heritage object and shall cause it to be listed in the Register.

(2) Before making the declaration under subsection (1), the consent of the owner of such object shall be obtained and for that purpose, the Director may furnish the owner such prior opportunity for representation or submission in regard to the proposed declaration as may be practicable in the circumstances and in such manner as may be prescribed.

(3) The Director may, in the same manner as in subsection (1), amend or revoke the *Gazette* and in each case of such amendment or revocation he shall substantiate his action with the necessary background and reason.

(4) Upon the object being listed in the Register, the object shall be a heritage object starting from the date of its registration and shall cease to be a heritage object when the Director revokes the registration.

Application for registration

Application for registration of heritage object

44. (1) Any person may apply for an object to be registered as a heritage object.

(2) An application for registration shall be in such form and accompanied by such document or information as may be prescribed.

(3) The Director may, at any time after receiving the application under subsection (1) and before it is determined, by a written notice require the applicant to provide such additional documents or information as Director deems necessary.

(4) Where any additional document or information required under subsection (3) is not provided by the applicant within the time specified in the notice or any extension thereof granted by the Director, the application shall be deemed to be withdrawn and

shall not be proceeded with, but without prejudice to a fresh application being made by the applicant.

(5) An application under this section may be withdrawn at any time before it is approved or refused.

Approval or refusal of application for registration

45. (1) Where the Director is satisfied that an object is of cultural heritage significance, he shall register the object as a heritage object in the Register and give the applicant a written notice of the Director's decision under this section.

(2) Where the application involves an object which is attached to any alienated land, the consent of the owner shall be obtained before the application is approved.

(3) Where the application involves intangible cultural heritage in which copyright subsists, the consent of the copyright owner shall be obtained before the application is approved.

(4) An application for registration which is approved under this section may be subject to such conditions as the Director may impose.

(5) As soon as possible after the approval in subsection (4), the Director shall cause to be published in the *Gazette* a notice that the object has been registered as a heritage object and on any other matter constituting or relating to the heritage object which in his opinion is desirable to publish.

(6) Where the Director refuses the application, he shall immediately notify the applicant in writing of the refusal with or without assigning any reason for the refusal.

Certificate of registration

46. (1) When an object is registered under section 45 the Director shall issue a certificate of registration to the owner.

(2) Upon the heritage object being ceased to be registered as a heritage object, the owner of the object must surrender the certificate of registration to the Director within three months from the date of such cessation.

Management of heritage object

Compensation for certain heritage object

47. (1) On the discovery of any object having cultural heritage significance, the Director shall be entitled to the custody and possession of the same on behalf of the Government and shall be responsible for its safeguarding and safekeeping.

(2) If the Director decides not to retain such object, it shall be returned to the person who delivered it subject to any condition that may be imposed by the Director.

(3) When an object is retained by the Director or where in the opinion of the Director that object should be safeguarded at the place where it was found, the Director 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.

Apportionment of share of heritage object

48. The Director may enter into a written agreement with the owner of the heritage object for the apportionment of share of such heritage object as may be agreed upon by the Director and the owner.

Dispute as to compensation or apportionment

49. Where there is any dispute regarding the compensation to be paid for any heritage object or apportionment of share of such heritage object, such dispute shall be referred to the Minister whose decision shall be final.

Sale or disposal of heritage object

50. (1) The Director may by notice in writing require any person in the possession of any heritage object which is deemed to be of a state importance or interest, not to sell or dispose of such heritage object without prior written consent of the Director.

(2) Any person who receives such notice shall not sell or dispose of any heritage object in his possession or custody.

(3) Within the period of thirty days from the date of the notice under subsection (1) the Director shall have the first right to purchase such heritage object at an agreeable value.

(4) Any person who contravenes subsection (2) commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding one year or to both.

Notice of intention to sell or transfer a heritage object

51. The owner of a heritage object who enters into an agreement to sell or transfer the heritage object shall notify the Director in writing of the information about the existence of that agreement within twenty eight days of the date of the agreement.

Change of owner of a heritage object

52. (1) Any person who purchases or acquires a heritage object shall, within twenty eight days of the date of the purchase or acquisition, notify the Director in writing of that purchaser or acquirer's name, particulars and address.

(2) Any change to the information under subsection (1) shall be notified to the Director in writing within twenty eight days.

(3) Any person who contravenes subsection (1) or (2) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding one year or to both.

Conservation of heritage object

53. (1) The owner or custodian of a heritage object shall keep the heritage object in good condition and in a secure place.

(2) The owner or custodian of a heritage object shall immediately report to the Director any loss or damage to such heritage object or any part of it upon discovery of such loss or damage.

(3) Any person who fails to comply with subsection (1) or (2) commits an offence.

Conservation of intangible cultural heritage

54. (1) The owner or custodian of a heritage object in the form of an intangible cultural heritage shall take all necessary steps to develop, identify, transmit, cause to be performed and facilitate the research on the intangible cultural heritage according to the guidelines and procedures as may be prescribed.

(2) The Director may enter into any arrangements with the owner or custodian of the intangible cultural heritage for the compliance with the guidelines and procedures as prescribed.

PART VIII
STATE HERITAGE

Declaration of State Heritage

55. (1) The Minister may, in consultation with the Council, by order published in the *Gazette*, declare any heritage site, heritage object or any living person as a State Heritage.²

(2) In making a declaration under subsection (1) the Minister may consider the following matters:

- (a) the historical importance, association with or relationship to Sabah history;

- (b) the design or aesthetic characteristic;
- (c) the innovation or scientific or technical achievements;
- (d) the social or cultural association;
- (e) the potential to educate, illustrate or provide further scientific investigations in relation to Sabah heritage;
- (f) the importance in exhibiting a richness, diversity or unusual integration of features;
- (g) the rarity or uniqueness of the natural heritage, tangible or intangible cultural heritage; and
- (h) any other matter which is relevant to the determination of cultural heritage significance

(3) Where the site or immovable object is on alienated land or belongs to any person other than the Government, the owner, custodian or trustee of that site or immovable object shall be notified at least thirty days prior to the date of the proposed declaration.

(4) Where the declaration under subsection (1) involves an intangible cultural heritage and copyright still subsists in such works, the consent of the copyright owner shall be obtained before any declaration is made.

(5) Where the declaration under subsection (1) involves a living person, the consent of that person shall be obtained before any declaration is made.

(6) A copy of the order shall be served on the owner, custodian or trustee of the site, object or on the living person.

(7) Any person who objects to the making of the declaration under subsection (1) may submit an objection in writing to the Minister within three months of its publication and may apply to the Minister for the revocation of the order.

(8) The Minister may, after having been advised by the Council, revoke or refuse to revoke the order and such decision shall be final.

Nomination as State Heritage

56. Any person may nominate to the Minister in the prescribed form any natural heritage, tangible or intangible cultural heritage or living person to be declared as a State Heritage.

Ownership or possession of State Heritage

57. Any State Heritage which is owned or possessed by a person other than the Government may remain in the possession of its owner, custodian or trustee.

Change in the ownership of State Heritage

58. (1) There shall be no change in respect of the ownership of any State Heritage except by –

- (a) inheritance; or
- (b) sale, with the prior approval of the Director.

(2) Where the owner, custodian or trustee intends to sell a State Heritage, that owner, custodian or trustee shall give priority to the Director to purchase that State Heritage on an agreed value or upon the instruction of the Director to deal with in such manner that the Director deems fit.

(3) Where there is any dispute between the Director and the owner as to the reasonable value for such State Heritage, such dispute shall be referred to the Minister whose decision shall be final.

(4) Where a sale is effected pursuant to paragraph (1)(b), the owner, custodian or trustee and the purchaser shall inform in writing to the Director within twenty eight days after the change in ownership and Director shall cause to be made the necessary amendment in the Register.

Listing of the State Heritage in the Register

59. The Director shall cause to be listed a State Heritage declared under subsection 55(1) in the Register.

Conservation and preservation of State Heritage

60. (1) The Minister may impose different procedures and guidelines as may be prescribed for the management, conservation and preservation of different categories of State Heritage.

(2) The Minister may approve any financial assistance to the owner, custodian or trustee of a State Heritage for the compliance with any procedure or guidelines prescribed under subsection (1)

PART IX OFFENCES

Offences in respect of heritage site

- 61.** (1) No person shall, without the approval in writing of the Director –
- (a) dig, construct, excavate, build, plant trees, quarry, irrigate, burn lime or deposit earth or refuse, on or in the heritage site or conservation area;
 - (b) demolish, disturb, obstruct, modify, mark, pull down or remove any monument in any heritage site;
 - (c) erect any building or structure abutting upon a monument in any heritage site;
 - (d) destroy the relationship of a building and its environment that is incompatible with the character of the neighbourhood in any heritage site;

- (e) clear any area or interfere with, destroy or remove any tree, plant undergrowth, weed, grass or vegetation in any heritage site; or
- (f) do any activities or actions that would likely cause damage to the adjacent and surrounding land which have been registered as heritage site.

(2) Any person who, without lawful authority, contravenes subsection (1) commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding five hundred thousand ringgit or to both.

(3) 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.

(4) Any person convicted of an offence under this section may be ordered to pay, in addition to any punishment imposed under subsection (2), compensation equal to the value of the object and of anything damaged in the course of its extraction.

(5) For the purposes of subsection (4), the value of any object shall, in the absence of evidence to the contrary, be deemed to be such amount as the Government valuer may certify.

Offences in respect of heritage object

62. Any person who destroys, damages, disfigures or disposes a tangible cultural heritage, or alters a tangible cultural heritage without a permit issued by the director, commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding five hundred thousand ringgit or to both.

Offences in respect of State Heritage

63. (1) No person shall, without the written approval of the Director, transfer, demolish, remove, alter, renovate, export, add to or deal with any State Heritage except in case of urgency and immediate necessity for the safety of persons or property.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding five hundred thousand ringgit or to both.

PART X
ENFORCEMENT

Appointment of enforcement officers

64. The Director may in writing appoint any number of enforcement officers as may be necessary for the purposes of this Enactment.

Authority card

65. (1) The Director shall issue an authority card to each enforcement officer which shall be signed by the Director.

(2) Whenever an enforcement officer exercises any of the powers under this Enactment or any subsidiary legislation made under this Enactment, he shall, on demand, produce to the person against whom the power is being exercised the authority card issued to him under subsection (1).

Power of investigation

66. An enforcement officer shall have the power to investigate any offence under this Enactment, and such power shall be in addition to the powers provided for under this Enactment and not in derogation thereof.

Search and seizure with warrant

67. (1) If it appears to a Magistrate, upon written information on oath and after such inquiry as he considers necessary, that there is reasonable cause to believe that –

(a) any premises have been used or are about to be used for; or

- (b) there is in any premises evidence necessary to the conduct of an investigation into,

the commission of an offence under this Enactment or any subsidiary legislation made under this Enactment, the Magistrate may issue a warrant authorizing an enforcement officer or police officer named in the warrant, at any reasonable time by day or by night and with or without assistance, to enter the premises and if need be by force.

(2) A warrant issued under subsection (1) may authorize the enforcement officer or police officer to search the premises for, and to seize and remove from the premises –

- (a) any object, material, book, document, receptacle or other thing in respect of which offence has or is suspected to have been committed; and
- (b) any object, material, book, document, receptacle or other thing that is reasonably believed to furnish evidence of the commission of the offence.

(3) An enforcement officer or a police officer acting under subsection (1) or (2) may –

- (a) break open any outer or inner door of the premises or any fence, enclosure, gate or other obstruction to the premises, in order to effect entry into the premises, if necessary forcibly;
- (b) remove by force any obstruction to entry, search, seizure or removal as he is empowered to effect under this section; and
- (c) detain any person found in the premise until the search has been completed.

Search and seizure without warrant

68. If the enforcement officer or a police has reasonable cause to believe that any object, material, book, document or other thing in respect of which an offence under this Enactment or any subsidiary legislation made under this Enactment has been committed is likely to be found in or on any place, premises or person and that by reason of delay in

obtaining a warrant under section 67 the object of the search would be adversely affected, he may, without warrant, with such assistance and force as is necessary –

- (a) enter and search the place or premises;
- (b) stop and search that person or conveyance; and
- (c) seize any object, material, book, document, receptacle or other thing which may be found and may be an evidence of the commission of such offence.

Search of persons

69. No person shall be searched except by another person of the same gender, and such search shall be conducted with strict regard to decency.

Power to seal premises

70. (1) If by reason of its nature, size or amount, it is not practicable to remove any object, material, book, document, receptacle, conveyance or other thing that has been seized in or on any premises, the enforcement officer or police officer shall, by any means, seal such premises from where the object, material, book, document, receptacle, conveyance or other thing was found.

(2) Any person who, without lawful authority, breaks, tampers or damages the seal referred to in subsection (1) or removes any object, material, book, document, receptacle, conveyance or other thing seized under seal or attempt to do so, commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding two years or to a fine not exceeding two hundred thousand or to both.

Access to computerized data

71. (1) An enforcement officer or police officer conducting a search under this Enactment shall be given access to computerized data whether stored in a computer or otherwise.

(2) For the purpose of this section, “access” includes being provided with the necessary password, encryption code, decryption code, software or hardware or any other means required to enable the comprehension of computerized data.

Power to stop, search and seize conveyance

72. (1) Where an enforcement officer or police officer has reasonable cause to suspect that any conveyance is carrying any object, material, book, document, receptacle or other thing in respect of which an offence under this Enactment or any subsidiary legislation made under this Enactment is being or has been committed, he may stop and search the conveyance and may, if on the examination he has reasonable cause to believe that such conveyance is or has been used for the commission of such offence, seize such conveyance and any object, material, book, document, receptacle or other thing found in the conveyance that is reasonably believed to furnish evidence of the commission of such offence.

(2) The person in control or in charge of the conveyance shall, if required by the enforcement officer or police officer –

- (a) stop the conveyance and allow the enforcement officer or police officer to examine it; and
- (b) open all parts of the conveyance for examination and take all measures necessary to enable or facilitate the carrying out of such examination as the enforcement officer or police officer considers necessary.

(3) Any person who contravenes subsection (2) commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding one year or to both.

Power of arrest

73. (1) Any enforcement officer or police officer may arrest without warrant any person whom he reasonably believes has committed or is attempting to commit an offence under this Enactment or any subsidiary legislation made under this Enactment.

(2) An enforcement officer making an arrest under subsection (1) shall without unnecessary delay make over the person so arrested to the nearest police officer or, in the absence of a police officer, take such person to the nearest police station, and thereafter the person shall be dealt with in accordance with the law relating to criminal procedure for the time being in force as if he had been arrested by a police officer.

Notice of seizure

74. (1) Where any seizure is made under this Enactment, the enforcement officer or police officer making the seizure shall give a notice in writing of the seizure and the grounds of the seizure to the owner of the object, material, book, document, receptacle, conveyance or other thing seized by delivering a copy of such notice to the owner, if the owner or his whereabouts are known.

(2) A notice under subsection (1) need not be given if the seizure is made in the presence of –

- (a) the owner;
- (b) the occupier of the premises; or
- (c) the person in control or in charge of the conveyance where the seizure is made under section 72.

(3) Where any object, material, book, document, receptacle, conveyance or other thing are stored, kept or found the enforcement or police officer seizing the things shall prepare a list of the things seized and immediately deliver a copy signed by him to the owner or person in charge of the premises or conveyance which has been searched.

(4) Where the seizure is made in or from any place or premises which is unoccupied, the enforcement officer or police officer shall whenever possible post a list of the things seized conspicuously at or on the place or premises.

Temporary return of conveyance

75. (1) Where any conveyance has been seized under this Enactment, the court may temporarily return the conveyance to the owner of the conveyance from whose possession, custody or control it was seized, subject to such terms and conditions as the court may impose, subject to such terms and conditions as the court may impose, and subject to sufficient security being furnished to the satisfaction of the court that the

conveyance shall be surrendered to the court on demand and that such terms and conditions, if any, shall be complied with.

(2) Where any seized conveyance is temporarily returned under subsection (1), a person who –

- (a) fails, on demand, to surrender the conveyance to the court; or
- (b) fails to comply with any of the terms or conditions imposed under subsection (1),

commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Power to require attendance of person acquainted with case

76. (1) An enforcement officer making an investigation under this Enactment may, by order in writing, require the attendance before himself of any person who appears to the enforcement officer to be acquainted with the fact and circumstances of the case, and such person shall attend as so required.

(2) If the person refuses or fails to attend as so required, the enforcement officer may report such refusal or failure to a court who shall issue a summons to secure the attendance of such person as may be required by the order made under subsection (1).

Examination of person acquainted with case

77. (1) An enforcement officer making an investigation under this Enactment may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

(2) Such person shall be bound to answer all questions relating to the case put to him by the enforcement officer, but he may refuse to answer any question the answer to which would have a tendency to expose him to a criminal charge or penalty or forfeiture.

(3) A person making a statement under this section shall be legally bound to state the truth, whether or not such statement is made wholly or partly in answer to questions.

(4) The enforcement officer examining a person under subsection (1) shall first inform that person of the provisions of subsections (2) and (3).

(5) A statement made by any person under this section shall, whenever possible, be reduced into writing and signed by the person making it or affixed with his thumb print, as the case may be, after it has been read to him in the language in which he made it and after he has been given an opportunity to make any correction he may wish.

Admissibility of statements in evidence

78. (1) Except as provided in this section, no statement made by any person to an enforcement officer in the course of an investigation under this Enactment shall be used in evidence.

(2) When any witness is called for the prosecution or for the defence, other than the accused, the court shall, on the request of the accused or the prosecutor, refer to any statement made by that witness to the enforcement officer in the course of the investigation under this Enactment and may then, if the court thinks fit in the interest of justice, direct the accused to be furnished with a copy of it and the statement may be used to impeach the credit of the witness in the manner provided by the Evidence Act 1950 [Act 56].

(3) Where the accused had made a statement during the course of an investigation, such statement may be admitted in evidence in support of his defence during the course of the trial.

(4) Nothing in this section shall be deemed to apply to any statement made in the course of an identification parade or falling within section 27 or paragraph 32(1)(a), (i) and (j) of the Evidence Act 1950 [Act 56].

(5) When any person is charged with any offence in relation to –

- (a) the making; or
- (b) the contents,

of any statement made by him to the enforcement officer in the course of an investigation made under this Enactment, that statement may be used as evidence in the prosecution's case.

Forfeiture or release of seized object, etc.

79. (1) Any object, material, book, document, receptacle, conveyance or other thing seized in exercise of any power conferred by this Enactment shall be liable to forfeiture.

(2) An order for the forfeiture of any object, material, book, document, receptacle, conveyance or other thing shall be made if it is proved to the satisfaction of the court that an offence under this Enactment has been committed and that the object, material, book, document, receptacle, conveyance or other thing was the subject matter of or was used in the commission of the offence, even though no person may have been convicted of such offence.

(3) If there is no prosecution with regard to any object, material, book, document, receptacle, conveyance or other thing seized under this Enactment, such object, material, book, document, receptacle, conveyance or other thing calendar month from the date of service of a notice to the last known address of the person from whom the object, material, book, document, receptacle, conveyance or other thing was seized indicating that there is no prosecution in respect of such object, material, book, document, receptacle, conveyance or other thing unless before the expiration of that period a claim thereto is made in the manner set out in subsections (5), (6), (7) and (8).

(4) If no claim is made under subsection (5) within thirty days from the date of service of the notice referred to in subsection (3), the object, material, book, document, receptacle, conveyance or other thing seized under this Enactment shall be taken and deemed to be forfeited at the expiration of that period.

(5) Any person asserting that he is the owner of object, material, book, document, receptacle, conveyance or other thing referred to in subsection (3) and that it

is not liable to forfeiture may personally or by his agent authorized in writing, give written notice to the enforcement officer in whose possession such object, material, book, document, receptacle, conveyance or other thing is held that he claims the object, material, book, document, receptacle, conveyance or other thing.

(6) On receipt of the notice referred to in subsection (5), the enforcement officer shall refer the claim to a Magistrate.

(7) The Magistrate to whom a matter is referred under subsection (6) shall issue a summons requiring –

- (a) the person asserting that he is the owner of the object, material, book, document, receptacle, conveyance or other thing; and
- (b) the person from whom the object, material, book, document, receptacle, conveyance or other thing was seized,

to appear before him, and when they appear or they fail to appear, due service of the summons having been proved, the Magistrate shall proceed to the examination of the matter.

(8) If it is proved that an offence under this Enactment or any subsidiary legislation made under this Enactment has been committed and that object, material, book, document, receptacle, conveyance or other thing was the subject matter of or was used in the commission of such offence, the Magistrate shall order the object, material, book, document, receptacle, conveyance or other thing to be forfeited, and shall, in the absence of such proof, order its release.

(9) Any object, material, book, document, receptacle, conveyance or other thing forfeited or deemed to be forfeited shall be delivered to the Director and shall be disposed of in such manner as the Director thinks fit.

Property in forfeited object, etc.

80. Any object, material, book, document, receptacle, conveyance or other thing forfeited or deemed to be forfeited under this Enactment shall be the property of the Government.

Obstructing, etc., officers

81. Any person who –

- (a) in any way assaults, hinders or obstructs the enforcement officer or police officer in the performance of his duties under this Enactment or an subsidiary legislation made under this Enactment; or
- (b) fails to give reasonable facilities or assistance to any enforcement officer or police officer in the performance of his duties under this Enactment or any subsidiary legislation made under this Enactment,

commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding one year or to a fine not exceeding one hundred thousand ringgit or to both.

Cost of holding object, material, etc., seized

82. Where any object, material, book, document, receptacle, conveyance or other thing seized under this Enactment is held in the custody of the Director pending the completion of any proceedings in respect of an offence under this Enactment, the cost of holding it in custody shall, irrespective of whether any prosecution is instituted or otherwise against any person, be a civil debt due to the Government by such person and shall be recoverable accordingly.

No costs or damages arising from seizure to be recoverable

83. No person shall, in any proceedings before any court in respect of any object, material, book, document, receptacle, conveyance or other thing seized in the exercise or the purported exercise of any power conferred under this Enactment, be entitled to the costs of such proceedings or to any damages or other relief unless such seizure was made without reasonable cause.

Enforcement officer may seek assistance to examine things relating to offence

84. An enforcement officer may seek the assistance from any person who has the necessary qualifications to examine object, material, book, document or other thing seized or retained under this Enactment for the purposes of an investigation under this Enactment.

PART XI
MISCELLANEOUS

Compounding of offences

85. (1) The Director may compound any offence committed by any person under this Enactment or any subsidiary legislation made under this Enactment and prescribed to be a compoundable offence by making a written offer to such person to compound the offence on payment to the Director of such amount not exceeding fifty per cent of the amount of the maximum fine for that offence within such time as may be specified in the offer.

(2) An offer under subsection (1) may be made at any time after the offence has been committed, but before any prosecution for it has been instituted.

(3) If the amount specified in the offer made under subsection (1) is not paid within the time specified in the offer or within such extended period as the Director may grant, prosecution for the offence may be instituted at any time after that against the person to whom the offer was made.

(4) Where an offence has been compounded under subsection (1), no prosecution shall after that be instituted in respect of the offence against the person to whom the offer to compound was made, and any object, material, book, document, receptacle, conveyance or other thing seized in connection with the offence maybe released by the Director, subject to such terms and conditions as the Director thinks fit.

Prosecution

86. No prosecution for an offence under this Enactment shall be instituted except by or with the consent in writing of the Public Prosecutor.

Offences by body corporate and by employees or agents

87. (1) If an offence under this Enactment or any subsidiary legislation made under this Enactment has been committed by a body corporate, any person who at the time of the commission of the offence was a director, manager, secretary or other similar officer of the body corporate, or was purporting to act in any such capacity, or was in any manner responsible for the management of any of the affairs of the body corporate, or was assisting in such management, shall be deemed to be guilty of the offence unless he proves that the offence was committed without his knowledge, consent or connivance and he had exercised due diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his function in that capacity and to all the circumstances.

(2) Where any person would be liable under this Enactment or any subsidiary legislation made under this Enactment to any punishment or penalty for any act, omission, neglect or default, he shall be liable to the same punishment or penalty for every such act, omission, neglect or default of any employee or agent of his or of the employee of such agent, if such act, omission, neglect or default was committed by the employee of such agent in the course of his employment by such agent or otherwise on behalf of the agent.

(3) Nothing under subsection (2) shall absolve an agent, officer or employee from any liability for an offence.

General penalty

88. (1) Any person who commits an offence under this Enactment or any subsidiary legislation made under this Enactment for which no penalty is expressly provided shall, on conviction, be liable to a fine not exceeding two hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both, and for a second

or subsequent offence he shall be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.

(2) Any body corporate which commits an offence under this Enactment or any subsidiary legislation made under this Enactment for which no penalty is expressly provided shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit.

(3) Where the offence committed resulted in damage to or the demolition or destruction of a heritage item, the court may order the person to pay, in addition to any penalty that may be imposed under subsection (1) or (2), the cost of the repair, restoration or reconstruction of the heritage item.

Protection against suit and legal proceedings

89. No action shall lie or prosecution shall be brought, instituted or maintained in any court against –

- (a) the Director;
- (b) any member of the Council;
- (c) an enforcement officer; and
- (d) any other person for or on account of or in respect of any act done or purported to be done by him under the order, direction or instruction of the Director, Council or the enforcement officer,

If the act was done in good faith and in a reasonable belief that it was necessary for the purpose intended to be served by it and for the carrying into effect the provisions of this Enactment.

Public servants

90. All members of the Council and the committee while discharging their duties or performing their functions or exercising their powers under this Enactment, shall be deemed to be public servants within the meaning of the Penal Code [Act 574].

Power to make regulations

91. (1) The Minister may make regulations as may be necessary or expedient for the better carrying into effect the provisions of this Enactment.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations in respect of all or any of the following matters:

- (a) prescribing any matter which is required under this Enactment to be prescribed;
- (b) prescribing any criteria for determination of heritage site, heritage object and State Heritage;
- (c) prescribing the conservation management plan;
- (d) prescribing the condition and restriction (including the payment and amount of a fee) subject to which any permit under this Enactment may be issued;
- (e) prescribing the management and procedures for the conservation and preservation of heritage sites, heritage objects and State Heritage;
- (f) prescribing guidelines and procedures for the conservation and preservation of intangible cultural heritage;
- (g) prescribing the procedure for compounding such offences; and
- (h) prescribing all other matters as are necessary or expedient to be prescribed for giving effect to this Enactment.

PART XII
REPEAL AND SAVING

Repeal and saving

92. (1) The Cultural Heritage (Conservation) Enactment 1997 [*No. 2 of 1997*] is repealed.

(2) Notwithstanding the provision of this Enactment, the members of the Council and the members of any committee appointed or elected before the date of

coming into operation of this Enactment shall continue to hold office until the appointments are revoked or until expiry of their terms of appointment.

(3) All appointments, regulations, exemptions, directions and orders made, all registers kept and all certificate granted or having effect under the law repealed by this section and in force or having effect at the commencement of this Enactment shall (without prejudice to the power of the Minister to amend the regulations or to amend, revoke or withdraw the exemptions, directions or certificates by order or direction made under the appropriate provisions of this Enactment and subject to such modifications as may be necessary to bring the regulations exemption, directions or orders in conformity with this Enactment) continue to be in force and have effect as if they had been made, kept or granted under this Enactment, until otherwise provided for under this Enactment.

CERTIFIED by me to be a true copy of the Bill passed by the Legislative Assembly on Thursday, the 23rd day of December, 2017.

DATUK SERI PANGLIMA HAJI SYED ABAS SYED ALI,
Speaker,
State Legislative Assembly,