

I . Safeguarding System & Policy

In Malaysia, heritage is managed in three governmental levels—federal, state and local—of which each has its rules and regulations.

1. Federal Level

(1) MALAYSIA NATIONAL HERITAGE ACT 2005

The Malaysia National Heritage Act 2005¹, or Act 645 regulates heritage related matters at the federal level. This Act was gazetted on 31 December 2005 and came into force on 1 March 2006. It is a comprehensive legal document that covers a broad dimension of preservation, conservation and management of the cultural heritage, including intangible cultural heritage at the national level.

The Act defines heritage related terms; it allows for the appointment of a Heritage Commissioner, the establishment of a National Heritage Council and National Heritage Fund, and the listing of a National Heritage Register; it also explains the responsibilities and penalties for heritage matters.

The National Heritage Act repeals two previous acts: Antiquities Act, 1976 (Act No. 168) and Treasure Trove Act, 1957 (Act No. 542). However, it is stated in the Article 125 (2) that “The Treasure Trove Act 1957 shall continue to apply to those States which do not adopt the provisions of Part XI of this Act by a law made by the Legislature of the relevant States in accordance with Clause (3) of Article 76 of the Federal Constitution.”

The Act contains seventeen (17) parts:

- I Preliminary;
- II Conservation and Preservation of Heritage;
- III Administration of the Act;
- IV National Heritage Council;
- V Heritage Fund;
- VI National Heritage Register;
- VII Heritage Site;

¹ The complete legal document is available at <http://www.gtwhi.com.my/images/stories/files/NATIONAL%20HERITAGE%20ACT%202005.pdf> or at Annex 2.

- VIII Heritage Object;
- IX Underwater Cultural Heritage;
- X National Heritage;
- XI Treasure Trove;
- XII Licensing;
- XIII Appeal;
- XIV Powers relating to Enforcement, Seizure, Arrest, etc.;
- XV Offences;
- XVI Miscellaneous; and
- XVII Repeal and Saving Provision.

Under this Act, the National Heritage Department (*Jabatan Warisan Negara*) was established to manage, conserve, preserve, protect and promote heritage of Malaysia. In 2013, the department was shifted from the portfolio of the Ministry of Information, Communication and Culture to the Ministry of Tourism and Culture during the Cabinet reshuffling process.

The contact of National Heritage Department is as follows:

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Definitions

Under this Act, intangible cultural heritage is included under Object. Their definitions are as follows:

Object includes any moveable antiquity, tangible cultural heritage, intangible cultural heritage and historical object but excluding treasure trove.

Heritage imports the generic meaning of a National Heritage, sites, objects and underwater cultural heritage whether listed or not in the Register.

Cultural heritage includes tangible or intangible form of cultural property, structure or artefact and may include a heritage matter, object, item, artefact, formation structure, performance, dance, song, music that is pertinent to the historical or contemporary way of life of Malaysians, on or in land or underwater cultural heritage of tangible form but excluding natural heritage.

Intangible cultural heritage includes any form of 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, that may have existed or exist in relation to the heritage of Malaysia or any part of Malaysia or in relation to the heritage of a Malaysian community.

Tangible cultural heritage includes area, monument and building;

Cultural heritage significance means cultural heritage having aesthetic, archaeological, architectural, cultural, historical, scientific, social, spiritual, linguistic or technological value;

Heritage object means an object declared under section 49 or registered under section 51 as a heritage object;

Heritage item means any National Heritage, heritage site, heritage object or underwater cultural heritage listed in the Register;

Register means the National Heritage Register established and maintained under section 23 containing a list of heritage items;

National Heritage means any heritage site, heritage object, underwater cultural heritage or any living person declared as a National Heritage under section 67.

Articles Related to Intangible Cultural Heritage

There are two parts within this Act that are related to intangible cultural heritage, Part VIII (Heritage Object), IX (National Heritage), and XVI (Miscellaneous). Particular articles and further elaboration are as follows:

Part VIII (Heritage Object)

Article 47 (1) stated that “Any person who discovers any object which he has reason to believe has cultural heritage significance shall immediately notify the Commissioner, any authorized officer or the District Officer of the district where the object was discovered, and where practicable, deliver the object to the Commissioner, authorized officer or the District Officer who shall give a written acknowledgement thereof.”

Article 49 gives power to the Heritage Commissioner to declare an object being listed in or and revoke from the Register.

(1) The Commissioner may declare in the Gazette any object which has 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 Commissioner 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 Commissioner 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 Commissioner revokes registration.

Article 50 is about the application for registration of a heritage object.

(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 documents or information as may be prescribed.

(3) The Commissioner 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 the Commissioner 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 Commissioner, the application shall be deemed to be withdrawn and shall not be further 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.

Article 51 deals with the approval or refusal of application and registration of a heritage object. Article 51(3) stated that “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.”

Article 60 is about conservation of intangible cultural heritage.

(1) “the owner or the 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 the procedures as may be prescribed.”

(2) “the Commissioner 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 IX (National Heritage)

Article 67 is on declaration of a National Heritage.

(1) The Minister may, by order published in the Gazette, declare any heritage site, heritage object, underwater cultural heritage listed in the Register or any living person as a National Heritage.

(2) In making a declaration under subsection (1) the Minister may consider—

- (a) the historical importance, association with or relationship to Malaysian history;
- (b) the good design or aesthetic characteristics;
- (c) the scientific or technical innovations or achievements;
- (d) the social or cultural associations;
- (e) the potential to educate, illustrate or provide further scientific investigation in relation to Malaysian cultural 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 or underwater cultural heritage;
- (h) the representative nature of a site or object as part of a class or type of a site or object; and
- (i) any other matter which is relevant to the determination of cultural heritage significance.

Article 68 gives the rights to people on nomination a National Heritage. “Any person may nominate to the Minister in the prescribed form any natural heritage, tangible or intangible cultural heritage, living person or underwater cultural heritage to be declared as a National Heritage.”

Article 69 is about the ownership of a National Heritage. “Any National Heritage which is owned or possessed by a person other than the Federal Government or the State Government may remain in the possession of its owner, custodian or trustee.”

Article 72 empowers the minister to conserve and preserve the National Heritage items:

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

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

Part XVI (Miscellaneous)

Article 124 It gives the power to the minister to make regulation on necessity.

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

(2) Without prejudice to the generality of subsection (1), regulations may be made for all or any of the following purposes: 124(2)(f) prescribing guidelines and procedures for the conservation and preservation of intangible cultural heritage.

- (a) Prescribing any matter which is required under this Act to be prescribed;
 - (b) Prescribing the conservation management plan;
 - (c) Prescribing the conditions and restrictions (including the payment and amount of a fee) subject to which any licence or permit under this Act may be granted or issued;
 - (d) Providing for procedures for application, terms and conditions to be imposed on licences, and for fees, charges and deposits in respect thereof, including provisions for the forfeiture, use or return of such deposits;
 - (e) Prescribing the management and procedures for the conservation and preservation of heritage sites, heritage objects, underwater cultural heritage and National 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 a penalty or a fine not exceeding twenty-five thousand ringgit for the contravention of or failure to comply with any of the provisions of any regulations made under this Act or with the restrictions or conditions of any licence or permit granted under any such regulations.

(2) NATIONAL CULTURE POLICY 1971 **(DASAR KEBUDAYAAN KEBANGSAAN 1971)**

One of the most influential policies on cultural heritage in Malaysia is the National Culture Policy 1971. According to National Department for Culture and Arts, the National Culture Policy 1971² was formulated based on the following principles as determinate by the government during the National Culture Congress (*Kongres Kebudayaan Kebangsaan*) in 1971:³

- 1) The national culture must be based on the indigenous culture of this region:

The region involved covers Malaysia, Indonesia, Philippines, Singapore, Brunei, Thailand and Cambodia, as well as the South Pacific islands (Polynesia, Melanesia and Oceania) and Malagasy. This whole region has been an important part of Malay civilization and culture. During the height of the Malay civilization era based in Malacca, the Malay language has been used as an international language in trade relations (*lingua franca*). The culture of this region showed several similarities, in the language used, which was basically the Malay language–Austronesia, the geographical location, historical experience, natural resources, arts and moral values. The Malay culture today is a way of life and symbol of identity of more than 200 million people who speak the same language. As such, the culture of the indigenous people from this region, which, in a wider or narrower sense, refers to the Malay culture, forms the basis of the National Culture Policy.

- 2) Suitable elements from the other culture may be accepted as part of the national culture:

Culture is a dynamic phenomenon, always changing through the on-going process of adaptation and assimilation. This principle takes into consideration the multi-cultural aspects in a multi-racial society. Hence, cultural elements of the Chinese, Indians, Arabs, Westerners and others which are considered suitable and acceptable are included in the national culture. Such acceptance must be in accordance with the provisions in the Constitution and the principles of *Rukun Negara*, as well as national interest, moral values and the position of Islam as the official religion of the country.

² The original text of this policy is available at <http://pmr.penerangan.gov.my/index.php/maklumat-kenegaraan/238-dasar-kebudayaan-kebangsaan.html>.

³ National Department for Culture and Arts, “National Culture Policy”, <http://www.jkkn.gov.my/en/national-culture-policy>.

3) Islam is an important component in the formulation of the national culture:

Religion or the belief in God is important in the development process of a country and also in the personal development of her people. Islam provides guidance to mankind and fulfills the physical and emotional needs. Hence Islam should be an important element in formulating the National Culture Policy based on its position as the official religion of the country.

Objectives of National Culture Policy 1971

- 1) To strengthen national unity through culture.
- 2) To foster and preserve national identity created through national culture.
- 3) To enrich and enhance the quality of human life in equilibrium with socio-economic development.

These three principles serve as guidelines in defining a national culture, and implemented through different levels of government agencies, such as ministries and departments at the federal and state levels, statutory bodies, private sector and non-government organisations for culture.

2. State Level

Of all the eleven states in Malaysia, six (6) states already established their own heritage enactments, rules and regulations. Most of these enactments empower the State Government to establish an institution or agency in managing, protecting and conserving heritage properties within the state.

For example, **Johor Heritage Foundation Enactment 1988** (*Enakmen Yayasan Warisan Negeri 1988*, Enactment No.7/1998) is an enactment to establish a corporate body for the preservation of the cultural and historical heritage of the Johor state.⁴ The key terms in this enactment include monument, historical site, and curator. Similarly, the **Sabah Cultural Heritage (Conservation) Enactment 1997** provides the cornerstone of the cultural heritage related legislation in the state of Sabah.⁵ It gives power to the state to establish a Cultural Heritage Site or Conservation Areas, and to restrict any change that may compromise the value of the site/area. Same goes for the **State of Selangor Malay Custom and Heritage Corporation Enactment 2009** (*Enakmen Perbadanan Adat Melayu dan Warisan Negeri Selangor 2009*, Enactment No. 4/2009)—which replaced the previous Museum Selangor Enactment 1975—enables the establishment of a corporation

⁴ The official website of the Johor Heritage Foundation (in Malay) <http://www.ywj.gov.my/>

⁵ The complete legal text is available at [http://www.lawnet.sabah.gov.my/Lawnet/SabahLaws/StateLaws/CulturalHeritage\(Conservation\)Enactment1997.pdf](http://www.lawnet.sabah.gov.my/Lawnet/SabahLaws/StateLaws/CulturalHeritage(Conservation)Enactment1997.pdf).

that preserves, transmits and promotes the Malay custom and heritage in the state. The term safeguarding was introduced within this enactment.

State level enactments also enable the state to declare any heritage properties as well as to impose regulated policies in managing these properties. The **Malacca Preservation and Conservation of Cultural Heritage Enactment 1988** (*Enakmen Pemuliharaan dan Pemugaraan Warisan Budaya 1988*, Enactment No.6/1998) makes provisions for the preservation, conservation and enhancement of cultural heritage and related matters. The enactment gives power to the state and local authorities to declare cultural heritage to be subject to preservation and conservation, and also restrict any alteration or demolition of the cultural heritage or conservation site.

Amongst all, it was **Sarawak Cultural Heritage Ordinance 1993**⁶ and **State of Penang Heritage Enactment 2011** (*Enakmen Warisan Negeri Pulau Pinang 2011*)⁷ that have expanded the concept of intangible cultural heritage. In particular, the Sarawak Cultural Heritage Ordinance 1993 regulates cultural heritage within the state. It gives the power for the state to gazette sites, buildings, monuments as well as other historical objects. This ordinance will be further elaborated later. The State of Penang Heritage Enactment 2011 (Enactment No.14/2011) enables a regulated management, preservation and conservation of cultural heritage and natural heritage of the state of Penang. This enactment has a chapter on intangible Cultural Heritage and will be further elaborated later in this chapter.

⁶ The complete legal text is available at http://www.unesco.org/culture/natlaws/media/pdf/malaisie/malaysia_law_chap6_1993_engl_orof.pdf or at Annex 2.

⁷ The complete legal text is available at <http://www.gtwhi.com.my/images/pdfs/enakmen%20warisan%202011.pdf> or at Annex 3.

(1) SARAWAK CULTURAL HERITAGE ORDINANCE 1993

According to a summary prepared by the Sarawak Heritage Society,⁸ this Ordinance was gazetted on 13 December 1993 and came into operation on 1 July 1994 (amendment Swk. L.N. 38/94). This Ordinance replaced the Antiquities Ordinance (Art.36) 1958 but notifications, licenses or permits issued under it remain in force as if made or issued under this Ordinance.

The scope of the 1993 Ordinance includes all antiquities, ancient and historical monuments and records and archaeological sites and remains other than those declared to be Federal by or under Federal law.

The 1993 Ordinance contains eight (8) parts:

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

Definitions

While there is no particular sentence that was written regarding to intangible cultural heritage, this Act does have a specific section (Part VI) on traditional arts and handicraft. The act defines traditional arts and handicraft as “any work of art, craft, carving, handiwork or product derived from manual skill which is associated with or depicting the culture, traditions, customs, way of life and history of the natives and the various communities in Sarawak.”

Traditional arts and handicraft is any work of art, craft, carving, handiwork or product derived from manual skill which is associated with or depicting the culture, traditions, customs, way of life and history of the natives and the various communities in Sarawak.

Articles Related to safeguarding Intangible Cultural Heritage

⁸ Sawarak Heritage Society (2015), “A Summary of the Sarawak Cultural Heritage Ordinance 1993”, <http://sarawakheritagesociety.com/wp-content/uploads/2015/06/summary-cult-herit-ordin-1993-sk-ed-ro.pdf>.

Article 25 on promotion of traditional arts and handicraft

(1) The Director shall, subject to the directions of the Minister and to such rules as may be made under section 35, take such measures as may be expedient or reasonably necessary—

(a) to promote and, where necessary, to stimulate interest and rehabilitate skills in traditional arts and handicraft;

(b) to develop, maintain or enhance the standards and appreciation of traditional arts and handicraft;

(c) to preserve such traditional arts and handicraft which ought to be preserved as a cultural heritage of the people;

(d) to provide incentives, by way of awards, grants or other forms of monetary rewards, to any person or body of persons, actively involved in the promotion, preservation, perpetuation and development of traditional arts and handicraft; and

(e) to establish centres, workshops and other facilities for the making, promotion, exhibition, display, development of, and the dissemination of information on, traditional arts and handicraft.

(2) For the purpose of this section— “traditional arts and handicraft” means any work of art, craft, carving, handiwork or product derived from manual skill which is associated with or depicting the culture, traditions, customs, way of life and history of the natives and the various communities in Sarawak.

(2) STATE OF PENANG HERITAGE ENACTMENT 2011

The Enactment was gazetted on 18 August 2011. It allows the establishment of a State Heritage Council, appointment of State Heritage Commissioner, and listing of State Heritage Register.

The Enactment contains eight (8) parts:

- I Preliminary;
- II Penang Heritage Council;
- III State Heritage Commissioner;
- IV Cultural Heritage and Natural Heritage;
- V State Heritage;
- VI Management, Preservation and Conservation of State Heritage;
- VII Enforcement; and
- VIII Miscellaneous.

Definitions

Intangible cultural heritage includes any form expressions, languages, lingual utterances, saying, musically produced tunes, notes, audible lyric, songs, folk songs, oral traditions, poetry music, dances as produced by the performing arts, theatrical plays, audible compositions of sounds and music, and martial arts that have existed in relation to the heritage of a Penang community.

Articles Related to Intangible Cultural Heritage

There are four (4) parts within this Enactment that are related to intangible cultural heritage:

- III State Heritage Commissioner;
- V State Heritage;
- VI Management, Preservation and Conservation of State Heritage;
and
- VIII Miscellaneous.

Particular articles are elaborated in the following:

Part III (State Heritage Commissioner)

Article 28 mentions about declaration of intangible cultural heritage.

(1) The Commissioner may, with the approval of the State Authority, declare any intangible cultural heritage in the state of Penang to be a State Heritage.

(2) Any person may propose to the Commissioner any intangible cultural heritage to be declared as the State Heritage.

Part V (State Heritage)

Article 29 is about the declaration of State Heritage.

(1) The commissioner may, with the approval of the State Authority, by notification in the Gazette, declare any tangible cultural heritage site, intangible cultural heritage or natural heritage site as a State Heritage.

(2) In making a declaration under subsection (1), the Commissioner may be considering the following matters:

- (a) The historical importance of the state;
- (b) The design or aesthetic characteristics;

- (c) The innovation or scientific or technical achievements;
- (d) The social or cultural relationship of society;
- (e) The potential to educate, illustrate or provide scientific investigation in relation to the cultural heritage and natural heritage in the state of Penang; or
- (f) The uniqueness of the cultural heritage or natural heritage.

(3) Where the site is on alienated land or belongs to any person other than the State Government, the owner, custodian or trustee of that site, 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.

Article 31 regulates the registration of the State Heritage.

(1) The Commissioner shall establish a register known as the State Heritage Register which contains the lists of tangible cultural heritage site, intangible cultural heritage and natural heritage site which have been declared as a State Heritage under section 29.

(2) The Commissioner shall maintain and ensure that the Register is kept up to date from time to time and in good condition.

(3) Any person may request for any information contains in the Register and the Commissioner may provide the information and impose prescribed fee for such information.

Part VI (Management, Preservation and Conservation of State Heritage)

Article 38 is about conservation of intangible cultural heritage.

(1) The Commissioner may establish a guideline for the purpose of preservation and conservation of the intangible cultural heritage in the state of Penang.

(2) 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.

Part VIII (Miscellaneous)

Article 58 indicates the regulation that can be made by the state authorities.

(1) The State Authority may make regulations as may be expedient or necessary for carrying out the purposes of this Enactment.

(2) Without prejudice to the generality of subsection (1), the State Authority may prescribe—

- (a) The criteria for determination a heritage site;
- (b) Any matters regarding the heritage conservation management plan;
- (c) Guidelines and procedures for the preservation and conservation of State Heritage;
- (d) The conditions and restrictions including the payment and amount of fees that may be imposed under this Enactment;
- (e) Procedures on appeal or compounding of offences;
- (f) Any manner and form to be used; and
- (g) Any other matters which are required or allowed to be prescribed by this Enactment, or are necessary or proper to be prescribed for the performance or enforcement of the provisions of this Enactment.

(3) Local Authorities Level

Local authorities such as the municipal and city council may have their own guidelines on heritage conservation. However, it will not be elaborated in this chapter due to limitation of resources.