

STATE OF SABAH

ANTIQUITIES AND TREASURE TROVE ENACTMENT 1977

(Sabah No. 11 of 1977)

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LIST OF AMENDMENTS

<i>Enactment No.</i>	<i>Sections amended</i>	<i>Effective date of amendment</i>
Act 160	9, 40, 42	29-8-1975
20/1978	3, (1)(c)	1-1-1979
10/1983	2 (definition of "occupier"), 3(1)(c), 5(1), (2), (3), (4), (5), 6(1), (2), (23)(1), (2), (6), (7), 24(1), (2), (3), 26(1), (2), 27, 28(1)	1-1-1984
8/1994	3(1)(c), 5(1), (2), 23(1), (6), 39	15-9-1994
2/2006	"Director" substituted for" Curator", 2 (definitions of "ancient monument" , "antiquity", "Director", "enforcement officer", "Ministry", "police officer"), 3(1), 19(1)(e), (f), (g), 21A, PART VIII 36A, 36B, 36C, 36D, 36E, 36F, 36G, 36H, 36I, 36J, 36K, 36L, 36M, 39A, 40(1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), 41A, 41B, 41C, 42 (c)	14-9-2006

An Enactment to provide for the control and preservation of ancient and historical monuments, archeological sites and remains, antiquities and other cultural properties of national interest; to regulate the dealing and export of antiquities and other cultural properties of national interest; to regulate matters connected with research into antiquities and archeological sites; to regulate the law relating to treasure trove; and for matters connected therewith.

[30 September 1977]

ENACTED by the Legislature of the State of Sabah as follows:

PART I
PRELIMINARY

Short title.

1. This Enactment may be cited as the Antiquities and Treasure Trove Enactment 1977.

Interpretation.

2. (1) In this Enactment, unless the context otherwise requires —

“ancient monument” means any monument in the State which dates or may reasonably be believed to date from a period fifty years from present and includes any other monument which has been declared in accordance with the provisions of section 18 of this Enactment to be an ancient monument for the purposes of this Enactment;

“antiquity” means —

- (a) any object movable or immovable or any part of the soil or of the bed of a river or lake or of the sea, which has been or may have reasonably believed to be, constructed, shaped, inscribed, erected, excavated or otherwise produced or modified by human agency at a time reasonably believed to be fifty years from the present; and

- (b) any part of any such object which has at any later date been added thereto or reconstructed or restored; and
- (c) any human, plant or animal remains which date or may reasonably be believed to date from a period hundred years from the present; and
- (d) any ancient monument:

provided that no object or remains —

- (i) which has been imported into the State on or after the commencement of this Enactment; or
- (ii) to which no public interest of a local or national, historical, traditional, artistic, archaeological or other scientific character is attached, shall be deemed to be an antiquity for the purposes of this Enactment;

“archaeological reserve” means land which has, under the provisions of any law relating to land, been reserved for a public purpose, that is to say for the preservation or excavation of archaeological remains;

“Director” means the Director of the Sabah Museum;

“enforcement officer” means any officer appointed by the Director under section 36A;

“export” means to export from Sabah;

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

“historical site” means a site which has been declared in accordance with the provisions of section 18 of this Enactment to be a historical site;

“Minister” means the Minister for the time being responsible for matters relating to the Sabah Museum;

“Ministry” means the Ministry charged with the responsibility for Sabah Museum;

“monument” means any temple, church, building, monument, fort, earthwork, standing stone, keramat, cave or other structure, erection or excavation, and any tomb, tumulus or other place of internment or any other immovable property of a like nature or any part of remains of the same, the preservation of which is a matter of public interest, traditional or archaeological interest attaching thereto, and includes the site of any monument and such portion of land adjoining such site as may be required for fencing or covering in or otherwise preserving any monument and the means of access thereto;

“occupier” shall have the same meaning as in the Local Government Ordinance 1961 [Ord. 11/1961];

“owner” in relation to any land shall have the same meaning as in the Local Government Ordinance 1961 [Ord. 11/1961];

“police officer” means a police officer as defined in the Police Act 1967 [Act 344];

“President” shall have the same meaning as in the Local Government Ordinance 1961 [Ord. 11/1961];

“State” means the State of Sabah; and

“treasure trove” means any money, coin, gold, silver, plate, bullion, jewellery, precious stones or any object or article of value found hidden in, or in anything affixed to, the soil or the bed of a river or of the sea, the owner of which is unknown or cannot be found, but shall not include any antiquity.

Museum Committee.

3. (1) For the purposes of deciding whether any object is or is not an antiquity, there shall be established a Museum Committee consisting of —
- (a) the Permanent Secretary to the Ministry, who shall be the Chairman of the Museum Committee;
 - (b) the Director, who shall be Secretary to the Museum Committee;
 - (c) four members, one of whom shall be the District Officer of the District or

the President of the Municipality in which any object in question is situated and the other three of whom shall be nominated by the Minister after consultation with the Director.

(2) The decision of the Museum Committee whether any object is or is not an antiquity shall be final.

(3) The Museum Committee may with the approval of the Minister make regulations for the proper discharge of its functions.

PART II DISCOVERY OF AND PROPERTY IN ANTIQUITIES

Property in antiquities.

4. (1) Subject to the provisions of this Enactment, every antiquity other than antiquities declared to be federal under federal law discovered in the State on or after the date of the coming into force of this Enactment shall be the absolute property of the Government.

(2) Every ancient monument which on the date of the coming into force 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 or is not declared federal under federal law, shall be deemed to be the absolute property of the Government.

(3) All undiscovered antiquities, other than ancient monuments or those antiquities declared federal under federal law, whether lying on or hidden beneath the surface of the ground or in any river or lake or in the sea, shall be deemed to be the absolute property of the Government.

(4) In any legal proceedings relating to an antiquity, it shall be presumed until the contrary is proved that such antiquity was discovered after the date of the coming into force of this Enactment.

Notice of discovery of antiquities.

5. (1) Any person who discovers any object or monument which he has reason to believe to be an antiquity or ancient monument shall forthwith give notice of his discovery to

the Native Chief or Headman of the area or to the District Officer of the District or the President of the Municipality wherein the antiquity was discovered, and if it is practicable so to do, shall deliver the antiquity to the District Officer or the President who shall give a receipt therefor.

(2) A Native Chief or Headman receiving notice as in subsection (1) of this section shall inform the District Officer of the District or the President of the Municipality wherein the antiquity was discovered.

(3) If a District Officer or President has reason to believe that any object discovered in his District or Municipality is an antiquity, he may by notice in writing require the person having possession thereof, if it is practicable so to do, to deliver the same forthwith to a District Officer or President, and such District Officer or President on delivery to him of such object shall give a receipt therefor.

(4) A District Officer or President receiving notice under sub-section (1) of this section shall communicate the same to the Director.

(5) Where any object has been delivered to a District Officer or President under the provisions of subsection (1) or (3) of this section or where the District Officer or the President has reason to believe that any object or monument discovered in his District or Municipality is antiquity, such District Officer or President shall forthwith give notice thereof to the Director who may report the discovery to the Museum Committee.

Compensation for certain antiquities.

6. (1) On the discovery of any antiquity other than an ancient monument, a District Officer or President shall be entitled to the custody and possession of the same on behalf of the Director and shall forthwith deliver the same to the Director who shall be responsible for its recording, preservative treatment and after consultation with the Museum Committee, ultimate disposal.

(2) The Director may decide not to retain such antiquity and the same shall then be returned to the person who delivered up possession thereof to the District Officer or the President and thereupon the property in such antiquity shall be deemed to have been transferred to the person to whom such antiquity would have belonged if section 4 of this

Enactment had never been enacted.

(3) When any antiquity is retained by the Director there shall, subject to the provisions of section 8 of this Enactment, be paid by the Government —

- (a) one-half of the market value of the antiquity to the finder thereof and one-half of such value to the owner of the land in/or on which the same was discovered, or, where the same person is both the finder of the same and the owner of such land, the whole of such value to such person; or
- (b) where the antiquity is found in or on State land, on land reserved for any public purpose or in any forest reserve by any person (other than a person acting under authority in the discharge of any function or duty under this Enactment) one-half of the market value of the same to the finder thereof:

Provided that on the retention of any antiquity no such payment as aforesaid shall be made to the finder thereof where the finder has failed to report the discovery of the same in accordance with the provisions of section 5 of this Enactment.

Apportionment of antiquities.

7. (1) Notwithstanding the provisions of section 4 or 6 of this Enactment, the Director may enter into an agreement in writing with any person who would under the provisions of the said section be entitled to the market value of such antiquity or any part thereof, whereby such person shall receive from the Government, in place of such value or part thereof, a share of such antiquity to be apportioned in such manner as may be provided in the said agreement.

(2) Every agreement under subsection (1) of this section shall have force and effect notwithstanding anything in section 6 of this Enactment:

Provided that where the finder of any antiquity does not report the discovery thereof in accordance with the provisions of section 5 of this Enactment, he shall not be entitled to receive any share of such antiquity under any such agreement.

Compensation for antiquity in place of finding.

8. If the Director is of the opinion that the antiquity shall be preserved in the place where it was found, then only such compensation as the Director shall determine shall be paid to the finder thereof.

Reward for certain antiquities.

9. In any case where the Director has retained any antiquity in accordance with the provisions of this Enactment, and the amount payable to the finder or to the owner of the land under section 6 of this Enactment would not, in the opinion of the Director, be adequate and such finder or owner as the case may be consents thereto, the Director may in his discretion pay to such finder or owner a reward of such sum of money as he may think fit not exceeding one thousand ringgit in place of any payment payable under section 6 of this Enactment:

Provided that no such reward shall be paid to the finder where the finder has failed to report the discovery of the same in accordance of the provisions of section 5 of this Enactment.

Sale or disposal of antiquities.

10. (1) The Minister may by notice in writing require any person in possession of an antiquity or lawfully entitled to sell or dispose of the same not to sell or otherwise dispose of such antiquity without giving notice of any such proposed transaction to the Director.

(2) No person shall sell or otherwise dispose of any such antiquity within two months of giving the notice to the Director required by subsection (1) of this section, unless the Director shall first have notified such person that the Government does not propose to acquire such antiquity.

(3) In any case where the Government proposes to acquire such antiquity, the Government shall offer to the owner thereof the market value of such antiquity, and, notwithstanding any agreement which the owner may have entered into with any other person, the owner may accept such offer and shall thereupon deliver up the antiquity to the Director.

(4) Where the owner of an antiquity refuses an offer made under subsection (3) of this section, such owner shall not sell or otherwise dispose of such antiquity to any other person.

Dispute as to value, price or apportionment.

11. Where there is any dispute between the Director and any person as to the market value of, or a reasonable price for, any antiquity or as to the apportionment of any antiquity in terms of an agreement under section 7 of this Enactment, such dispute shall be submitted to a Magistrate of the First Class.

PART III
EXCAVATION

No excavation except upon licence.

12. Subject as hereinafter provided, no person shall excavate for the purpose of discovering antiquities, whether on land of which he is the owner or occupier or otherwise, except under the authority of a licence issued by the Director:

Provided that nothing in this section shall apply to any excavation carried out by or on behalf of the Director.

Application for licence to excavate.

13. Every application for a licence to excavate shall be made to the Director, and shall contain a full and accurate description of the land on which it is proposed to carry out the excavation, the nature and extent of the proposed excavation, and such other particulars as may be prescribed.

Grant or refusal of licence to excavate.

14. The Director may in his discretion grant or refuse any application for a licence to excavate :

Provided that no such licence shall be granted unless the Director is satisfied after such enquiry as he may deem necessary —

- (a) that the owner of the land where the proposed excavation is to be made has consented to the excavation; and
- (b) that the proposed excavation will not cause any damage or inconvenience to persons residing in the vicinity of such land or to any place used for religious purposes, or to any cemetery, school, water source or supply, irrigation or drainage works or public road, or that if any such damage is likely to be caused, adequate provision has been made by the applicant for the payment of compensation thereof; and
- (c) that the applicant is able to furnish security for the due observance by him of the provisions of this Enactment or any rule made thereunder, and of any conditions subject to which the licence may be issued.

Terms and conditions of licence.

15. (1) A licence issued under section 14 of this Enactment shall be granted for such period (subject to the provisions of section 16 of this Enactment) and subject to such conditions as may be specified therein.

(2) In addition to any other conditions which may be either prescribed generally or specified in any particular case, every licence under the provisions of section 14 of this Enactment shall be subject to the following conditions —

- (a) the holder of the licence shall take all reasonable measures for the preservation of the antiquities discovered by him;
- (b) the holder of the licence shall carry out his excavations in a scientific manner and to the satisfaction of the Director;
- (c) the holder of the licence shall keep a record of all antiquities discovered in the course of the excavation;
- (d) the holder of the licence shall, within a reasonable time, deposit with the

Director such photographs, casts, squeezes or other reproductions of any antiquity apportioned to him in accordance with the provisions of section 7 of this Enactment as the Director may require;

- (e) the holder of the licence shall furnish such plans and photographs of his excavations as the Director may require.

Extension and cancellation of licence.

16. (1) Any licence to excavate may, on the expiration of the period for which it was granted, be extended by the Director for such further period or periods as he shall deem fit.

(2) Any licence to excavate may, at any time before the expiration of the period for which it was granted, be cancelled by the Director and the holder thereof shall not be entitled to claim compensation for any loss or damage suffered or alleged to have been suffered by him by reason of such cancellation.

(3) Any person aggrieved by the decision of the Director to specify any condition in any licence or to refuse or to cancel any licence under this Part may appeal to the Minister, whose decision shall be final.

Saving of private rights and immunity of Government.

17. (1) Nothing contained in this Part shall be deemed to authorise the infringement of any private right or the contravention of any written law in force in the State.

(2) Neither the Director nor the Government shall incur any liability in respect of any loss sustained by any person or any damage caused to any person in the course of or as a result of any excavation carried on under the authority of a licence granted under this Part by reason merely of the grant of such licence.

PART IV

ANCIENT MONUMENTS AND HISTORICAL SITES

Declaration and schedule of ancient monuments and historical sites.

18. (1) The Minister may by order declare any monument to be an ancient monument

and any site to be a historical site and may determine the limits of such monument or site.

(2) The Director may publish in the *Gazette* a schedule of ancient monuments and historical sites together with the limits thereof and may from time to time add to or amend such schedule.

Acts prohibited in regard to ancient monuments and historical sites.

19. (1) No person shall without the permission in writing of the Director and except in accordance with such conditions as he may impose in granting such permission —

- (a) dig, excavate, build, plant trees, quarry, irrigate, burn lime or do similar work, or establish or extend a cemetery, or deposit earth or refuse on or in the immediate neighbourhood of an ancient monument or a historical site; or
- (b) demolish an ancient monument or disturb, obstruct, modify, mark, pull down or remove any monument or any part thereof; or
- (c) make alterations, additions, or repairs to any ancient monument; or
- (d) erect building or walls abutting upon an ancient monument
- (e) damage, destroy or interfere with any object, material or thing in a historical site; or
- (f) dispose of or remove any object, material or thing from a historical site; or
- (g) carry out any other activities in a historical site.

Care of ancient monuments and historical sites.

20. (1) Where any ancient monument or historical site is on private property, the Government may —

- (a) make arrangements with the owner or occupier thereof for its preservation, inspection and maintenance and for such purpose make a contribution towards the cost of carrying out any works of repair or

conservation which it deems necessary and which the owner or occupier may be willing to undertake:

Provided that where such a contribution towards the cost of carrying out such works is made, such works shall be carried out in accordance with such directions as the Director may give; or

- (b) acquire the site in accordance with the provision of any written law relating to the acquisition of land for a public purpose for the time being in force in the State; or
- (c) in the case of an ancient monument, remove the whole or any part thereof making good any damage done to the site or to buildings thereon by such removal and paying compensation therefor:

Provided that the amount of such compensation shall be fixed by agreement, or in the case of dispute, shall be submitted to a Magistrate of the First Class.

Inspection of ancient monuments and historical sites.

21. (1) The owner or occupier of an ancient monument or historical site shall at all reasonable times permit the Director or any person or officer authorised by him, either generally or specifically in that behalf, to enter upon the site for inspection or to carry out any study or work necessary for the restoration, repair alteration, maintenance or conservation hereof as to him may seem expedient or necessary:

Provided that the liability imposed by this section shall arise only if such owner or occupier shall have received not less than seven days' notice in writing of the proposed entry:

Provided further that if any person objects to such entry or to the execution of any such works on conscientious or religious grounds, such entry or works shall not be effected or executed without the permission in writing first obtained from the Chief Minister.

(2) No such 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 the execution of such work or any part of such work in any case in which the owner or occupier has

undertaken to do such work under section 20 of this Enactment.

Duty to keep ancient monument and historical site in good repair.

21A. (1) The owner or occupier of an ancient monument or historical site shall ensure that the ancient monument or historical 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 or site, he may carry out such repair works, after giving any person appearing to the Director to be the owner of the monument or site two weeks 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.

PART V
ARCHAEOLOGICAL RESERVES

Activities forbidden except under licence.

22. (1) The Minister, on the recommendation of the Director, may by order declare any specified area to be an archaeological reserve for the purposes of this Enactment.

(2) When any land has, under the provisions of this section or of any law relating to land, been reserved for a public purpose, that is to say for the preservation of archaeological remains, no person shall, except under licence issued by the Director —

- (a) clear or break up for cultivation or cultivate any part of an archaeological reserve; or
- (b) erect any building or structure upon any such reserve; or
- (c) fell or otherwise destroy any tree standing on any such reserve; or
- (d) otherwise encroach on any such reserve.

PART VI
TREASURE TROVE

Notice of discovery of treasure trove.

23. (1) Any person who discovers any treasure trove shall, except in any case in which he has already given notice of his discovery and delivered up the objects so discovered under the provision of section 5 of this Enactment, forthwith give notice of such discovery to the District Officer of the District or the President of the Municipality wherein the treasure trove was discovered and shall deliver the treasure trove to such District Officer or President who shall give a receipt therefor.

(2) A District Officer or President receiving notice under subsection (1) of this section shall communicate the same to the Director.

(3) Where the Director has reason to believe that any object delivered up under this section is an antiquity, he shall report the matter to the Museum Committee for its decision.

(4) Where the Museum Committee decides that the object is an antiquity, the provision of this Enactment relating to antiquities shall thereupon apply.

(5) Where the Museum Committee decides that the object is not an antiquity, the provisions of this Part shall thereupon apply.

(6) If a District Officer or President has reason to believe that any treasure trove has been discovered in his District or Municipality and the discovery of the same has not been notified to him under any of the provisions of this Enactment, he shall by notice in writing require the finder or suspected finder thereof to appear personally before him on a day and at a place mentioned and to deliver up to him all such treasure trove or suspected treasure trove.

(7) Any person receiving a notice under subsection (6) of this section shall, if it is practicable so to do, deliver such treasure trove or suspected treasure trove to the District Officer or the President, who shall give a receipt therefor.

Notification requiring claimants to appear.

24. (1) On receiving a notice under subsection (1) of section 23 of this Enactment or where any such treasure trove or suspected treasure trove has been delivered to him under subsection (7) of section 23 of this Enactment, the District Officer or the President shall cause a notice to be published in the *Gazette* in two successive issues requiring all persons claiming the treasure trove or any part thereof to appear personally or by agent before the District Officer or the President on a day and at a place therein mentioned such day not being earlier than two months or later than three months after the date of first publication of such notification in the *Gazette*.

(2) Such notice shall be posted at the office of the District Officer or the President and at the place where such treasure trove was found.

(3) Where the owner or occupier of the place in which the treasure trove appears to the District Officer or the President to have been discovered was at the date of discovery some person other than the finder, the District Officer or the President shall also serve on such person a notice in writing to the same effect.

Forfeiture of right for failing to appear.

25. Any person having any right, howsoever arising to such treasure trove or any part thereof, and wilfully failing to appear as required by the notice issued under section 24 of this Enactment, shall forfeit such right.

Matters to be enquired into.

26. (1) On the day and at the place notified under section 24 of this Enactment, the District Officer or the President shall cause the treasure trove to be produced before him and shall enquire as to and determine —

- (a) whether any object or article is treasure trove;
- (b) the person by whom, the place in which, and the circumstances under which, such treasure trove was discovered; and
- (c) as far as possible, the person by whom, and the circumstances under

which such treasure trove was hidden.

(2) The District Officer or the President may adjourn the hearing at any stage for any period and shall record his reasons for such adjournment.

Time to be allowed for suit for claimant.

27. If upon an enquiry made under section 26 of this Enactment the District Officer or the President has reason to believe that the treasure trove was hidden within fifty years before the date of its discovery, and that a person appearing as required by the said notice and claiming such treasure trove or by some other person under which such person claims, the District Officer or the President shall make an order adjourning the hearing of the case for such period as he deems sufficient to allow of a suit being instituted in a court of competent jurisdiction by the claimant to establish his right.

When treasure trove may be ownerless.

28. (1) If upon such enquiry the District Officer or the President sees no reason to believe that the treasure trove was hidden within fifty years before the date of its discovery, or if, where a period is fixed under section 27 of this Enactment, no suit is, to the knowledge of the District Officer or the President, instituted within such period as aforesaid, or if such suit is instituted within such period and the claim is finally rejected, the District Officer or the President may declare the treasure trove to be ownerless.

(2) Any person aggrieved by a declaration made under subsection (1) of this section may appeal against the same within two months from the date thereof to the High Court.

(3) Subject to such appeal, every such declaration shall be final and conclusive.

When treasure trove vests in Government.

29. When a declaration has been made in respect of any treasure trove under section 28 of this Enactment, such treasure trove shall vest in and belong to the Government.

Rewards to finder and owner.

30. The Government may in its discretion pay as a reward to the finder of any treasure

trove and to the owner of any land in which it was found such sums as it may think fit.

PART VII
EXPORT OF ANTIQUITIES

Prohibition of export except on licence.

31. (1) No person shall export any antiquity unless he has obtained a licence to export the same from the Director.

(2) The Director shall not issue a licence if in his opinion the antiquity is of lasting national importance or interest and should be acquired on behalf of the Government or for any other reason it is not desirable in the public interest that such antiquity should be exported.

(3) An applicant for a licence to export any antiquity shall submit a list of the antiquities sought to be exported, shall declare the value thereof and furnish any other particulars in regard thereto which the Director may require and shall, if so required by the Director, deposit any such antiquity with the Director for the purpose of inspection.

(4) No licence to export an antiquity shall be issued to any person unless he proves to the satisfaction of the Director that he is the owner of such antiquity or that he is acting on behalf of and with the authority of such owner.

Production of licence.

32. A licence to export shall be produced by the holder to the Director or the proper officer of customs on demand.

Power to prohibit export of antiquities.

33. (1) Where the issue of a licence to export an antiquity is refused on the grounds set out in subsection (4) of section 31 of this Enactment, any person aggrieved by such refusal may appeal to the High Court within one month of receiving notice of such refusal.

(2) Where the issue of a licence to export an antiquity is refused on the ground that such antiquity ought to be acquired on behalf of the Government or on the ground of public

interest, any person aggrieved thereby may within one month of the receipt of notice of such refusal, appeal to the Minister whose decision shall be final.

Acquisition of antiquity sought to be exported.

34. Where a licence to export any antiquity has been refused on the ground that such antiquity should be acquired on behalf of the Government, the Government shall offer to the owner thereof the market value of such antiquity, and if the owner accepts such offer, he shall deliver up the antiquity to the Director.

PART VIII
POWERS OF THE DIRECTOR

Powers of Director and authorised officer.

35. The Director or any officer authorised by him in writing for that purpose may at all reasonable times inspect any antiquity or treasure trove in the possession of any person; and it shall be the duty of every such person to permit such inspection and further to give the Director or such officer all reasonable facilities to examine such antiquity or treasure trove and to make drawings, photographs, squeezes or reproduction thereof by the making of casts or by any other means:

Provided that no such drawings, photographs, squeezes or reproduction shall be sold without the consent of the person in possession of the antiquity or treasure trove:

Provided further that if such person object to such inspection on conscientious or religious grounds the Director or officer authorised by the Director shall not make such inspection unless with the permission in writing first obtained from the Chief Minister.

Delegation of powers.

36. The Director may generally or specially authorise the exercise, performance or discharge of any of his powers, duties or functions under this Enactment or any regulations or rules made thereunder by any other officer.

PART VIIIA
POWER RELATING TO ENFORCEMENT, SEIZURE,
ARREST, ETC.

Appointment of enforcement officer.

36A. The Director may appoint such number of enforcement officers as may be necessary for the purposes of this Enactment and regulations made under this Enactment.

Power to investigate complaints and inquire into information.

36B. (1) Every complaint relating to the commission of an offence under this Enactment may be made orally or in writing to an enforcement officer or police officer.

(2) Where a complaint is made orally, it shall be reduced into writing and read over to the person making the complaint.

(3) Every complaint, whether in writing or reduced into writing, shall be signed by the person making the complaint.

(4) Every complaint, whether in writing or reduced into writing, shall be entered in a book kept at the office of the Director or recorded on any other medium so long as the information recorded on that other medium capable of being reproduced in legible form.

(5) There shall be appended to every complaint entered or record under subsection (4) the date and hour on which such complaint was made.

(6) Where an enforcement officer or police officer has reason to suspect the commission of an offence under this Enactment following a complaint made under subsection (1) or information otherwise received by him, he shall cause an investigation to be made and for such purpose may exercise all the powers of investigation provided for under this Enactment.

Powers of enforcement officer or police officer in investigation.

36C. (1) Every enforcement officer or police officer making an investigation under this Enactment shall have the power to require information, whether orally or in writing, from any

person acquainted or supposed to be acquainted with the facts and circumstances of the case under investigation.

(2) Any person who, on being required by an enforcement officer or police officer to give information under this section, refused to comply with such requirement or furnishes as true any information which he knows or has reason to believe is false commits an offence.

(3) Where any information furnished by a person to an enforcement officer or police officer is proved to be untrue or incorrect in whole or in part, it shall be no defence to allege that the information or any part of the information was misinterpreted, or furnished inadvertently or without criminal or fraudulent intent.

Power to examine persons.

36D. (1) An enforcement officer or police officer investigating an offence under this Enactment may –

- (a) order any person to attend before him for the purpose of being examined orally in relation to any matter which may, in his opinion, assist in the investigation into the offence;
- (b) order any person to produce before him any object, material, book, document or any other thing which may, in his opinion, assist in the investigation into the offence; or
- (c) by written notice require any person to furnish a statement in writing made on oath or affirmation, setting out in the notice all such information which may be required, being information which, in the opinion of the enforcement officer or police officer, would be of assistance in the investigation into the offence.

(2) A person to whom an order under paragraph (1) (a) has been given shall –

- (a) attend, in accordance with the terms of the order, to be examined and shall continue to attend from day to day as directed by the enforcement officer or police officer until the examination is completed; and

(b) during such examination, disclose all information which is within his knowledge, or which is available to him, or which is capable of being obtained by him, in respect of the matter in relation to which he is being examined, whether or not any question is put to him with regard to such matter, and where any question is put to him he shall answer the question truthfully and to the best of his knowledge and belief.

(3) A person to whom an order has been given under paragraph (1) (b) shall not conceal, destroy, alter, remove from or send out of Malaysia, or deal with, expend, or dispose of, any object, material, book, document or other thing specified in the order, or alter or deface any entry in any such book or document, or cause such act to be done, or assist or conspire to do such act.

(4) A person to whom a written notice has been given under paragraph (1) (c) shall, in his written statement made on oath or affirmation, furnish and disclose truthfully all information required under the notice which is within his knowledge, or which is available to him, or which is capable of being obtained by him.

(5) A person to whom an order or a notice is given under subsection (1) shall comply with such order or notice and with the provisions of subsection (2), (3) or (4) in relation to the order or notice, but nothing contained in subsection (2), (3) or (4) shall be construed as compelling the person who is being examined under this section to disclose any information, object, material, book, document or other thing which may incriminate him for any offence under this Enactment or any other written law.

(6) An enforcement officer or police officer examining a person under paragraph (1) (a) shall record in writing any statement made by the person and the statement so recorded shall be signed by the person being examined or affixed with his thumbprint, 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, and if such person refuses to sign the record, the enforcement officer or police officer shall endorse on the record under his hand the fact of such refusal and the reason for such refusal, if any, stated by the person being examined.

(7) The record of an examination under paragraph (1) (a), or a written statement on oath or affirmation made pursuant to paragraph (1) (c), or any object, material, book,

document or other thing produced under paragraph (1) (b) or in the course of an examination under paragraph (1) (a) or under a written statement on oath or affirmation made pursuant to paragraph (1) (c) shall, notwithstanding any written law or rule of law to the contrary, be admissible in evidence in any proceedings in any Court for an offence under this Enactment, regardless whether such proceedings are against the person who was examined, or who produced the object, material, book, document or other thing, or who made the written statement on oath or affirmation, or against any other person.

(8) Any person who contravenes subsection (2), (3), (4) or (5) 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 two years or to both.

Search by warrant.

36E. (1) If it appears to a Magistrate, upon written information and after such inquiry as he considers necessary, that there is reasonable cause to believe that an offence under this Enactment has been committed or is being committed on or in respect of any premises, the Magistrate may issue a warrant authorising an enforcement officer or police officer named in that warrant to enter such premises with such assistance as may be required, and if necessary by force.

(2) A warrant issued under subsection (1) may authorise 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 or other thing in respect of which an offence has or is suspected to have been committed; and
- (b) any object, material, book, document or other thing that is reasonably believed to furnish evidence of the commission of the offence.

(3) An enforcement officer or police officer conducting a search under subsection (1) may, if in his opinion it is reasonably necessary to do so for the purpose of an investigating the offence, search any person who is in, or on, such premises and detain such person and remove him to such place as may be necessary to facilitate such search.

(4) An enforcement officer or police officer making a search of a person under subsection (3) may seize or take possession of any object, material, book, document or other

thing found on the person for the purpose of the investigation being carried out by the enforcement officer or police officer.

(5) Where, by reason of their nature, size or amount, it is not practicable to remove any object, material, book, document or other thing seized under this section, the enforcement officer or police officer making the seizure shall, by all means, seal such object, material, book, document or other thing in the premises or container in which they are found.

(6) A person who, without lawful authority, breaks, tampers with or damages the seal referred to in subsection (5) or removes any object, material, book, document or other thing under seal, or attempts to do so 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 two years or to both.

(7) Whenever it is necessary so to do, an enforcement officer or police officer exercising any powers under subsection (1) may –

- (a) break open any outer or inner door or window of any premises and enter into the premises, or otherwise forcibly enter into the premises and every part of the premises;
- (b) remove by force any obstruction to such entry, search, seizure, detention or removal as he is empowered to effect; or
- (c) detain any person found on any premises searched under subsection 91) until such premises have been searched.

Search without warrant.

36F. If the enforcement officer or police officer in any of the circumstances referred to in section 36E has reasonable grounds to believe that any object, material, book, document or other thing in respect of which an offence under this Enactment or any regulations made under this Enactment has been committed is likely to be found in or on any place, premises, person, vehicle, vessel or conveyance and that by reason of delay in obtaining a warrant under section 36E the object of the search is likely to be frustrated, he may, without warrant, with such assistance and force as is necessary –

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

Search of persons.

36G. No person shall be searched except by another person of the same gender, and such search shall be conducted with strict regard to decency.

Seizure of thing, etc.

36H. Without prejudice to subsection 36E (2) and section 36F, any object, material, book, document or other thing that an enforcement officer or a police officer reasonably suspects has been used or will be used in the commission of any offence under this Enactment or any regulations made under this Enactment may be seized and detained by the enforcement officer or police officer.

Temporary return and list of things seized.

36I. (1) Where anything has been seized under this Enactment, the Director may temporarily return the things seized to the owner thereof or to the person from whose possession, custody or control it was seized, subject to such terms and conditions as the Director may impose and subject, in any case, to sufficient security being furnished to the satisfaction of the Director that the things seized shall be surrendered to him on demand and that the said terms and conditions, if any, shall be complied with.

(2) Where any seizure is made under this Enactment, an enforcement officer or police officer making the seizure shall prepare a list of every object, material, book, document or other thing seized and of the place in which it is found and shall sign the list.

(3) The list prepared in accordance with subsection (2) shall be served on the owner, or on the person from whom the object, material, book, document or other thing was seized as soon as possible and shall be signed by such owner or person.

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

Power of arrest.

36J. (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 regulations 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 as is provided for by the law relating to criminal procedure for the time being in force as if he had been arrested by a police officer.

Obstruction of search.

36K. (1) Any person who –

- (a) refuses any enforcement officer or police officer access to any premises or any part of such premises, or fails to submit to a search of his person by a person authorised to search him under this Enactment;
- (b) assaults, obstructs, hinders or delays and enforcement officer or police officer in the execution of his duty under this Enactment;
- (c) fails to comply with any unlawful demand, notice, order or requirement of an enforcement officer or police officer in the execution of his duty under this Enactment;
- (d) omits, refuses or neglects to give to an enforcement officer or police officer any information which may reasonably be required of him and which he is empowered to give;
- (e) fails to produce to, or conceals or attempts to conceal from, an enforcement officer or police officer any object, material, book, document

or other thing in relation to which such enforcement officer or police officer has reasonable grounds for suspecting that an offence under this Enactment has been or is being committed, or which is liable to seizure under this Enactment;

(f) rescues or endeavours to rescue or causes to be rescued any thing which has been duly seized; or

(g) destroys any thing to prevent the seizure or the securing of the thing,

commits an offence and shall on conviction be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding twelve months or to both.

(2) Any person who abets the commission of any offence under subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding twelve months or to both.

Admissibility of statements by accused persons.

36L. (1) In any trial or inquiry by a Court into an offence under this Enactment any statement, whether the statement amounts to a confession or not or is oral or in writing, made at any time, whether before or after the person is charged and whether in the course of an investigation or not and whether or not wholly or partly in answer to questions, by an accused person to or in the hearing of any enforcement officer or police officer, whether or not interpreted to him by any other enforcement officer or police officer or any other person, whether concerned or not in the arrest of that person, shall, notwithstanding any written law or rule of law to the contrary, be admissible at his trial in evidence and, if that person tenders himself as a witness, any such statement may be used in cross-examination and for the purpose of impeaching his credit.

(2) No statement made under subsection (1) shall be admissible or used as provided for in that subsection if the making of the statement appears to the Court to have been caused by any inducement, threat or promise having reference to the charge against the person, proceeding from a person in authority and sufficient in the opinion of the Court to give that person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to

the proceedings against him.

(3) Where any person is arrested or is informed that he may be prosecuted for any offence under this Enactment, he shall be served with a notice in writing, which shall be explained to him, to the following effect:

“You have been arrested/informed that you may be prosecuted for (the possible offence under this Enactment). Do you wish to say anything? If there is any fact on which you intend to rely in your defence in Court, you are advised to mention it now. If you hold it back till you go to Court, your evidence may be less likely to be delivered and this may have a bad effect on your case in general. If you wish to mention any fact now, and you would like it written down, this will be done.”

(4) Notwithstanding subsection (3), a statement by any person accused of any offence under this Enactment made before there is time to serve a written notice under that subsection shall not be rendered inadmissible in evidence merely by reason of no such written notice having been served on him if such written notice has been served on him as soon as is reasonably possible after the statement was made.

(5) No statement made by an accused in answer to a written notice served on him pursuant to subsection (3) shall be construed as a statement caused by any inducement, threat or promise as is described in subsection (2), if it is otherwise voluntary.

(6) Where in any criminal proceedings against a person for an offence under this Enactment, evidence is given that the accused, on being informed that he might be prosecuted for it, failed to mention any such fact, being a fact which in the circumstances existing at the time he could reasonably have been expected to mention when so informed, the Court, in determining whether the prosecution has made out a *prima facie* case against the accused and in determining whether the accused is guilty of the offence charged, may draw such inferences from the failure as appear proper: and the failure may, on the basis of those inferences, be treated as, or as capable of amounting to, corroboration of any evidence

given against the accused in relation to which the failure is material.

- (7) Nothing in subsection (6) shall in any criminal proceedings –
 - (a) prejudice the admissibility in evidence of the silence or other reaction of the accused in the face of any thing said in his presence relating to the conduct in respect of which he is charged, in so far as evidence thereof would be admissible apart from that subsection; or
 - (b) be taken to preclude the drawing of any inference from any silence or other reaction of the accused which could be drawn from that subsection.

Forfeiture and disposal of things, etc., seized.

36M. (1) Any object, material, book, document or other thing seized under to this Enactment shall be liable to forfeiture.

(2) An order for the forfeiture under subsection (1) shall be made if it is proved to the satisfaction of the Court that an offence under this Enactment or any regulations made under this Enactment has been committed and that the object, material, book, document or other thing was the subject matter of or was used in the commission of the offence, even though no person has been convicted of such offence.

(3) Where there is no prosecution with regard to any object, material, book, document or other thing seized in exercise of any power conferred under this Enactment, the same shall be taken and deemed to be forfeited at the expiration of one calendar month from the date it was seized unless a claim thereto is made before that date in the manner set out in subsections (4), (5), (6) and (7).

(4) Any person asserting that he is the owner of any object, material, book, document or other thing seized under this Enactment and that the same are not liable to forfeiture may personally or by his agent authorised in writing by him give written notice to the Director of his claim.

(5) On receipt of a notice under subsection (3) the Director who may, after such inquiry as may be necessary, direct that any object, material, book, document or other thing seized be returned or forfeited or refer the matter to the Court for decision.

(6) The Court to which a matter is referred under subsection (5) shall issue a summons requiring the person asserting that he is the owner of the object, material, book, document or other thing seized and the person from whom they were seized to appear before it and upon appearance or default to appear, due service of the summons being proved, the Court shall proceed to examine the matter.

(7) If it is proved that an offence under this Enactment or any regulations made under this Enactment has been committed and that object, material, book, document or other thing seized was the subject matter or was used in the commission of such offence, the Court shall order the same to be forfeited or may, in absence of such proof, order its release.

(8) The Court shall upon conviction of an offence, order any thing seized to be forfeited and disposed of in accordance with the provisions under this Enactment.

(9) Where any thing has been forfeited under this Enactment, the Director shall dispose such thing by way of auction or tender and the proceeds of sale shall belong to the Government.

PART IX MISCELLANEOUS

Authorisation of sale of antiquities.

37. (1) The Government may sell any antiquity which is the property of the Government.

(2) Where any antiquity is sold under the provisions of subsection (1) of this section by the Government to any person then, unless it is otherwise expressly agreed in writing between the parties to such sale, the provisions of section 10 of this Enactment shall cease to apply to such antiquity and a licence to export such antiquity shall, if requested, be granted to the owner in respect of such antiquity.

Loans or exchanges of antiquities.

38. (1) The Director may make loans or exchanges of any antiquities which are the property of the Government to or with learned societies or museums or with any expert specialist and may authorise the export of the same for such purposes.

(2) Any agreement for a loan under the preceding subsection shall contain adequate provisions for the preservation, insurance and, if the Director considers necessary, the return to the Government of the antiquities.

Dealers.

39. No person shall deal in antiquities unless he is in possession of a dealer's licence granted by the Director.

Prosecution.

39A. Any person authorised in writing by the Public Prosecutor pursuant to section 377 of the Criminal Procedure Code [Act 593], may conduct prosecution under this Enactment.

PART X
PENALTIES

Penalties.

40. (1) Any person who, being the finder of any antiquity or treasure trove, fails to report the same or to deliver up the same or to state the circumstances of the discovery or origin of the same, or wilfully makes a false report of such circumstances of such origin, commits an offence and shall on conviction be liable to a fine not exceeding fifty thousand ringgit or to imprisonment not exceeding five years or to both.

(2) Any person who sells or otherwise dispose of any antiquity contrary to section 10 of this Enactment commits an offence and shall on conviction be liable to a fine not exceeding fifty thousand ringgit or ten times the market value of the antiquity, whichever is the greater, or to imprisonment not exceeding five years or to both.

(3) Any person, not being the holder of a licence to excavate granted under section 14 of this Enactment, who wilfully or negligently digs for antiquities or demolishes or damages any ancient monument, whether above or below the ground, even though the acts are done upon land of which he is the owner, commits an offence and shall on conviction be liable to a fine not exceeding fifty thousand ringgit or to imprisonment not exceeding five

years or to both.

(4) Any person, being the holder of a licence to excavate granted under section 14 of this Enactment, who fails to comply with any of the conditions specified in such licence commits an offence and shall on conviction be liable to a fine not exceeding ten thousand ringgit.

(5) Any person who contravenes any of the provisions of sections 19, 21, 21A or 22 of this Enactment commits an offence and shall on conviction be liable to a fine not exceeding fifty thousand ringgit or to imprisonment not exceeding five years or to both.

(6) Any person who, not being the holder of a licence to export granted under section 31 of this Enactment, exports or attempts to export any antiquity commits an offence and shall on conviction be liable to a fine not exceeding fifty thousand ringgit or to imprisonment not exceeding five years or to both.

(7) Any person who exports or attempts to export any antiquity in respect of which a licence to export has been refused in accordance with the provisions of section 30 of this Enactment commits an offence and shall on conviction be liable to a fine not exceeding fifty thousand ringgit or to imprisonment not exceeding five years or to both.

(8) Any person who fails to give reasonable facilities to the Director, or any officer authorised by the Director, to inspect, study, make drawings, photographs, squeezes or other reproductions of any antiquity or to enter and carry out any necessary work for the restoration, repair, alteration, maintenance or conservation of any ancient monument or historical site, where the duty to give such facilities is imposed by this Enactment, commits an offence and shall on conviction be liable to a fine not exceeding ten thousand ringgit.

(9) Any person who maliciously or negligently destroys, injures, defaces, displaces, disturbs or disfigures any antiquity commits an offence and shall on conviction be liable to a fine not exceeding fifty thousand ringgit or to imprisonment not exceeding five years or to both.

(10) Any person who wilfully deceives or attempts to deceive any public officer acting in the course of his duty by any description, statement or other indication as to the genuineness or age of any antiquity or object of archeological interest commits an offence and shall on conviction be liable to a fine not exceeding fifty thousand ringgit or to

imprisonment not exceeding five years or to both.

(11) Any person, not being the holder of a licence issued under section 39 of this Enactment, who deals in antiquities commits an offence and shall on conviction be liable to a fine not exceeding fifty thousand ringgit.

Forfeiture on conviction.

41. (1) Any person who is convicted of an offence under this Enactment in respect of any antiquity or treasure trove shall by virtue of such conviction forfeit all claim to or interest in the same or the value thereof or any reward in connection with the finding thereof, and in any such case the Court may order the antiquity or treasure trove to be delivered up to the Director and where the Court makes such order it shall be the duty of any person in whose possession the antiquity or treasure trove may be, to deliver it up accordingly.

(2) The Minister may order any antiquity or treasure trove forfeited under the provisions of this section to be delivered to the owner or other person entitled thereto or returned to the finder, as the case may be, upon such terms and conditions, as he may deem fit.

Offences committed by body corporate.

41A. Where a person charged with an offence under this Enactment or any regulations made thereunder is a body corporate, every person who, at the time of the commission of such offence was a managing director, manager or other similar officer of such body corporate, may be charged jointly in the same proceedings with the body corporate, and where the body corporate is convicted of the offence charged, every such managing director, manager or officer shall also be liable to the same penalty as the body corporate, unless he proves that the offence was committed without his knowledge, consent or connivance or that he took reasonable precautions to prevent its commission.

General Penalty.

41B. (1) Any person who commits an offence under this Enactment or any regulations made under this Enactment where no penalty is expressly provided shall on conviction be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not

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

(2) Where the offence committed resulted in damage to an antiquity or the demolition or destruction of an ancient monument or historical site, the Court may order the person to pay, in addition to any penalty that may be imposed under subsection (1), the market value of the antiquity or the costs of the repair, restoration or reconstruction of the monument or site.

Compounding of offences.

41C. (1) The Director may, with the consent in writing of the Minister, compound any offence committed by any person under this Enactment or any regulations made under this Enactment, by accepting from the person reasonably suspected of having committed such offence a sum of money not exceeding fifty percent of the maximum fine for that offence, within the time 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 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 be instituted after that in respect of the offence against the person to whom the offer to compound was made and where possession has been taken of any book, record, document or any other thing, such book, record, document or any other thing may be released subject to such conditions as may be imposed in accordance with the conditions of the compound.

(5) The amounts received under this section shall be paid into and form part of the State Consolidated Fund.

PART XI
RULES

Rules.

42. The Minister may make rules for the purpose of carrying out or giving effect to the provisions of this Enactment, and, without prejudice to the generality of the foregoing, may make rules —

- (a) prescribing the conditions and restrictions (including the payment and amount of a fee) subject to which any licence or permit under this Enactment may be granted or issued;
- (b) prescribing the conditions and restrictions (including the payment and amount of a fee) subject to which members of the public may have access to any ancient monuments on State land; and
- (c) prescribing a penalty of a fine not exceeding twenty-five thousand ringgit for the contravention or failure to comply with any of the provisions of any rule made under this section or with the restrictions or conditions of any licence or permit granted under any such rules.