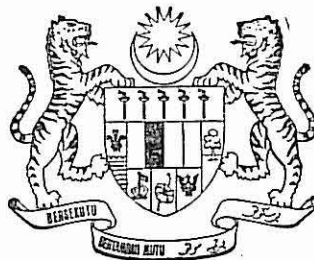


H.B. West Malaysia



LAWS OF MALAYSIA

Act 168

ANTIQUITIES ACT, 1976

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LAWS OF MALAYSIA

Act 168

ANTIQUITIES ACT, 1976

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LAWS OF MALAYSIA

Act 168

ANTIQUITIES ACT, 1976

An Act to provide for the control and preservation of, and research into ancient and historical monuments, archaeological sites and remains, antiquities and historical objects and to regulate dealings in and export of antiquities and historical objects and for matters connected therewith.

[]

BE IT ENACTED by the Duli Yang Maha Mulia Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows:

PART I

PRELIMINARY

1. This Act may be cited as the Antiquities Act, 1976 and shall apply only to West Malaysia.

Short title and application.

2. (1) In this Act, unless the context otherwise requires—
“ancient monument” means any monument in West Malaysia which is or is reasonably believed to be at least one hundred years old or which is declared in accordance with section 15 to be an ancient monument;

Interpretation.

“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 constructed, shaped, inscribed, erected, excavated or otherwise produced or modified by human agency and which is or is reasonably believed to be at least one hundred years old;
- (b) any part of any such object which has at any later date been added thereto or re-constructed or restored;
- (c) any human, plant or animal remains which is or is reasonably believed to be at least one hundred years old; and

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(d) any object of any age which the Director-General by notification in the *Gazette* declares to be an antiquity;

62/67. “customs airport” and “customs port” have the same meanings assigned to them by the Customs Act, 1967;

“Director-General” means the Director-General of Museums, Malaysia;

“District Officer”, in relation to any area comprised within any municipality, includes the Secretary to such municipality and the word “District” shall be deemed to include when appropriate a reference to such area;

“export” with its grammatical variations and cognate expressions means to take or cause to be taken out of West Malaysia, by land, sea or air or to place any goods in a vessel, conveyance or aircraft for the purpose of such goods being taken out of West Malaysia by land, sea or air;

“Government” means the Federal Government;

“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, personal ornament;

(b) work of art such as a 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 and armour;

(d) vehicle, ship and boat, in part or in whole, whose production have ceased;

“historical site” means a site which has been declared in accordance with the provisions of section 15 to be a historical site;

“Minister” means the Minister charged with responsibility for museums;

“monument” means any temple, church, building, monument, port, earthwork, standing stone, keramat, cave or other structure, erection or excavation, and any tomb, tumulus or other place of interment or any other immovable property of a like nature or any part or remains

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of the same, the preservation of which is a matter of public interest, by reason of the religious, historic, 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” includes the cultivator or person in actual possession, management or control of any land, and includes any person having the possession or control of any movable property;

“owner”, in relation to any land, means the registered owner or the holder by customary tenure;

“proper officer of customs” has the same meaning assigned to it by the Customs Act, 1967.

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(2) For the purpose of deciding whether any object is or is not an antiquity or a historical object, the Director-General may examine it and may call upon expert opinion.

(3) A certificate by the Director-General that any object is an antiquity or a historical object, or that he is satisfied that an antiquity or a historical object is or will be of lasting national importance or interest shall be final.

PART II

DISCOVERY OF, AND PROPERTY IN, ANTIQUITIES

3. (1) Subject to the provisions of this Act, every antiquity discovered in West Malaysia on or after the date of the coming into force of this Act shall be the absolute property of the Government.

Property
in anti-
quities.

(2) Every ancient monument which on the date of the coming into force of this Act is not owned by any person or the control of which is not vested in any person as a trustee or manager, shall be deemed to be the absolute property of the Government.

(3) All undiscovered antiquities (other than ancient monuments), 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.

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

Notice of discovery of antiquities, or ancient monument.

4. (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 Penghulu or Penggawa of the area or to the District Officer of the District wherein the antiquity was discovered, and if it is practicable so to do, shall deliver the antiquity to the District Officer, who shall give a receipt therefor.

(2) A Penghulu or Penggawa receiving notice as in subsection (1) shall inform the District Officer of the District wherein the antiquity was discovered.

(3) If the District Officer has reason to believe that any object discovered in his District 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 him, and the District Officer on receiving such object shall give a receipt therefor.

(4) A District Officer receiving notice under subsection (1) shall communicate the same to the Director-General.

(5) Where any object has been delivered to a District Officer under subsection (1) or (3) or where the District Officer has reason to believe that any object or monument discovered in his District is an antiquity or ancient monument, he shall give notice thereof to the Director-General.

Compensation for certain antiquities.

5. (1) On the discovery of any antiquity, the Director-General shall be entitled to the custody and possession of the same on behalf of the Government and shall be responsible for its recording, preservative treatment and ultimate disposal.

(2) In any case the Director-General 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 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 3 had never been enacted.

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(3) When any antiquity is retained by the Director-General or where in the opinion of the Director-General the same should be preserved in the place where it was found, there shall be paid by the Director-General reasonable compensations to—

- (a) the finder thereof; and
- (b) the owners of the land in or on which the same was discovered, if such land is not a State land or Federal land:

Provided that no such payment as aforesaid shall be made to the finder thereof where the finder has failed to give notice of the discovery of the same in accordance with section 4.

6. (1) Notwithstanding sections 3 and 5 the Director-General on behalf of the Government may enter into an agreement in writing with any person who would under section 5 be entitled a compensation for such antiquity whereby such person shall receive from the Director-General, in place of such compensation, a share of such antiquity to be apportioned in such manner as may be provided in the said agreement.

Apportionment of antiquities.

(2) Every agreement under subsection (1) shall have force and effect notwithstanding anything in section 5:

Provided that where the finder of any antiquity does not report the discovery thereof in accordance with the provisions of section 4 he shall not be entitled to receive any share of such antiquity under any such agreement.

7. (1) The Director-General may by notice in writing require any person in possession of or lawfully entitled to sell or dispose of any antiquity or any historical object which the Director-General is satisfied to be or will be of lasting national importance or interest not to sell or otherwise dispose of such antiquity or historical object without giving notice in writing to him of any such proposed transaction.

Sale or disposal of antiquities and historical objects.

(2) No person shall sell or otherwise dispose of any antiquity or historical object in respect of which a notice under subsection (1) has been given until after a lapse of ninety days after the giving of notice by such person of his intention to sell or otherwise dispose of the antiquity

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or historical object and in the meanwhile it shall be lawful for the Director-General to purchase such antiquity or historical object at a reasonable price notwithstanding any agreement which the owner may have entered into with another person.

Dispute as to compensation or apportionment.

8. Where there is any dispute between the Director-General and any person as to the reasonable compensation for any antiquity or historical object or as to the apportionment of any antiquity in terms of an agreement under section 6, such dispute shall be submitted to the Minister whose decision shall be final.

PART III
EXCAVATIONS

No excavation except upon licence.

9. 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 granted by the Director-General.

Application for licence to excavate.

10. Every application for a licence to excavate shall—

- (a) be made to the Director-General in the prescribed form; and
- (b) contain a full and accurate description of the land on which it is proposed to carry out the excavation, the purpose, nature and extent of the proposed excavation, and such other particulars as may be prescribed.

Grant or refusal of licence to excavate.

11. The Director-General may in his discretion approve or refuse any application for a licence to excavate:

Provided that no such licence shall be granted unless the Director-General is satisfied, after such inquiry as he may deem it necessary to make—

- (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 therefor; and

- (c) that the applicant is able to furnish security for the due observance by him of this Act or any rule made thereunder, and of any conditions subject to which the licence may be issued.

12. (1) A licence granted under section 11 shall be valid for such period (subject to the provisions of section 13) and subject to such conditions as may be specified therein. Terms and conditions of licence.

(2) In addition to any other conditions which may be either prescribed generally or specified in any particular case, every licence granted under section 11 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-General;
- (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-General such photographs, casts, squeezes or other reproductions of any antiquity apportioned to him in accordance with section 6 as the Director-General may require;
- (e) the holder of the licence shall furnish such plans and photographs of his excavations as the Director-General may require.

(3) Such photograph, cast, squeeze, reproduction or plan shall be held by the Director-General and where a museum exists in the State in which the antiquity was found one copy shall be deposited in such museum.

13. (1) Any licence to excavate may, at the expiration of the period for which it was granted, be extended by the Director-General for such further period or periods as he shall deem fit. Extension and cancellation of licence.

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(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-General 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.

Saving of private rights and immunity of Government.

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

(2) Neither the Director-General, the Government nor the Government of any State shall incur any liability in respect of any loss sustained by any person or of 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.

15. (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 :

Provided that if the monument or site is situated in any State, the concurrence of the State Authority is to be first obtained.

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

Acts prohibited in regard to ancient monuments and historical sites.

16. No person shall, without the permission in writing of the Director-General after consultation with the Minister, 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 deposit earth or refuse on or in the immediate neighbourhood of an ancient monument or a historical site included in

the schedule published in accordance with section 15, as added to or amended from time to time, or establish or extend a cemetery on a historical site so included; or

- (b) demolish an ancient monument or disturb, obstruct, modify, mark, pull down or remove any such monuments or any part thereof; or
- (c) make alteration, additions or repairs to any ancient monument; or
- (d) erect buildings or walls abutting upon an ancient monument.

17. Where any ancient monument or historical site is on private property the Director-General may after consultation with the Government of the State in which the ancient monument or historical site is situated—

Care of ancient monuments and historical sites.

- (a) make arrangements with the owner or occupier thereof for its preservation, inspection and maintenance and for such purposes make a contribution towards the cost of carrying out any works of repair or conservation which he 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 direction as the Director-General may give;

- (b) purchase or lease the site by private treaty or acquire the same in accordance with the provisions of any written law relating to the acquisition of land for a public purpose for the time being in force; 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 the Minister whose decision shall be final.

18. (1) The owner or occupier of an ancient monument or historical site shall at all reasonable times permit the Director-General or any person or officer authorised by him either generally or specially in that behalf to enter upon the

Inspection of ancient monuments and historical sites.

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site for inspection or to carry out any study or work necessary for the restoration, repair, alteration, maintenance or conservation thereof 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 any 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 except with the permission in writing of the Menteri Besar or Chief Minister of the State in which such monument or historical site is situated.

(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 17.

PART V

ARCHAEOLOGICAL RESERVES

Declaration
of archaeo-
logical
reserves.

19. The State Authority or, in the case of the Federal Territory, the Minister, on the recommendation of the Director-General may by order declare any specified area to be an archaeological reserve for the purposes of this Act.

Encroach-
ments, etc.
on archaeo-
logical
reserves.

20. No person shall, except under licence issued by the Director-General—

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

PART VI

EXPORT OF ANTIQUITIES AND HISTORICAL OBJECTS

21. (1) No person shall export any antiquity unless—
- (a) he has obtained a licence to export the same from the Director-General or that the antiquity was originally imported by him; and
 - (b) he has declared the antiquity to a proper officer of customs at a customs airport or customs port.
- (2) The Director-General shall not issue a licence if in his opinion the antiquity is or will be of lasting national importance or interest.
- (3) An applicant for a licence to export any antiquity shall submit the description of such antiquity, shall declare the value thereof and furnish any other particulars in regard thereto which the Director-General may require and shall, if so required by the Director-General, deposit any such antiquity with the Director-General 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-General that he is the owner of such antiquity or that he is acting on behalf of and with the authority of the owner.
22. A licence to export shall be produced by the holder to the Director-General or the proper officer of customs on demand.
23. (1) Where a proper officer of customs or an officer authorised in writing by the Director-General has reason to believe that any object which is to be exported is a historical object he may detain such object and forthwith report such detention to the Director-General.
- (2) If the Director-General is satisfied that the historical object is or will be of lasting national importance or interest he may prohibit the export thereof.
24. Where the issue of a licence to export an antiquity is refused on the grounds set out in section 21 (2) or where a historical object is prohibited from being exported under section 23 (2) any person aggrieved by such refusal or prohibition may appeal to the Minister within one month of receiving notice of such refusal.

Prohibition of export except on licence.

Production of licence.

Prohibition of export of historical object.

Appeal.

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Acquisition of antiquity or historical object sought to be exported.

25. (1) Where a licence to export any antiquity has been refused on the ground that such antiquity should be acquired on behalf of the Government or where a historical object is prohibited from being exported, the Director-General shall pay to the owner thereof the reasonable compensation for such antiquity or historical object and thereupon the said owner shall deliver up the same to the Director-General who may dispose or deal with it in such manner as he deems fit.

(2) Where there is any dispute between the Director-General and the owner as to the reasonable compensation for the antiquity or historical object such dispute shall be submitted to the Minister whose decision shall be final.

PART VII

POWERS OF THE DIRECTOR-GENERAL

Power of Director-General to inspect any antiquities and to request for information.

26. (1) The Director-General or any officer authorised by him in writing for that purpose may at all reasonable times inspect any antiquity, or inspect any historical object which he has reason to believe is or will be of lasting national importance or interest, in the possession of any person; and it shall be the duty of every such person to permit such inspection and further to give to the Director-General or such officer all reasonable facilities to study such antiquity or historical object and to make drawings, photographs, squeezes or reproductions thereof by the making of casts or by any other means:

Provided that no such drawings, photographs, squeezes or reproductions shall be sold without the consent of the person in possession of the antiquity or historical object.

(2) For the purpose of subsection (1), the Director-General may in writing demand any person whom he believes to be in possession of the antiquity or historical object to produce such antiquity or historical object in his office.

(3) The Director-General or any officer authorised by him in writing for that purpose may in writing or orally require any person to supply him any information relating to anything which is or he believes to be an antiquity, historical object or any monument.

ANTIQUITIES

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27. The Director-General may in writing generally or specially authorise the exercise, performance or discharge of any of his powers, duties or functions under this Act or any regulations or rules made thereunder by any other officer. Delegation of powers.

PART VIII

PENALTIES

28. (1) Any person who, being the finder of any antiquity or ancient monument fails to report the same or to deliver up the same or to state the circumstances of the discovery or the origin of the same, or wilfully makes a false report of such circumstances or such origin, commits an offence and shall be liable to imprisonment not exceeding one year or to a fine not exceeding two thousand ringgit or to both. Penalties.

(2) Any person who sells or otherwise disposes of any antiquity or historical object, contrary to the provisions of section 7 commits an offence and shall be liable to imprisonment not exceeding six months or to a fine not exceeding one thousand ringgit or to both.

(3) Any person, not being the holder of a licence to excavate granted under section 11 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 be liable to imprisonment not exceeding three months or to a fine not exceeding five hundred ringgit or to both.

(4) Any person who contravenes section 16 commits an offence and shall be liable to imprisonment not exceeding three months or to a fine not exceeding five hundred ringgit or to both.

(5) Any person who contravenes section 20 commits an offence and shall be liable to imprisonment not exceeding three months or to a fine not exceeding five hundred ringgit or to both.

(6) Any person who—

(a) not being the holder of a licence to export granted under section 21, exports or attempts to export any antiquity; or

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(b) fails to declare any antiquity to a proper officer of customs at the customs airport or customs port as required under section 21;

commits an offence and shall be liable to imprisonment not exceeding six months or to a fine not exceeding five thousand ringgit 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 or exports or attempts to export any historical object which the Director-General has prohibited from being exported commits an offence and shall be liable to imprisonment not exceeding one year or to a fine not exceeding ten thousand ringgit or to both.

(8) Any person who fails to give reasonable facilities to the Director-General to inspect, study, make drawings, photographs, squeezes or other reproductions of any antiquity or historical object 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 Act, or fails to comply with any demand to produce made under section 26 (2), commits an offence and shall be liable to a fine not exceeding five hundred ringgit.

(9) Any person who fails to supply any information required by the Director-General or any officer authorised by him in writing for that purpose in pursuance of the power conferred under section 26 (3) or supplies any information which he knows or has reason to believe to be false commits an offence and shall be liable to a fine not exceeding five hundred ringgit.

(10) Any person who maliciously or negligently destroys, injures, defaces, displaces, disturbs or disfigures any historical object in respect of which a notice under section 7 (1) has been given or which has been prohibited from being exported under section 23 (2) or any antiquity commits an offence and shall be liable to imprisonment not exceeding one year or to a fine not exceeding two thousand ringgit or to both.

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(11) 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 historical object commits an offence and shall be liable to imprisonment not exceeding one year or to a fine not exceeding two thousand ringgit or to both.

29. The Director-General and any public officer authorised in writing by the Director-General for that purpose shall have the power to prosecute any offence under this Act or any regulations made thereunder.

Prosecution.

30. (1) Any person who is convicted of any offence under this Act in respect of any antiquity or historical object 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 Magistrate shall order the antiquity or historical object to be delivered up to the Director-General; and where the Magistrate makes such order it shall be the duty of any person in whose possession the antiquity may be to deliver it accordingly.

Forfeiture of claims to and interest in antiquities or historical objects.

(2) The Minister may, on appeal by any person aggrieved by an order of the Magistrate under subsection (1), order any antiquity or historical object forfeited under this section to be delivered to the owner or other person entitled thereto or to be returned to the finder, as the case may be, upon such terms and conditions as he may deem fit.

(3) The appeal shall be in writing and shall be made not later than one month from the date of the order of the Magistrate.

PART IX

MISCELLANEOUS, RULES AND REPEAL

31. The Director-General may on behalf of the Government and if so requested by the Government of any State may on its behalf sell any antiquity or historical object which is the property of such Government.

Authority to sell antiquities and historical objects.

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

Loan of antiquities and historical objects.

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(2) Any agreement for a loan under subsection (1) shall contain adequate provisions for the preservation, insurance and, if the Director-General considers necessary, the return of the antiquities or historical objects.

Dealers. 33. No person shall deal in antiquities unless he is in possession of a dealer's licence granted by the Director-General.

Rules. 34. The Minister may make rules for the purpose of carrying out or giving effect to the provisions of this Act, 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 Act 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 monument on Federal or State land; and

(c) prescribing a penalty of a fine not exceeding five hundred ringgit for the contravention or failure to comply with any of the provisions of any rules made under this section or with the restrictions or conditions of any licence or permit granted under any such rules.

Repeal and saving. 14/57. 35. (1) The Antiquities and Treasure Trove Ordinance, 1957 is, except in so far as it applies to treasure troves, hereby repealed.

(2) All subsidiary legislations made under the repealed Ordinance relating to matters other than treasure trove shall continue to remain in force until repealed by rules made under this Act and all licences, permits and authorities granted under the repealed Ordinance shall remain valid until their expiration or unless they are suspended or revoked.

KUALA LUMPUR

DICETAK OLEH PEMANGKU KETUA PENGARAH PERCETAKAN DAN DITERBITKAN DENGAN PERINTAH PADA
25HB MAC, 1976

Harga: 50 sen