

granted to *all* religious groups, and not limited to Islam only. Therefore, establishing and maintaining a church is constitutionally protected.

Hence, there is no doubt that Articles 11(1) and (3)(b) of the Federal Constitution firmly guarantee the constitutional status of churches established throughout the whole of Malaysia. Such freedom of religion means Christians have the freedom to establish churches for the purpose of worship, fellowship and ministry as these activities are essential and cardinal to the practice of our faith. No other interpretation of the Constitution would be logical.

## IN WHAT FORM SHOULD A CHURCH EXIST IN MALAYSIA?

The more practical question is not whether a church can exist, but rather in what *form* it may exist as a legal entity in Malaysia.

Since the Federal Constitution guarantees the existence of churches, a church's right to exist is not disputed. A church *need not be registered* through any mechanism in order to be a lawful and constitutional body. However, a church that is not registered may encounter practical difficulties with matters involving land (immovable property), bank accounts (movable property), or when applying for approval from government authorities (for instance, when applying for

Does a church need to be registered as an institution under the Societies Act 1966, Companies Act 2016 or be a member of any registered Christian organisation?



conversion of usage of land designated for residential purposes into property for religious purposes, or in applications for putting up a signboard in front of a church located in a shophouse or residential premise).

Why does such an anomaly exist since the Federal Constitution secures the establishment of churches? To the best of our knowledge, there are at least three inter-related reasons:

(a) Under Article 11(3)(c) of the Federal Constitution, a church has the right to own and hold property only when it is done *in accordance with the law*.

(b) The National Land Code 1965 (NLC), which is the law governing land matters in West Malaysia, does not include churches as one of the many bodies which are eligible to hold and deal in land in Malaysia.<sup>12</sup>

(c) Church denominational groups which were established in Malaya after the year 1900<sup>13</sup> (for instance, Assemblies of God<sup>14</sup> and Full Gospel Assembly<sup>15</sup>) and newly-established local churches are generally not recognised by the government, what more in being granted the status of a *body corporate*<sup>16</sup> entitling them to own church property.

These issues will be discussed further in Chapter 3 on “Church Buildings”.

In summary, Christians have the right to hold a gathering

<sup>12</sup> See sections 43 and 205(2) of the NLC. For details of the provisions and for further discussion, see Chapter 3 on “Church Buildings”.

<sup>13</sup> For the denominational history of churches in Malaysia, see Robert Hunt, Lee Kam Hing and John Roxborough (eds.), *Christianity in Malaysia: A Denominational History*, Pelanduk Publications, 1992, particularly p. 357.

<sup>14</sup> The Assemblies of God was established in Malaysia in 1935: *ibid*.

<sup>15</sup> The Full Gospel Assembly was established in Malaysia in 1978: *ibid*.

<sup>16</sup> A body corporate is entitled to hold property under the NLC: see section 43(d) of the NLC. See further Chapter 3 on “Church Buildings”.

for religious purposes. Any law to the contrary should be unenforceable. Therefore, there is no reason to be doubtful or fearful with regards to establishing churches and organising church gatherings.

Having said that, sometimes authorities find other reasons to impede or repress Christian gatherings especially gatherings held in places or premises not designated for religious purposes (e.g. residential or commercial premises). The reasons for and possible solutions to this predicament will be explored in Chapter 3.

In the event a church chooses not to register itself as a legal entity, can it still function?



Whether or not a church is a registered legal entity, a bank account is an operational necessity for almost all churches. To facilitate the opening of bank accounts without the need to register under any legal statute, a church may register itself with the National Evangelical Christian Fellowship (NECF) as a member.<sup>17</sup> The church will receive a certificate of membership. The NECF has standing arrangements with certain banks that will allow NECF members to open bank accounts.<sup>18</sup>

For ownership of property, please see Chapter 2.

## REGISTRATION: COMPANIES ACT 2016 vs SOCIETIES ACT 1966

Let us now examine the pros and cons of registration under two main legal mechanisms provided for under the

<sup>17</sup> The criteria for membership and the process of application can be found on NECF's website. See <http://www.necf.org.my/index.cfm?&menuid=7> (accessed on 4 October 2017).

<sup>18</sup> <http://www.necf.org.my/newsmaster.cfm?&action=view&menuid=2&retrieveid=436> (accessed on 4 October 2017).

statutes of Malaysia. Such knowledge is important before a church attempts to incorporate or register itself under any of the following statutes:

- (1) The Companies Act 2016.
- (2) The Societies Act 1966.

## 1. CHURCH ORGANISATION: PROS AND CONS OF REGISTRATION UNDER THE COMPANIES ACT 2016

ADVANTAGES	
1. <i>Separate legal entity</i> : A company has a legal identity separate from its shareholders. Thus, a company enjoys all the rights and powers of a legal entity in carrying out its dealings.	Sections 20 & 21; <i>Salomon v A Salomon &amp; Co. Ltd</i> <sup>1</sup>
2. <i>Membership</i> : No maximum number of members, except in relation to a private company. <sup>2</sup> A church can only be incorporated into a public company limited by guarantee. <sup>3</sup>	Section 42
3. <i>Property</i> : A company may own property in its own name. The members do not legally own its assets. Apart from land, properties that a company can own include goods, chattels, shares, etc.	Section 21(1)(b)

<sup>1</sup> [1897] AC 22.

<sup>2</sup> A private company may generally have no more than 50 members: section 42(1) of the Companies Act 2016.

<sup>3</sup> A company which is formed with the object of promoting religion shall only be formed as a company limited by guarantee: section 45(1)(e) of the Companies Act 2016. A company limited by guarantee does not have a share capital: section 12 of the Companies Act 2016. Therefore, the sources of funds are mainly derived from donation, subscription and fees of members. In the context of a church set up as a company limited by guarantee, the source of funds is primarily derived from offerings of church members.

<p>4. <i>Liability of members:</i> The fiscal liability of the members of a company can be limited if it is a limited company (normally such organisation contains the word “Berhad”/“Bhd” as part of its name). The members of a company cannot be sued for a company’s debt. Under the Companies Act 2016 churches are required to incorporate themselves as guarantee companies whereby members need to contribute, at most, the amount they agreed to guarantee as stated in the memorandum of association. Companies limited by guarantee are usually not trading companies. They are confined in practice to organisations that want the advantages of incorporation without necessarily wanting to engage in business.</p>	<p>Section 435(2)(b)  Section 435(2)(c)</p>
<p>5. <i>Duration &amp; dissolution:</i> once a company is incorporated, it may not be dissolved except in accordance with due process of law as set out in the Companies Act, i.e. when it is properly wound up or struck off the register. A company can continue to exist even without a business, directors or members. This means that it has perpetual succession.</p>	<p>Section 18</p>

DISADVANTAGES	
1. Since it is a separate legal entity, it can, among other things, sue or be sued in its own name. E.g., expulsion of a member of a guarantee company may be challenged in court by suing the church as in <i>Peck Constance Emily v Calvary Charismatic Centre Ltd.</i> <sup>4</sup>	
2. A company must maintain various registers for members, directors, managers and secretaries and shareholdings which can be inspected by the public.	See generally, Part II, Division 8
3. A company is obliged to lodge with the Registrar of Companies an annual return setting out details, inter alia, its financial records, indebtedness or “such other information as the Registrar may require”.	Section 68
4. <i>Licence of Minister of Domestic Trade and Consumer Affairs to Acquire Land:</i> A company formed for the purpose of promoting religion must be registered as a guarantee company. Such companies <i>must</i> obtain a licence from the Minister to hold lands. Hence, the right to hold property is not guaranteed, but subject to the approval of the Minister.	Section 45(1)(e)  Section 45(4)

<sup>4</sup> [1991] 2 MLJ 455, at p. 457. In this case, a church was sued for failure to comply with the company's Articles of Association and contravention of the principles and rules of natural justice.

## 2. CHURCH ORGANISATION: PROS AND CONS OF REGISTRATION UNDER THE SOCIETIES ACT 1966

ADVANTAGES	
<p>1. <i>Separate legal entity</i>: A registered society is to be treated as a person in the eyes of the law, who is able to sue or be sued in the name of the public officer of the society.<sup>5</sup></p>	Section 9(c)
<p>2. Property: Immovable property may be registered in the name of the society unless it has been registered in the names of trustees. So long as all documents or instruments relating to the property are duly signed and executed by three present office-bearers<sup>6</sup> and sealed with the seal of the society, the documents shall be valid and effective as though they had been done by a private person or a registered proprietor. Movable property, if not vested in trustees, is vested in a “governing body”.<sup>7</sup> This means that the society can open a bank account through the “governing body” or trustee.</p>	<p>Section 9(b)</p> <p>Section 9(a)</p>

<sup>5</sup> The public officer must be declared to the Registrar and be registered by him. Without a public officer, a society can be sued in the name of any officer-bearer: section 9(c) of the Societies Act 1966.

<sup>6</sup> The appointment of an office-bearer must be authenticated by a certificate of the Registrar.

<sup>7</sup> The term “governing body” is not defined in the Act. Presumably, it refers to the main committee of the society.

DISADVANTAGES	
<p>1. <i>Restriction to the office-bearers:</i></p> <p>A person who has been:</p> <p>(i) convicted of any offence under the Societies Act 1966;</p> <p>(ii) convicted of any offence that carries a sentence of a fine of more than RM2,000 and/or imprisonment of more than one year;<sup>8</sup></p> <p>(iii) detained, banished, deported, etc. under any law relating to security and public order; or</p> <p>(iv) an undischarged bankrupt, etc.; cannot become or remain in role where he/she is responsible for the management or conduct of any activity of the society<sup>9</sup>, or be an adviser or employee. Such a restriction may not be a fair yardstick for a church or Christian organisation to choose its leader or adviser.</p>	<p>Section 9A</p>
<p>2. <i>Prospect of being made unlawful:</i> Authorities have wide powers and discretion over societies so that the Registrar has powers to enter, search and seize any material or evidence which in the Registrar's opinion would be "prejudicial to public peace, welfare, good order or morality". Churches can, contrary to its constitutional status, be "made" an unlawful society.</p> <p>This is the main reason why it is not advisable for a church to be registered under the Societies Act 1966</p>	<p>See for e.g., sections 5, 6A, 7, 13, 64 and 65</p>

<sup>8</sup> Such a restriction will cease after five years from the date of release from imprisonment, or from the date on which a fine was imposed: section 9A(2) of the Societies Act 1966.

<sup>9</sup> See section 9A(7)(b) of the Societies Act 1966 for the full definition of "office-bearer" under this provision.



## SUMMARY

A church legally exists and can practise its beliefs by virtue of the Federal Constitution, without any need for it to be registered. However there may be practical reasons for the church to be registered. If so, it is generally advisable that the church be incorporated under the Companies Act 2016.