



UK Companies Act heralds important changes to the way companies execute documents

At Cheeswrights we have been closely following the progress of the **Companies Act 2006** as it lumbered its way through Parliament. The **statute**, which is the longest ever to have been enacted by Parliament, contains some 1,300 sections and introduces the most significant changes to UK company law since the Companies Act 1985. The Act received Royal Assent on 8 November 2006 and following its passage Secretary of State Alistair Darling stated that: *"This Act will help ensure Britain remains one of the best places in the world to set up and run a business. It makes sure the regulatory burden on business is "light touch", promotes shareholder engagement and will help encourage a long-term investment culture in the UK."* The provisions of the Act will not come into force immediately. It is the Government's intention to commence all parts of the Act by October 2008 and to produce for consultation further details of how the Act will be applied to existing companies by early next year. Once all the provisions of the Act are brought into force, companies

will need to make fundamental changes to the way they function. Of special importance are the proposed changes to the manner in which companies incorporated under the Companies Acts will be able to execute deeds and other documents, in particular the introduction of provisions which will allow **one director of a company to bind a company**; this innovation reflects Continental practice and should facilitate proof of the execution of company documents, particularly when they are to be produced overseas.

Section 44 (1) of the Act provides that a document is executed by a company either **by the affixing of its common seal**, or **by signature** in accordance with section 44 (2) which provides:

"A document is validly executed by a company if it is signed on behalf of the company –

(a) by two authorised signatories, or (b) by a director in the presence of a witness who attests the signature."

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A J (Tony) Burgess

Tony Burgess, former senior partner of Cheeswrights, passed away on March 17, 2006. Widely known and respected in the City of London and in Greek shipping circles, his loss was keenly felt.

At the request of the family there was to be no memorial service, but anyone wishing to commemorate Tony's life and work can make a donation towards the planting of oak trees in Tony's memory at Victory Wood, Kent. Please contact Darrell Oliver at Cheeswrights (doliver@cheeswrights.co.uk) for further details.

An extensive obituary appeared in the Daily Telegraph on 4 April and now his friend and colleague, Derek Saul, has contributed the obituary which appears on page two.



A J (Tony) Burgess

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The meaning of **authorised signatories** is also contained in section 44 of the Act, which provides:

“The following are authorised signatories for the purposes of subsection (2) –

- (a) every director of the company;*
- (b) in the case of a private company with a secretary or a public company, the secretary (or any joint secretary) of a company.”*

The Government had sought to introduce a register of authorised signatories for companies but, following extensive lobbying, this proposal was dropped during the final stages of the Act’s passage through Parliament.

Another important change in the bill is the abolition of the requirement that a **private company** have a **company secretary**, although it may choose to have one if it so wishes. The Act also seeks to clarify the law relating to the appointment of attorneys by limited companies and the execution of deeds and documents by attorneys so appointed.

We will be closely monitoring the implementation of the Act’s provisions and will keep our clients informed once a complete timetable for implementation has been agreed upon. Copies of the Act and accompanying notes will be available on the Office of Public Sector Information website at www.opsi.gov.uk and please speak to any Cheeswrights partner if you require further advice relating to the matters contained in this article.



Edward Gardiner

OBITUARY – A J (Tony) Burgess

Anthony Jack Burgess, who died at Stroud, Gloucestershire on 17th March last – Tony to all who knew him well – was born in Aldershot, Hampshire on 27th June 1925, the descendant of a long line of Romney Marsh sheep farmers. Educated at Lewes County Grammar School for Boys, he gained an Open Exhibition in History at Hertford College, Oxford in 1943. He served in the army as a Captain, Royal Artillery and on secondment to the Indian Army saw active service in South East Asia. He joined his college in 1948 on completion of national service and after graduating in 1951 entered into articles with Cheeswright, Casey and Murly, a firm of notaries established in the City of London in the middle of the eighteenth century. Tony served the seven-year period of apprenticeship prescribed for articled clerks to scrivener notaries, during which he studied civil, commercial and Roman law and notarial practice and extended his linguistic knowledge, acquiring the high degree of proficiency in European languages essential to the practice of a notary public of the City of London. In 1958, after obtaining his freedom of the City, he was admitted to practice as a notary and became a partner in the firm, which under his subsequent direction as senior partner of Cheeswrights came to enjoy the esteem and respect of business and maritime circles worldwide.

A pinnacle of the London notarial profession until his retirement in 2001, Tony enjoyed the distinction of being Master of the Scriveners’ Company from 1969 to 1970, and in 1992 was awarded a Gold Naval Medal, First Class, by the Greek Government for his services to Greek merchant shipping. But his profession was far from being his only interest: widely read in history and literature and an enthusiast for the plays of Shakespeare, Chekhov and Ibsen, he was also a great lover of classical music and opera and the author of *The Notary in Opera and The Notary and other Lawyers in Gilbert and Sullivan*. He was a keen golfer and a connoisseur of fine wine and malt whiskies. His abundant generosity in sharing these tastes with friends and associates, and above all his capacity for friendship and hospitality towards rich and poor alike, was proverbial.

He leaves a widow, Barbara, a nurse by profession, whom he married in 1949, three sons - one of whom, Jeremy, is a partner at Cheeswrights - two daughters and eleven grandchildren. Tony was enormously proud of his family and had great affection for all of them.

The United Kingdom Notarial Forum

Jeremy Burgess, a partner at Cheeswrights, regularly attends meetings of the UK Notarial Forum in his capacity as Honorary Secretary of the Society of Scrivener Notaries.

The United Kingdom Notarial Forum was established nearly fifteen years ago in order to provide a means whereby representatives of notaries public within the jurisdictions of England and Wales (both from the Society of Scrivener Notaries and the Notaries Society), Scotland, Northern Ireland, the Republic of Ireland, the Isle of Man and the Channel Islands, could meet and discuss matters of importance to the profession.

In recent years, the forum has met on average three times a year, and over the past year has had meetings in Edinburgh, London and Bury St. Edmunds, Suffolk.

These meetings have been useful in order to discuss and formulate common positions on a range of issues affecting the profession such as the Clementi review on the future of legal services and anti-money laundering guidance. The Forum has also provided a useful means of comparing the different ways in which notaries throughout the United Kingdom perform their notarial functions. For example, notarial representatives from the Republic of Ireland have recently welcomed guidance from the notaries of England and Wales and Scotland in the Forum regarding identification requirements for declarants when taking statutory declarations for use in other countries.

The Forum as a body has also been keen to foster links with the National Association of Civil Law Notaries, a body recently established in the United States in order to develop a civil law notariat, the aim of which is to go some way to reconciling the conflicting legal systems prevalent in Central America and the United States from a commercial perspective, and to help in facilitating the challenges and opportunities provided by the North American Free Trade Area (NAFTA).



Jeremy Burgess, Cheeswrights partner and Honorary Secretary of the Society of Scrivener Notaries.

Visit to Shanghai and Hong Kong

In October last year senior partner, Nigel Ready, accompanied by his wife Marisa, visited notaries in Shanghai before travelling to Hong Kong.

Notaries in China have played a central role in the development of a market-led economy there. The Chinese notarial system is based on civil law traditions and the China Notaries Association is a full member of the International Union of Notaries. In Shanghai, Nigel spent an afternoon visiting one of the larger notarial offices; in the evening he and Marisa were entertained by the President of the Shanghai Notaries Association to an elaborate dinner at the famous Peace Hotel on the Bund.



Nigel Ready with a senior official from the Shanghai Notary Public Office.

Hong Kong notaries public perform much the same function as their counterparts in England. The Scriveners' Company, the City livery company to which all Cheeswrights notaries belong, sets their examinations. These took place at the end of last year for over 150 candidates.

In Hong Kong, Nigel launched the Hong Kong Supplement to Brooke's Notary and gave a series of seminars on notarial practice. The visit also included a meeting with the Association of China Appointed Attesting Officers who officiate as notaries in Hong Kong in relation to documents to be produced in mainland China.



Nigel Ready at a meeting in Hong Kong with the President and other officials of the Association of China Appointed Attesting Officers.

Fact File – Notaries in The Russian Federation

There are two types of notary in the Russian Federation: State notaries and private notaries. Prior to the break up of the Soviet Union all notaries were State notaries and the profession was not held in particularly high regard. Almost all notaries were female, a situation that is changing gradually, although to this day the vast majority of Russian notaries are women. The system of private notaries was created in 1993 by the enactment of the “Basic Law on Notaries”. All private notaries are members of, and are regulated by, a local notarial chamber, which in turn is overseen by the Federal notarial chamber. They practise on a self-employed basis and the “Basic Law” requires them to maintain a notarial office, although this may be housed in the same premises as the offices of a firm of advocates (the Russian equivalent of our solicitors). The Basic Law further provides that private notaries are permitted to have client and other accounts at banking institutions, to employ staff and to retain income earned by offering notarial services. Private notaries are not permitted to set their own fees in relation to matters that by law require the intervention of a notary, as these are fixed by the State, but they are permitted to negotiate fees with clients for other work. By way of comparison, State notaries are regulated and employed by the State and they receive a State salary. In theory individuals and businesses may choose between the services offered by private and State notaries, although in some areas (including Moscow) there are in fact no State notaries left in practice. The range of services that a Russian notary may provide is defined in the Law “On the Notariat” and includes matters relating to inheritance, certificates of property ownership, notarised translations and copies, acceptance of sums of money and securities on deposit, bills of exchange and ship protests, to name but a few. There is one matter reserved to State notaries, which is the issuance of certificates of the right to inherit. Where there are no State notaries available this task is delegated to particular private notaries.

These days it is ever more important for Cheeswrights notaries to maintain contacts with overseas colleagues as we are frequently involved in quite complex areas of foreign procedural and substantive law. As was reported in our previous newsletter Cheeswrights has a well-established Russian department and recently I had the opportunity to visit the Federal Notarial Chamber and to meet the President of the Federal Chamber Evgeniy

Klyachin and the Chamber’s legal adviser Nadezhda Suchkova. An interesting exchange of information took place and both sides learned a good deal. The Chamber had some useful suggestions and observations, which we have incorporated into our Russian-language precedents and I was able to tell Mr. Klyachin and Ms. Suchkova about the international work of scrivener notaries, an area our colleagues in Russia, are keen to learn about.



Notaries in the Russian Federation was written by Alisa Grafton who is a scrivener notary at Cheeswrights and a Russian lawyer.

Notaries in Literature (1)

There are not many books in which notaries are the principal characters or which are set in notary's offices, although if one looks hard enough there are references to notaries in many major works of English literature, including Langland's "Piers Plowman" ("*Go gyve gold al aboute, And namely to the notaries, that hem noon faille*"), Chaucer's "The Parson's Tale" ("*Ware yow, questmongeres and notaries! Certes, for fals witnessyng was Susanna in ful gret sorwe and peyne, and many another mo.*"), Shakespeare's "The Merchant of Venice" ("*Go with me to a notary, seal me there your single bond*") and "Lucrece" ("*O comfort-killing Night, image of hell! Dim register and notary of shame!*"). Some might recall Mr Witherden, the notary in Dickens' "The Old Curiosity Shop" ("*a voice, supposed by the listener to be that of Mr Witherden the Notary, was heard to exclaim a great many times, 'oh, delicious!' 'oh, fragrant, indeed!'*") and possibly Adam Ewing, a fictional Californian notary and author of the journal which forms the outer shell of David Mitchell's recent Booker-shortlisted "Cloud Atlas". Connoisseurs of French literature may have noted that *le notaire* makes quite frequent appearances, Flaubert's "Madame Bovary" being a good example ("*Through an opening one can see a white house set behind a circular lawn ornamented with a Cupid, finger on lips; two cast-metal vases stand at either end of the steps up to the house; escutcheons of office glisten above the door. It is the notary's house and the finest in the county.*"). There are even a few books whose titles feature a notary: "The Notary" by Catherine Jinks, an Australian author (a word of warning, the subtitle of this novel is "What price lust?" – it is not a book for the faint-hearted or sensitive of mores), "Le notaire du Havre" written in 1933 by Georges Duhamel, a member of the *Académie française*, and "The Village Notary" by the Hungarian author József Eötvös (1813-1871) are the only such works known to me at present. I have seen references to a German book titled "Die Nase des Herrn Notar" (which translates rather awkwardly as "The Notary's Nose") by Edmond About although I have not yet been able to acquire a copy. There may well be others.

We recently came across a Russian novella called "The Notebook of an Assistant Notary" which not only features a notary as a central character, but is primarily set within the confines of a notary's office. The novel combines real situations in the notary's office with the private life of the notary's secretary, Sasha, the author of the notebook referred to in the title. As the story

progresses Sasha learns (as indeed does the reader) more and more about the notarial profession and by the end she has studied law, passed the State notarial examinations and been appointed as an assistant notary.

The novel's author, Nazira Shamba, wrote this book while herself working in a notary's office in Moscow. She based it on her own experiences in the hope that it would be of benefit not just to notaries, but to notaries' clients too.

Nazira graduated from the Faculty of Journalism at the Moscow State University and later from the Faculty of Law at the Russian Civil Service Academy. She has worked as a journalist and in various capacities in notaries' offices. Since 2005 she has had her own notarial practice in Moscow.

"The Notebook of an Assistant Notary" is just one of many books that Nazira has published. Her other publications include a number of more traditional literary works as well as, together with her husband, books covering legal topics from an artistic point of view such as "Artistic and Practical Commentaries" on Russian civil legislation and the Family Code. Future projects include "Artistic Jurisprudence", "Law for Fun" and "Law for Children".

Nazira has very kindly given me permission to translate "The Notebook of an Assistant Notary" and to make it available free of charge on our website to anyone interested in reading it. This project is currently at an early stage, but as work progresses the text will be updated.



Nazira Shamba, author of the novella *The Notebook of an Assistant Notary*.

Legal Services Bill Strengthens Role of Notaries

The Legal Services Bill produced in the wake of the Clementi review of the regulatory framework for legal services in England and Wales fully recognises the importance of the role of the notary as a core provider of those services. Under the existing proposals however, the traditional link with the Archbishop of Canterbury (who has appointed notaries since the reign of Henry VIII) will disappear. His role as “longstop” regulator will be taken over by the proposed Legal Services Board, although day to day regulation will remain with the Master of the Faculties. Interestingly, the Master of the Faculties (currently Sheila Cameron, QC) is an ecclesiastical appointment and this led to various questions being raised by the parliamentary committee which scrutinised the draft bill. However, it seems that the Government has remained firm in its proposal; Cheeswrights and, we believe, the majority of notaries in England and Wales would wish the Master of the Faculties to continue as the approved regulator, a role which she exercises with great efficiency coupled with respect for the traditions and, crucially, the independence of the profession.

Documentation for Germany – Andrew Claudet comments on likely pitfalls

Cheeswrights notaries are frequently called upon to certify documents for presentation to land and commercial registers throughout Germany. It is important to remember that each such register is administered by its local court (“Amtsgericht”). Practice varies between the different registers and consequently there is no uniform approach to documentation notarially certified and apostilled in England and Wales for use in Germany.

Difficulties are most likely to arise where documents for presentation to a register are signed in a representative capacity - for example by a director on behalf of a company or a person acting under a power of attorney. Such documents require very careful certification in order to meet the often stringent requirements of particular registrars. For example where a notary certifies the authority of a person or persons signing a document in a representative capacity, such as a power of attorney executed by two directors on behalf of an English company, German registrars will invariably require the notary to recite in some detail in his certificate the basis upon which he has ascertained the authority of the signatories. In the present example, this would include an inspection (generally on-line) of the records of the company as filed at Companies House (the companies registration office for England and Wales).

Additionally where documents are executed under power of attorney for presentation to a German land register, the registrar will require the notary to mention in his certificate that he has inspected the original power



Cheeswrights partner, Andrew Claudet, author of ‘Documentation for Germany’

of attorney, a copy of which may have to be appended to the notarial certificate.

If you require any specific advice on documentation for Germany or Austria please speak to Andrew Claudet.

Partner Profile: Andrew Claudet

Andrew comes from a linguistic background, his father having taught Latin and Ancient Greek. He studied French and German at Collingwood College, Durham, during which time he spent a year working in Austria.

After joining Cheeswrights in 1993 Andrew gained experience in the firm's shipping department, dealing mainly with the preparation of documentation in connection with the sale, purchase and financing of merchant ships and their registration under various flags.

Under the qualification rules in place when Andrew was a trainee notary it was customary for a candidate to spend up to one year of his articles working for an overseas lawyer or notary in order to familiarise himself with the legal system of the country in question and of course the foreign language itself. In keeping with Cheeswrights' long standing association with the

shipping industry Andrew spent most of his year abroad ('96-'97) working in Athens at the law office of Karatzas & Perakis (as it was then known), followed by three months with a firm of notaries in Hamburg. He still keeps in contact with the friends and colleagues he met in both those cities.

At the request of the Deutsches Notarinstitut, publishers of Notarius International, the official journal of the Union Internationale des Notariats (UINL), Andrew wrote the National Report on the notarial profession in England and Wales, which was published in volume 7 (2002) of that journal.

Outside the office he is a keen squash player who has regularly played at club level in the Middlesex and Surrey leagues. He is also a regular cinema-goer and motorcycling enthusiast.

NEWS IN BRIEF

Ruth Campbell was appointed notarial deputy of the Worshipful Company of Scriveners in July of this year. The Scriveners' Company has long been associated with the notarial profession in London and, as scrivener notaries, all Cheeswrights partners have passed the examinations in law and languages set by the Company. As an officer of the Company, Ruth will have an important role in ensuring that notarial activities remain central to the Company's purposes.

Iain Rogers has been appointed Education Officer both of the Worshipful Company of Scriveners and of the Society of Scrivener Notaries.

Nigel Ready was appointed by the British Institute of International Comparative Law to act as National Rapporteur for the United Kingdom in an EU-wide study on legalisations and apostilles conducted at the request of the European Commission.

Web address is www.biicl.org/legalisation/

Edward Gardiner attended a conference of the **Fédération des Associations de Notaires Européens (FANE)** in Brussels at the beginning of October. FANE is an association of European notaries which provides an opportunity to discuss matters of mutual concern to notaries practising in the European Union. Topics discussed included proposals on how to facilitate the mutual acceptance of notarial acts

throughout the Union and the visit also included a tour of the European Parliament building.

Nigel Ready was awarded a distinction by the Royal Photographic Society. You can see some of his images on the Society website.

www.rps.org/portfolios.php

Michelle Scott has joined Cheeswrights as a trainee notary. Michelle studied Italian and French at Durham University and holds a postgraduate diploma in law.



Cheeswrights partner Edward Gardiner (centre) addressing a meeting of European notaries in Brussels together with fellow notarial guest speakers from Spain and Belgium.

Ruth Campbell reports from Posidonia 2006

One of the highlights of the shipping calendar is the biennial Posidonia trade exhibition held in Greece in the first week of June, when the great and the good of the shipping world meet and network in great style.

Cheeswrights, which works closely with the shipping industry, is usually represented by one of its partners. This year I attended for the first time and was suitably impressed. Shipping has prospered in recent years (largely on the back of booming Chinese imports) and this was reflected in the high attendance by overseas delegates and the lavishness of the functions.

According to official figures, more than 1600 exhibitors from 80 countries were present at Posidonia this year and

attendance had grown by 15% over previous years. Banks specialising in shipping finance, shipbrokers, the marine insurance industry and maritime law firms represented maritime London. Classification societies, shipping registers and, most importantly, ship owners were all there in force, as were many representatives from shipyards in Korea, Japan, China and Singapore.

Married to the serious business intention is a hectic social programme of receptions, cocktails, lunches and dinners. One of the highlights of my week was a day sailing in the Saronic Gulf on board the "Thelginos", a Scottish-built single-masted cutter chartered by a leading London law

firm. Posidonia truly offers an unrivalled combination of the business and social sides of shipping.



Ruth Campbell



Photograph © Nigel Ready

The National Maritime Museum, Greenwich, for which Cheeswrights is a long term corporate sponsor – web link to the Museum is www.nmm.ac.uk. Canary Wharf, where Cheeswrights has its Docklands office, provides a spectacular backdrop.

Cheeswrights Website

We have recently updated our internet website, www.cheeswrights.co.uk, where you will find up to date information relating to our services together with an informative worldwide list of legalisation requirements. We hope you will visit our site and if you have any comments that you would like to share with us, we look forward to receiving them.

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We value your opinion, so tell us what you think about our newsletter. Please send your comments to Linda Collins at Philpot Lane. E-mail to: lcollins@cheeswrights.co.uk

In our last edition we asked if anyone could place this monument, reputedly London's smallest!

Here is another photo of it – its location is opposite our offices.

A bottle of champagne is offered to the first person who comes up with the history of this monument to 'two mice'.

