

23—05 P U D T

Sub Agent

1. Definition

(1) A sub agency is that an agent appoints another agent under his/her name to represent a principal for having the newly appointed agent act within authority. Another agent appointed by the agent is called a sub agent.

(2) Authority to appoint a sub agent (Right to appoint a sub agent) is not necessarily a part of authority of representation, but separate authority given by permission of a principal or directly given by the law.

2. Authority of Appointing Sub Agent

(1) Authority

A. Voluntary agent

A voluntary agent may not appoint a sub agent without special authorization (Patent Act Article 9, Utility Model Act Article 2-5(2), the Design Act Article 68(2), Trademark Act Article 77(2)).

Under the Civil Code, a voluntary agent may not appoint a sub agent in principle without permission of a principal or unavoidable reasons to do so (Civil Code Article 104).

B. Legal agent

A legal agent has become the agent not based on the intention of a principal. Such authority is generally extensive and may not resign freely. It often happens that the principal does not have capacity of consent, therefore a legal agent always has authority to appoint a sub agent and may appoint a sub agent on its own responsibility (Civil Code Article 105).

When there is a supervisor of guardian, it is necessary to have consent of the supervisor (Patent Act Article 7(3), Utility Model Act Article 2-5(2), Design Act Article 68(2), Trademark Act Article 77(2)).

3. Extinction of Authority of Sub Agent

Extinction of authority of sub agent occurs due to general causes of extinction under the Civil Code Article 111 or termination or cancellation of delegation or authorization to an agent or a sub agent, except when the authority of sub agent is not extinct according to the regulations of the Patent Act Article 11 (Utility Model Act Article 2-5(2), Design Act Article 68(2), Trademark Act Article 77(2)).

Patent procedures are considered similar to judicial procedures provided by the Code of Civil Procedure, and it is understood that authority of representation of a sub agent does not extinct upon death of an agent who has appointed the sub agent (→ Formality Examination Manual 02.26). From the same perspective, it is also understood that authority of representation of a sub agent does not extinct automatically upon resignation or dismissal of an agent.

4. Dismissal by a Principal

It is understood that a principal may also dismiss a sub agent, since a sub agent has the same rights and obligations as those of an agent to the principal and the third party (Civil Code Article 106(2)), and has the duty of care of a prudent manager in compliance with the main purport of the delegation (Civil Code Article 644) (→ Formality Examination Manual 02.26).

5. Authority of Sub Agent

A sub agent shall represent a principal with respect to any act within the scope of its authority (Civil Code Article 106(1)), and shall have the same rights and duties as an agent to the principal and the third party (Civil Code Article 106(2)).

6. Death of Sub Agent (→ 23-11)

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