

## **23—05 P U D T**

### **Sub Agent**

#### 1. Definition

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

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

#### 2. Authority and Responsibility of Appointing Sub Agent

##### (1) Authority

##### A. Voluntary agent

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

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

##### B. Legal agent

A legal agent has become the agent not based on the person's will. Such authority is generally extensive and may not resign freely. It often happens that the person does not have capacity to permit, therefore a legal agent always has an authority to appoint a sub agent and may appoint a sub agent on its own responsibility (the Civil Code Article 106).

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

## (2) Responsibility

### A. Voluntary agent

An agent who appoints a sub agent shall be responsible for compensating for damages suffered by the person only if the agent fails to appoint and supervise the sub agent (the Civil Code Article 105(1)).

However, when an agent appoints a sub agent in accordance with the nomination by the person, the agent shall be responsible only when the agent fails to notify the person or dismiss the sub agent knowing that the sub agent is not qualified or untrustworthy (the Civil Code Article 105(2)).

### B. Legal agent

Responsibility of a legal agent who appoints a sub agent shall extend to, in principle, all acts of a sub agent regardless of negligence for the appointment and supervision of such sub agent (the Civil Code the first sentence of Article 106).

However, if there is any unavoidable reason, a legal agent shall be responsible only for the appointment and supervision of the sub agent (the Civil Code the proviso to Article 106).

## 3. Extinction of Authority of Sub Agent

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

## 4. Dismissal by the Person

It is understood that the person may also dismiss a sub agent, since a sub agent has the same rights and obligations as an agent to the person and the third party (the Civil Code Article 107(2)), and has a duty of care of a good

manager compliance with the purport of the delegation ( → Formality Examination Manual 02, 26 (Representation -7).

#### 5. Authority of Sub Agent

A sub agent shall represent the person with respect to any act within the scope of its authority (the Civil Code Article 107(1), and shall have the same rights and duties as an agent to the person and the third party (the Civil Code Article 107(2)).

#### 6. Death of Sub Agent (→ 23-11)

(Revised Feb 2015)