



Kung Hei Fat Choy

Transaction Advisory: Agency Relationship

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Agent is a person who has power to act on behalf of another person, the principal, and to affect the principal's legal liability. There is usually a consensual agreement on the power of an agent, but the power and the limitation might not be known to the outsiders. Take the following examples:

- (a) M is appointed as the managing director of a company ("C"), but his authority is not expressly defined. It will be implied that he has all the authority that is usual for a managing director to have – i.e. Actual implied authority.
- (b) M is appointed as the managing director of C, but his authority is expressly limited to enter into contracts worth not more than \$200,000 without the approval of the board of directors. If M, without approval, makes a contract worth \$400,000 with third party ("T") who is unaware of the limitation, C will still be bound by the contract as M appears to have the authority as a managing director usually has – i.e. Apparent authority.
- (c) M is not expressly appointed as managing director, but is allowed by C to act as he had been appointed.

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If he deals with T who is unaware of the true position, C will still be bound by the contract. This is because M has the apparent authority and the scope of that authority is usual for a managing director. Alternatively, M can be treated as impliedly appointed to the post of managing director. His authority is implied and its scope will be what is usual for a managing director.

It is a misconception that apparent authority would solely affect staff or employee holding an executive title. In a case, where the general manager of finance and administration had usual authority to sign letters on behalf of the bank to the plaintiffs, the bank acquiesced to his act in doing so. Later on, the manager had made an offer to compromise which he had no actual authority to do so. The court held that the bank was bound.

Where the principal has previously held out the agent as having authority to enter a certain type of transactions or to act for a specified period, the agent may, depends on the representation he made, continue to have apparent authority until the notice of the termination brings to the third party dealing with the agent. (Reference: *Hong Kong and Shanghai Banking Corp. Ltd v. Jurong Engineering & Ors [2000] 2 SLR 54*)

China Update

The Law on Labor Dispute Mediation and Arbitration was passed on 29 December 2007 and shall be effective on 1 May 2008. It provides the new mediation and arbitration process for handling labor disputes. For simple cases such as involving a total sum less than 12 month wages; working hours; rest days; social insurance, the award will be effective immediately after hearing unless the complainant raised legal action or the employing entity applied for dismissal.

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