

# Determination of Apparent Authority in Chinese Hong Kong Law: A Comparative Law Perspective

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## Abstract

Six years since the 2019 release of the Outline Development Plan for the Guangdong-Hong Kong-Macao Greater Bay Area by the Central Committee of the Communist Party of China and the State Council, the Greater Bay Area has entered a phase of rapid economic development. Its economic scale now surpasses that of the New York Bay Area and San Francisco Bay Area in the United States, ascending to the top tier of global bay areas. In civil and commercial activities, apparent authority plays a critical role in safeguarding transactional security and protecting the legitimate interests of bona fide counterparties, leading to its frequent occurrence. Consequently, it has become a focal point in adjudicating civil and commercial cases in both Chinese Mainland and Chinese Hong Kong (Hong Kong) courts. Although both legal systems incorporate the fundamental structure of apparent authority, significant differences in legal traditions and frameworks between the two jurisdictions often create difficulties for Chinese Mainland's entities in identifying Hong Kong civil and commercial actors. This necessitates reliance on foreign law ascertainment systems for clarification. This article will focus on the basic framework of the apparent agency system in Hong Kong, introducing the theoretical foundations and legal provisions of apparent authority under Hong Kong law. From a comparative law perspective, it will analyze the differences between the apparent agency systems in Chinese Mainland and Hong Kong, while proposing specific institutional frameworks for Chinese Mainland's courts to properly identify Hong Kong-style apparent agency in civil and commercial cases.

## Keywords

Apparent Authority, Chinese Hong Kong Law, Interregional Private Law

## 1. Theoretical Foundations of Apparent Authority in Hong Kong Law

The doctrine of apparent authority, originating from the civil law traditions of continental legal systems, constitutes a form of agency under juridical acts. In civil law jurisdictions, apparent authority is designed to protect third parties' reliance interests. Even when actual agency authority has ceased to exist or never existed at all, third parties may reasonably believe that agency power has been granted based on representations presented to them (Brox & Walker, 2019: pp. 269-272). Chinese Mainland's Civil Code Article 172 codifies this doctrine: "*Where an actor still performs an act of agency without a power of agency, beyond his or her power of attorney, or after his or her power of attorney terminates, the act shall be valid if the opposite party has reason to believe that the actor has the power of attorney*". This provision encompasses three typical forms of apparent authority, all of which share the essential elements that the agent possesses the appearance of authority and the third party is acting in good faith without fault. Hong Kong law—as part of the common law system—also recognizes apparent authority (Some scholars also refer to it as “ostensible authority” (Michael, 1968: p. 681), derived from English law. This concept operates distinctly from “actual authority” as an independent category of agent power. While apparent power often coexists with actual authority and shares similar scope, their legal foundations differ fundamentally (Meihuan, 1996: p. 111):

- Actual authority arises from genuine consent (i.e., valid delegation), whereas apparent power rests on estoppel—though the agent lacks actual power, the principal is estopped from denying such power as perceived by third parties. Thus, apparent authority constitutes power recognized through external perception.

## 2. Structural Framework of the Doctrine of Apparent Authority in Hong Kong Law

Hong Kong's legal system comprises statutory law and case law. According to statutory research findings (<https://www.elegislation.gov.hk/>), Hong Kong's current statutory laws do not systematically codify the “apparent authority” regime. Instead, fragmented references appear only in specific provisions of:

- **Cap. 622 Companies Ordinance.** *Addressing scenarios where agents with apparent authority execute documents or receive payments on behalf of companies.*
- **Cap. 38 Partnership Ordinance.** *Governing analogous acts by partners under apparent authority.*

These statutory provisions solely regulate concrete applications of apparent authority (e.g., contract execution, fee collection) and are inapplicable to the present case. Therefore, the “apparent authority” regime must be traced back to case law.

## 2.1. Relationship between Apparent Authority and Contractual Validity

The Hong Kong courts have clarified in judgments that “apparent authority” affects contract validity and has been established as a common law principle through subsequent precedents.

### 1) Hong Kong Court of First Instance’s 2008 Judgment on “Apparent Authority”

In *Akai Holdings Ltd v Thanakharn Kasikorn Thai Chamkat (Mahachon)* (China, Hong Kong High Court, 2008), the Court of First Instance provided a detailed interpretation of “apparent authority”:

- “Apparent authority” refers to the power that a third party reasonably believes an agent possesses. It focuses on the relationship between the third party and the principal, such that even if the company has not granted actual authority to the agent, it may still be bound.
- Apparent authority arises from the principal’s declarations or acts of authorization. If the principal permits or indicates through declarations/acts that the agent may act on their behalf, the agent’s actions bind the principal, even if no actual authority exists.
- Authorization acts (e.g., appointing an agent to manage business operations) are the primary basis for apparent authority.
- If the third party’s belief in the agent’s authority arises not from the principal’s authorization but from the agent’s self-serving actions (e.g., contracting in the principal’s name without authorization, with the third party’s awareness), the principal bears no liability.

### 2) Hong Kong Court of First Instance’s 2015 Judgment on Contract Validity Under “Apparent Authority”

In *TS Office System Ltd v Wing Kee Produce Ltd* (China, Hong Kong Law Reports and Digest, 2015), the court held:

- Apparent authority creates an “ostensible authorization” that must be accurately communicated to the counterparty. This may manifest through formal authorizations (e.g., appointment letters) or customary practices (e.g., use of company chops for contract execution).
- If the ostensible authorization is unambiguous, the counterparty need not prove its validity. The company is estopped from denying the agent’s authority. Consequently, contracts executed under apparent authority are valid if they meet essential requirements.
- If the scope of apparent authority is unclear, the court examines factual circumstances (e.g., transaction history, industry norms) to delineate the permissible range of contractual obligations.

## 2.2. Essential Elements of the Apparent Authority Doctrine

Under the principle of *stare decisis*, legal rules and principles established in judgments of English courts also serve as authoritative precedents for Hong Kong

courts. In the 1964 case of *Freeman and Lockyer v Buckhurst Park Properties (Magna) Ltd.* (United Kingdom, 1964), the Court of Appeal of England and Wales (EWCA) established four constituent elements of the “apparent authority” doctrine:

- 1) There must exist declarations or acts by the principal indicating that the agent has authority to execute enforceable contracts on its behalf.
- 2) Such declarations or acts must emanate from persons with “actual authority” within the company—individuals empowered to make decisions on general corporate matters or contract-specific issues.
- 3) The third party must have entered into the contract based on reasonable reliance on the principal’s declarations or acts, demonstrating actual belief in the agent’s authority.
- 4) The company must possess the legal capacity to enter into the type of contract in question and to delegate contractual authority to agents. However, with the abolition of the *ultra vires* doctrine post-*Freeman*, the fourth element has become redundant as corporate charters no longer restrict contractual capacity.

Regarding the first and second elements, Mr. Justice Lawrence of the Hong Kong Court of First Instance held in *Honor Engineering Ltd v Hing Fat Machinery & Electrical Engineering Co Ltd* (China, Hong Kong District Court, 2015):

“The defendant’s permission for Mr. Wu to use the company’s chops and letterhead constituted a representation to the plaintiff that Mr. Wu was authorized to act on the defendant’s behalf, including the issuance of purchase orders, where the use of chops alone was sufficient.”

Regarding the third element, according to the rule established in *Thanakham Kasikorn Thai Chamkat (Mahachon) v Akai Holdings Ltd.* (China, Hong Kong High Court, 2008), the third party’s reliance must not be dishonest or irrational. Such circumstances include turning a blind eye and being reckless.

Additional principles from Diplock LJ in *Freeman and Lockyer v Buckhurst Park Properties (Magna) Ltd.*:

- 1) Apparent authority creates a legal relationship where the principal is bound by the agent’s acts if the principal has made representations (e.g., appointing the agent to manage business operations) that lead third parties to believe in the agent’s authority. The agent’s actual authority is irrelevant, and the principal cannot deny the agent’s authority even if unaware of the agent’s existence.
- 2) Authorization may take various forms, including appointing agents to manage corporate affairs. Such acts signal to third parties that the agent holds “actual authority” to contract.
- 3) For apparent authority to arise, representations must come from persons with “real authority” within the company, as corporations can only act through agents.

### 2.3. The Turquand Rule

When a director exceeds authority granted by the company’s constitution to exe-

cute a contract, whether the company is bound depends on whether the third party knew or ought to have known of the excess. The Turquand Rule, established by the Court of Exchequer in *Royal British Bank v Turquand* (1856), states:

“A person transacting with a company’s directors is entitled to presume that the board has granted the authority the director claims to possess.”

**Core Principles of the Turquand Rule (Prentice, 1991: pp. 14-18):**

1) Every external party contracting with a company is entitled to assume that internal rules and procedures have been complied with. Accordingly, even if the internal rules and procedures have not been followed, the company will still be bound by the contract. Specifically, in cases where a contract is concluded with a director, the counterparty is entitled to presume that the company’s internal rules and procedures for granting the director authority have been properly observed. The company cannot rely on non-compliance with its internal rules and procedures as a defense to avoid contractual obligations. The counterparty must act in good faith.

2) The Turquand rule shall not apply where the counterparty acts in bad faith.

3) The Turquand rule shall not apply where the counterparty can ascertain through the company’s public documents whether the internal rules and procedures have been complied with.

In addition to the “Turquand Rule” established by the aforementioned case law, Section 117 of the Companies Ordinance also provides explicit provisions regarding directors’ representation of the company in external dealings:

**117. Transaction or act binds company despite limitation in articles etc.**

1) *Subject to section 119, in favour of a person dealing with a company in good faith, the power of the company’s directors to bind the company, or authorize others to do so, is to be regarded as free of any limitation under any relevant document of the company.*

2) *For the purposes of subsection (1)—*

*a) a person deals with a company if the person is a party to any transaction or any other act to which the company is a party;*

*b) a person dealing with a company is presumed, unless the contrary is proved, to have acted in good faith;*

*c) a person dealing with a company is not to be regarded as acting in bad faith by reason only of the person’s knowing that an act is beyond the directors’ powers under any relevant document of the company; and*

*d) a person dealing with a company is not required to inquire as to the limitations on the power of the company’s directors to bind the company or authorize others to do so.*

3) *In this section—relevant document, in relation to a company, means—*

*a) the company’s articles;*

*b) any resolutions of the company or of any class of members of the company; or*

*c) any agreements between the members, or members of any class of members,*

*of the company.*

Therefore, pursuant to Section 117 of the Companies Ordinance and the Turquand Rule, where a counterparty enters into a contract with a director, the director shall be presumed to have authority to act on behalf of the company unless evidence to the contrary is established. The company cannot rely on non-compliance with its internal rules and procedures as a defense to avoid contractual obligations.

### 3. Differences between Hong Kong's Doctrine of Apparent Authority and Chinese Mainland's Doctrine of Apparent Authority

#### 3.1. Key Differences in the Two Legal Systems

As previously discussed, apparent authority in Hong Kong law refers to a situation where:

- A principal, through words or conduct, represents to a third party that an agent possesses authority to act on their behalf. If the third party relies on this representation to establish a legal relationship with the agent, the principal becomes bound by the agent's acts as if prior authorization had been granted. While this doctrine shares functional similarities with Chinese Mainland's doctrine of apparent authority, their legal structures and essential elements diverge significantly.

#### Comparative Analysis:

Apparent Authority in Chinese Hong Kong Law	Apparent Authority in Chinese Mainland's Law
1) Representation or conduct by the principal indicating the agent's authority to enter into enforceable contracts.	1) The actor has no authority to act as an agent or, exceeds the scope of authority or, the authority has terminated—namely, the actor was never granted authority from the outset or, the actor was granted authority but exceeded its scope or, the actor previously had authority which has now ceased.
2) Declarations or acts by persons with actual authority.	2) The actor has the appearance of authority, and the third party has formed a reasonable reliance on the actor's authority, namely the third party to be acting in good faith and without fault (Under Chinese law, fault often emphasizes a person's fault in causing the damaging consequences) (Li, 2023: p. 930).
3) Third-party reliance on such representations.	3) The third party and the actor have performed a civil juristic act, such as sign a contract.
4) No requirement for the third party's knowledge of lack of authority.	4) The actor bears attributable liability, meaning the actor's words or conduct involve culpable misrepresentation that leads the third party to reasonably believe the actor possesses authority.

Through comparison, it can be concluded that “apparent authority” and “apparent agency” share multiple similarities in their constituent elements. Both require the objective existence of a manifestation of authority and reasonable reliance by the third party. The main difference lies in the methods of determining authority manifestation and reliance.

A core feature of Hong Kong’s “apparent authority” rules is that the principal’s actions (words, conduct, or position assignment) lead the third party to believe in the agent’s authority. In contrast, Chinese Mainland places greater emphasis on the actor’s words or conduct misleading the third party into reasonably believing that the actor possesses authority (Li, 2023: p. 132). Despite differences in determination methods, circumstances constituting “apparent authority” under Hong Kong law often also constitute “apparent agency” under Chinese Mainland’s law.

### 3.2. Determination of Hong Kong’s Apparent Authority by Chinese Mainland’s Courts

The views of Hong Kong courts on “apparent authority” have been recognized by Chinese Mainland’s courts in similar cases. In *Guangdong Kingboard Laminates Sales Co., Ltd. v. Weishuo Electronics (Shenzhen) Co., Ltd.* (China, Shenzhen Qianhai Cooperative Zone People’s Court, 2018), the Shenzhen Qianhai Cooperative Zone People’s Court held:

“In transactions between Chongji Circuit Co., Ltd. and Zhongxin Laminates Co., Ltd., the small round seal was used in contractual documents without the director’s signature... Zhongxin Laminates Co., Ltd. and the Plaintiff had reason to believe the seal represented Chongji Circuit Co., Ltd.’s intent... Zhang Lili, as manager and business liaison, was deemed to have authority, constituting apparent agency. The ‘Credit Assignment Agreement’ was binding on Chongji Circuit Co., Ltd.”

Based on these precedents, where an agent has obtained “apparent authority” from the principal, it may conclude contracts within that scope, with consequences borne by the principal. The elements include:

- 1) Representation or conduct by the principal or key personnel.
- 2) Third-party reliance on such representations.

Additionally, Section 117 of the Companies Ordinance and the Turquand Rule allow presumptions of authority when dealing with directors, unless evidence to the contrary exists.

### 3.3. Pathways for Chinese Mainland to Standardize the Recognition of Hong Kong Apparent Authority

Given inconsistent standards among Chinese courts, the following solutions are proposed:

#### 1) Judicial Interpretations

- Define constituent elements, legal consequences, and applicable law for apparent authority.

- Mandate Chinese Mainland’s law application in cases of malicious abuse.

## 2) Judicial Cooperation Mechanisms

- Establish pilot programs in key regions (e.g., Shanghai, Shenzhen).
- Define scope (constituent elements, liability) and enable mutual recognition of judgments.

## 3) Joint Issuance of Guiding Cases

- Publish cases clarifying:
  - 1) Factual background and applicable law.
  - 2) Judgment outcomes (with anonymized details).
  - 3) Significance for future cases.

## 4. Conclusion

In the regulatory framework of agency law in Hong Kong, “apparent authority” serves as a crucial rule for determining the validity of corporate acts. This concept bears similarities to Chinese Mainland’s systems of “apparent authority”, with the primary distinction lying in the methods of identifying the appearance of authority and establishing the third party’s reasonable reliance.

The doctrine of apparent agency addresses the fundamental issue of balancing private autonomy with the protection of third-party reliance interests. In judicial practice, it often gives rise to significant controversies, as the determination of apparent agency actions heavily relies on judicial discretion. Consequently, court rulings on such matters frequently exhibit unpredictability. This is evident in Chinese Mainland’s courts’ current approach to adjudicating apparent agency cases under Hong Kong law, where a unified standard has yet to be established. Such legal uncertainty severely impacts the vitality of economic development in the Greater Bay Area and hampers the efficient flow of capital and other essential factors.

Therefore, establishing a consistent set of criteria for identifying apparent agency undoubtedly represents a critical step toward enhancing economic dynamism in the Greater Bay Area and improving its business environment. To address this issue, Chinese Mainland’s courts may consider implementing measures such as issuing judicial interpretations, refining judicial cooperation mechanisms, and publishing guiding cases. These efforts aim to safeguard legitimate interests of the parties involved and foster the robust growth of the Greater Bay Area economy.

## Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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