An agent needs express authorization to appoint a sub-agent in China

Description

This is a just a reminder to foreigners who may issue a power of attorney to their Chinese agents in dealing with affairs in China.

In the course of advising a few American three individual clients on their inheritance of a Chinese real property, I realized that it is worth a brief post on the blog.

Among the three inheritors, one of them has authorized the other two brothers to act in his behalf in inheriting the Chinese property. Because of unexpected trouble in the process, they need to appoint me as their attorney-in-fact to act for them in communicating with local authorities on land grant fee issue. The two authorized brothers want to know whether only they two can authorize me to act on behalf of their three brothers as the other brother has already authorized them to act on behalf him.

Since the agency between the brothers and me is to be conducted in China, the governing laws relating to this agency is Chinese laws. Whether the two brothers can authorize me to act on behalf of third brother depends on whether the two brothers have been expressly granted the power to authorize a sub-agent. In case the POA from third brother to the two brothers is silent on appointing a sub-agent, such two agent brothers shall have no power to appoint a sub-agent for the third brother because in Chinese laws, an agent is expected to execute the authorized powers on their own.

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Of course, this post does not mean that you should give the power to appoint sub-agent to your agent. Instead you should be very prudent in granting this sub-agent appointing power.

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