

# A Study on Legal Issues of the Circulation of Chinese Rural Land Contracting Management Right

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## ABSTRACT

This paper takes the legal problem of the transfer of rural land contract management right as the research object. Firstly, it summarizes the concept, current characteristics and development trend of the transfer of rural land contract management right. Secondly, it discusses the legal problems existing in the legal system of the transfer of land contract management rights in China. From these loopholes, it is found that it is necessary to push the land transfer system forward. Therefore, the author believes that more safeguards need to be established. For example, it is possible to take good security measures from the peasant groups themselves and give them a guarantee similar to the urban pension insurance system. Then it considers the legal defects of the system itself and the contradictions that will occur in the process of policy implementation and gives corresponding solutions. Also, the author puts forward his own views by comparing, analyzes relevant land system in developed countries, and summarizes the experience of land circulation system suitable for China. Finally, the paper puts forward some suggestions from the perspective of improving the legal issues of the transfer of land contracting and management rights in China.

**Keywords:** *land contractual management right, circulation system, circulation mode, protection agency*

## I. INTRODUCTION

China has undergone a development process from rural land to prohibition, restriction and opening. We have tasted the sweetness of open land development from the beginning of the gradual family contract responsibility system, and now we advocate the rural land contract management right circulation system. Land is closely related to our lives, especially for the majority of farmers, land is equivalent to raising their mothers. Therefore, the focus on land issues can fundamentally solve the quality of life of farmers. This shows that it is particularly important to protect the basic rights of farmers. At present, China's relevant laws and regulations are not perfect, and the existing laws and regulations are relatively fragmented, and it is still difficult to reach the implementation stage. Therefore, exploring the legal system for the transfer of rural land contractual management rights is a key to the current solution to the land development process. The law is an integral part of the social superstructure and a manifestation of economic development requirements. A good law can sum up the achievements of economic development in a timely manner and promote economic development. Secondly, the various land conflicts that have emerged in the current social situation have also hindered the development of rural land in China. Many farmers are reluctant to actively participate in the

transfer of rural land contractual management rights, and this problem also needs to be resolved reasonably and effectively. The system of transfer of rural land contractual management rights is an open system. The purpose of this system is to promote rural land to obtain maximum benefits under limited conditions, and to promote the large-scale and industrialized cultivation of rural land. Wasteland wastes resources are so large that it can improve the living standards of farmers and even the economic level of the entire society. With the continuous development of society, one's power is always limited. The development of scale and industrialization is the trend of social and economic development. Adhere to the core of the rural land contracting management right transfer system, and try to improve the social problems that the system may bring and the real interests of the peasant groups behind a better security system.

## II. OVERVIEW OF CHINA'S LAND CONTRACT MANAGEMENT RIGHT CIRCULATION SYSTEM

### A. *The concept of land contract management right in China*

Article 125 of the Property Right Law stipulates the specific content of the right to land contractual management: "The owner of the land contractual management right has the right to possess, use, and gain

the cultivated land, forest land, grassland, etc. which he manages in accordance with the law. Agricultural production such as animal husbandry." Therefore, the right to land contractual management also refers to the ownership of rural land ownership and the purpose and principle of rural land use still not changed, but only the transfer of some rights in rural land that can be separated from the nature of property rights to others. According to the provisions of this article, we can also understand that the main body of the land contract management right refers to agricultural producers, that is, people who use land to engage in agricultural production activities such as cultivating crops, planting forest trees, and raising animals. Other people's use of land for other purposes for circulation cannot be established as the land contracting management right stipulated in the Property Law. The rural land here refers to the forest land, grassland, etc. that are owned by the state and collectively organized by farmers. Therefore, legal regulations also make clear that people who use rural land for other purposes than agricultural production for other purposes cannot establish the right to land contractual management and cannot enjoy special benefits for illegal purposes.

*B. The status quo and characteristics of the transfer of land contracting management right in China*

General Secretary Xi Jinping paid close attention to rural development planning and rural revitalization strategies. In the report of the 19th National Congress of the Communist Party of China, the spirit of rural reform is as follows: rural reform and development should focus on whether the rural system is perfect, and the government must first play a guiding role to perfect the basic rural management system and push the reform forward again.

The status quo of China's current transfer of rural land contractual management rights: legal regulations are not yet complete. First, regarding the nature of land contractual management rights, many scholars have previously debated whether its nature is a creditor's right or a property right. But after the property right law stipulated the right to land contractual management, this argument basically reached a common understanding. The land contracted management right belongs to the real right, that is, the usufructuary right. Second, the imperfect land contract management right system. Land has local characteristics, and land problems in different regions and climates are very different. Therefore, if we have a single institutional norm, we will certainly not be able to cover most of the land issues. More problems still exist, and the role of sound systems is minimal. Scholars also have different opinions here. Third, since the reform and opening up, land issues have been valued and improved, and the importance of land transfer has gradually emerged. Up to now, China's research on the transfer of rural land contracted

management rights has entered a very broad stage, and the existing laws and regulations have not yet made the latest breakthrough in the study of the rural land contracted management rights transfer system. Most scholars believe that new and more detailed regulations are needed to make the circulation clearer and more in line with the development trend of the times, and try to reduce the constraints of farmers in the circulation process.

The legal characteristics of the transfer of rural land contractual management rights in China are as follows: First, it is premised on the effective existence of land contractual management rights of the nature of property rights. For example, except for the contractual management right acquired through family contracting, after acquiring in other ways, the acquirer cannot directly own the property right of the land, and it must be registered to be an effective business contract with property rights on the land. Second, no change in the nature of rural land ownership. No matter how the land is transferred, its ownership will not change. Third, the agricultural use of contracted land cannot be changed. The use of land is a matter of principle that we must pay attention to when transferring. Land is the people's grain depot. If the land deviates from its main use, it will be a disaster for the people. Fourth, the transfer of the right to land contractual management must follow the voluntariness of farmers. The owner of the right to the contractual management of land can voluntarily choose whether to circulate it or not and how to circulate it. Fifth, the time limit for the transfer of land contractual management rights is legal. Sixth, the contract for the transfer of land contractual management rights is an important proof of disputes between the two parties. Seventh, the subject of the transfer of land contractual management rights is specific.

### **III. PROBLEMS IN THE LEGAL SYSTEM FOR THE TRANSFER OF LAND CONTRACTING MANAGEMENT RIGHT IN CHINA**

*A. Restricted circulation of rural land contractual management rights*

First of all, there are two types of land contracting in China's rural areas: the first type is the property ownership of the land contracting management right directly obtained through family contracting; the second type is the land contracting management right obtained by other means and the property is effectively obtained after registration Right ownership. The land contractual management rights acquired by these two methods can be transferred. We have also undergone major changes in the course of development of the transfer of rural land contractual management rights in China. From the earliest prohibition, the restriction of transfer to the

current expansion of open circulation, we have found that the current transfer of land contractual management has gradually been recognized. Secondly, it is not clear how to transfer, and the boundary of which transfer method to use is not clear. Although China has issued laws that stipulate the content of the transfer method, it has not given a clear attitude to the connotation of the transfer method and the method and limit of use. There are still most farmers in China who do not know how to choose the method of circulation and how to carry out the circulation correctly in this way.

The way to transfer the contracted management right of rural land in China: First, subcontracting is a transfer method that transfers the land use right without changing the original contracting relationship. Second, leasing is a circulation method that does not change the original contractual relationship and leases land use rights to others for use. Third, transfer is a circulation method in which the contractor agrees to transfer the management right to others. Fourth, swap is a circulation method of exchanging the land contracted and operated by each of them. Fifth, shareholding is a circulation method that converts land contractual management rights into equity and operates in a joint-stock company model and a cooperative model. This method is relatively new, and gains benefits through dividends. Sixth, mortgage is a circulation method that does not change the current owner of the land, and regards the land management right as a security mortgage.

Although the current laws in our country have made some regulations on the circulation of land contractual management rights, these regulations are very chaotic. For example, the main body of each method is different, chaotic and complex. Whether the circulation needs to be registered is different, and the regulations are scattered and difficult to sort out. The regulations are vague, and farmers will inevitably encounter various problems in the process of use. In addition, the current legal regulations are not comprehensive on the types of circulation methods, and the regulations on other methods are ambiguous, farmers cannot use them, and there is no guarantee that there is no predictable liability risk. As a result, farmers only know that they can transfer, but they do not understand how to transfer, with whom they can transfer, and how to transfer is a legal transfer. In addition, there are also unscientific aspects of the six prescribed circulation methods.

*B. Issues: land transfer legislation, imperfect justice, lack of transfer management and service guarantee*

At present, most of the legal provisions for the transfer of land contractual management rights in China come from the "Land Contract Law", "Circulation Management Measures", and "Property Law". However, most of the provisions on the transfer of land

contractual management rights in these laws and regulations are relatively general, and there is no systematic theoretical system, and there are many conflicts with practical life. With the development of society and economy, there is a need for a policy to guide the advancement of farmers' land system.

The transfer of the right to land contractual management in China is based on the property rights. During the transfer, a written contract is required to regulate the rights and obligations of both parties. However, there is currently no clear law in our country that stipulates the normative nature of such contracts. Most farmers do not have the consciousness of signing a contract, and they cannot get help if there is a problem. The dispute between the two parties cannot resolve the deadlock. Over time, frequent contradictions will inevitably dampen the positive attitude of farmers to transfer their land. If there is a standardized circulation contract, and then the peasants' awareness of protecting their own power is signed and the contract is signed, the land circulation will be standardized, the contradiction resolution mechanism will flow normally, and the confusion will be greatly reduced.

China's land contract management right belongs to the property right, but compared with other property rights, the land belongs to the collective ownership of the state and has its own special features. If the intermediary agency using ordinary property rights is transferred, the concept is confusing and unprofessional, which will cause the transfer to the other side of chaos. And in real life, most of the land transfers are through rural collective economic organizations, and there is no standardized management mechanism for spontaneous management. If an independent intermediary agency is established to participate in guiding the farmer group to carry out the transfer of land contractual management rights, the risk of the farmer group will also be greatly reduced, and its own protection will be more adequate. It will reduce the occurrence of conflicts and reduce the danger of the society. Promote land reform better and maintain social harmony.

Land is the fundamental guarantee for farmers' lives. Most farmers rely on the benefits of land to survive, which is the basis of their survival. The risks brought by the transfer of land will make them unable to hold even the basic guarantee, and of course they will not be able to respond to the national call and take the initiative to transfer the land out. If this problem is to be solved, the basic guarantee for the survival of the peasant masses must be provided first. Like the various minimum living guarantees such as the city's endowment insurance, the fundamental problem of land becoming the source of their minimum living guarantee can be solved, so that the peasant masses can be assured. Boldly transfer the land out as your own mobile wealth to invest without worries. Therefore, a guarantee

mechanism for the transfer of land contractual management rights also needs to be established.

*C. Main contents of the legal system for the transfer of agricultural land use rights in developed countries and regions*

In the United States, land is private. The transfer of agricultural land in the United States includes the transfer of agricultural land ownership and the transfer of agricultural land use rights. The ownership and use rights of agricultural land transfer are regulated by the market. The use relations such as leasing, buying and selling of agricultural land are mainly adjusted through the legal system of land leasing. According to the laws of the United States, the land renter enjoys the land rights derived from the lease. Such land rights can be transferred through subletting, transfer, and inheritance. The transfer of the right to use agricultural land in the United States can be that both the owner and the leaser of agricultural land can obtain benefits because the land is protected, and can conduct large-scale operations on agricultural land and register a company partnership. These land transfer advantages in the United States can promote the scale management of agricultural land. Secondly, the US government has many preferential policies for agricultural land, such as the use of credit to support land use, the policy to guide the transfer of land, the adjustment of such interest, and appropriate subsidies for prices. These preferential policies have greatly encouraged people's self-confidence in farm management and improved farm scale operations.

The legal system for the transfer of agricultural land in Britain is divided into three categories: the first category is the permanent ownership of land by individuals and private individuals in a legal manner. Although this seems to contradict the British rule that all land is owned by the state, about four-fifths of the British in their lives own land. The second category is the direction of transfer of law as a guide for British agricultural land. British law allows them to purchase and lease, and they are free to choose to operate within the scope permitted by law. The third category is that the law as a force to encourage support runs through the land transfer process. In some cases, it can also receive government subsidies and rewards.

*D. Experiences of the legal system for the transfer of agricultural land use rights in developed countries and regions*

It can be found from the private system of agricultural land in the United States that regardless of whether land ownership is obtained through purchase or gift, the land property rights are very clear. It is precisely because the United States has clearly defined the boundaries of land property rights that legal cases in the United States due to land disputes are extremely

rare. The reason in the UK is that the landholder is the owner of the land, which guarantees the smooth flow of land. Secondly, the land lease law of the United States participates in land lease transactions as a standard and guide, and there are various ways of circulation that can be freely selected. The circulation in the UK is mainly achieved through acquisitions and leases. Most western countries have adopted a private land system. They have merged land to promote the concentration of land ownership, thereby realizing the path selection for large-scale operations and laying the foundation for large-scale land management.

Scholars at home and abroad learn from each other and exchange experiences. Some foreign scholars believe that too much government intervention in the transfer of land contractual management rights in China is a bad influence. It will affect the advantages of the market to farmers' transactions, not only the number of successful transactions. It will also affect the profit between traders. They put forward this view, mostly because more western countries mostly use market regulation for the land transfer system. According to the different national conditions of some countries, some adopt pure market regulation, and the government does not participate in it at all. Some use the government and the market to regulate and control the land circulation at the same time. In general, more foreign scholars suggest that we can appropriately reduce the impact of government policy forces on the transfer of rural land contractual management rights and increase the role of the market in it.

#### **IV. COUNTERMEASURES TO IMPROVE LEGAL ISSUES IN THE TRANSFER OF RURAL LAND CONTRACTUAL MANAGEMENT RIGHTS IN CHINA**

*A. Improving the rural collective land property rights system and clarifying the subject of rural collective land ownership*

Whether land owners should be involved in the transfer of land contractual management rights is related to whether the system of land contractual management rights transfer can be improved. Improving the rural collective land property rights system and clarifying the subject of collective ownership of rural land is a very important issue.

First of all, some scholars believe that the landowner's involvement in the transfer of rural land contractual management rights will not affect whether farmers can freely express their views on land issues. Although the impact is not significant, the landowner cannot be allowed for complete interference, so this requires us to do a good job of preparatory work and determine the extent of this intervention is limited. On the one hand, regarding the participation of landowners in the transfer of land contractual management rights, it

can be found that if the landowner can act as an intermediary regulator and act as an intermediary supervisor, it will use land circulation more.

*B. Exploring new forms of mortgage for land contracting management right*

There are many different opinions whether the rural land contract management right is mortgaged in theory or in actual operation. Some scholars believe that the right to land contractual management should be prohibited from mortgage. These scholars consider that in contemporary China, there are still some peasant groups with a single lifestyle, relying on land as their sole source of income. If these peasants mortgage the land out, it may lead to the only risk of loss of survival. Once problems occur, a large number of farmers lose their sole source of life, which may cause a small number of social problems. I think this view is also reasonable. Once farmers urgently need money, in order to raise arrears in a short time, they are forced to mortgage their land, and afterwards they regret their unwillingness to mortgage to create contradictions. However, instead of using the land as the sole source of living for the peasant group, the land does not satisfy their basic means of living and production, nor will it cause the above phenomenon. Moreover, the property rights contractor of such a group is generally operated on a large scale. For the purpose of contracting land, they have invested a lot of money in production. Allowing such land to be mortgaged can not only provide opportunities for the part of the land contractor who wants to finance, but also give play to the value of the land contractor's right. It can be seen that not all land must be transferred in the manner of mortgage, we only need to stipulate that the part of the labor group that uses the land as the sole source of income must not transfer the land in the manner of mortgage. In addition, the encouragement and support of the land can be mortgaged. However, it is important to note that while realizing the mortgage, the peasant group cannot change the actual use of the land away from our fundamental purpose.

*C. Strengthening legislation and justice, improving procedures, and improving management and service guarantee*

For ordinary intermediaries, it is aimed at trading between ordinary commodities. However, special intermediary service agencies are needed between the transactions of the transfer of land contractual management rights in rural areas, because the nature of land is very different from that of ordinary commodities. However, China does not have any specialized intermediary agencies for the transfer of rural land contractual management rights. All collective economic organizations are involved in the transfer of land. The bad thing is that it can easily affect the right of use

among trading entities, and it also affects their legal disposal rights and income distribution rights. Therefore, it is necessary to establish an intermediary mechanism for the transfer of rural land contractual management rights.

The reason why rural land is linked to the social security system is that rural land is the main source of income for most farmers' groups, and land is the basis for the survival of this group of farmers. All social security costs they need to bear are rooted. The bottom line is from the land they own. The farmer group used for planting trades for the source of survival from the crops, so these people are unwilling to carry out land transfer. Others who rely on land as the last line of defense for their livelihoods would prefer not to plant waste arable land, rather than transferring their living security transfers and leases. Then, we will find a problem. Farmers' social security currently relies on the farmers' own land. The land has a fixed meaning. Naturally, most people are unwilling to risk it. If we can establish a rural social security mechanism, there is a separate security mechanism.

## V. CONCLUSION

It is very important to solve the problem of rural land in China. As the origin of the people's grain depot life, to solve the land problem well, all problems have a solid reserve force. And for the system of land contract management right circulation, its significance also has such an important impact. China has taken the most correct step in the process of land reform from the beginning when it faced the problem of land and adopted an attitude of prohibiting and restricting the transfer to the realization of the importance of land transfer and adopting an open transfer. The transfer of land has improved the situation of land fragmentation, complexity, and risk. It is conducive to promoting the large-scale industrial development of land planting towards enterprise and collectivization, reducing individual planting risks and increasing the industrial rate. Land transfer can also promote the exchange and development of advanced planting technologies in different regions, reducing the risk of land and farmers from natural disasters. To be more precise, on the one hand, it can promote the integrated management of industrialized land in the region, and on the other hand, it can reduce the farmers' burden of planting and introduce good financial support to make the food industry develop better and higher.

## References

- [1] Huang Jianshui and Su Li: "Legal Thinking on Rural Land Circulation in China", contained in "Politics and Law Forum" No. 1, 2001, quoted from Feng Jinkang's "Legal Thinking on China's Rural Land Circulation System" contained in Chen Xiaojun and other "Research on Rural Land Legal System:

Interpretation of Field Investigation", China University of Political Science and Law Press, 2004.

- [2] Wang Liming: "Some Issues on Rural Land Contractual Management Right" are published in Journal of Renmin University of China, No. 1 of 2001.
- [3] Liang Huixing and Chen Huabin: "Law on Property Rights", Law Press, 1997.
- [4] Chen Xiaojun, et al. "Research on Rural Land Legal System-Interpretation of Field Investigations", Beijing: China University of Political Science and Law Press 2004.
- [5] Posner: Chinese version of Economic Analysis of Law (I), China Encyclopedia Press, 1997 edition
- [6] Huang Hua: "Rural Land Contract Management Right", in Journal of Zhengzhou University, No. 5 of 2015.
- [7] See Liang Huixing, editor: "Recommended Draft of China's Real Right Law", Social Science Literature Press, 2000 edition