

【Statute Title】 Interpretations of the Supreme People's Court about the Issues concerning the Laws Applicable to the Trial of Cases of Disputes over Rural Land Contracting [Effective]

【法规标题】最高人民法院关于审理涉及农村土地承包纠纷案件适用法律问题的解释 [现行有效]

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Announcement of the Supreme People's Court of the People's Republic of China

The Interpretation of the Supreme People's Court about the Issues concerning the Laws Applicable to the Trial of Cases of Disputes over Rural Land Contracting was adopted at the 1346th meeting of the Judicial Committee of the Supreme People's Court on March 29, 2005. It is hereby promulgated and shall be implemented as of September 1, 2005.

July 29, 2005

Interpretation of the Supreme People's Court about the Issues concerning the Laws Applicable to the Trial of Cases of Disputes over Rural Land Contracting

(Interpretation No. 6 [2005] of the Supreme People's Court)

In accordance with the General Principles of Civil Law of the PRC, Contract Law of the PRC, Civil Procedural Law of the PRC, Rural Land Contracting Law of the PRC, Land Management Law of the PRC and other laws, the following interpretations are hereby made about some issues concerning the laws applicable to the trial of cases of disputes over rural land contracting by taking into consideration the civil adjudication practices:

I. Acceptance and Litigation Subjects

中华人民共和国最高人民法院公告

(相关资料: 司法解释 3 篇 地方法规 5 篇 裁判文书 376 篇 相关论文 9 篇)

《最高人民法院关于审理涉及农村土地承包纠纷案件适用法律问题的解释》已于 2005 年 3 月 29 日由最高人民法院审判委员会第 1346 次会议通过, 现予公布, 自 2005 年 9 月 1 日起施行。

二 00 五年七月二十九日

最高人民法院关于审理涉及

农村土地承包纠纷案件适用法律问题的解释

（法释[2005]6 号）

根据《中华人民共和国民事诉讼法通则》、《中华人民共和国合同法》、《中华人民共和国民事诉讼法》、《中华人民共和国农村土地承包法》、《中华人民共和国土地管理法》等法律的规定，结合民事审判实践，对审理涉及农村土地承包纠纷案件适用法律的若干问题解释如下：

一、受理与诉讼主体

Article 1 The people's court shall accept the following civil disputes involving rural land contracting:

- (1)The dispute over a contracting contract;
- (2)The dispute over the infringement upon the contracted rural land management right;
- (3)The dispute over the circulation of the contracted rural land management right;
- (4)The dispute over the distribution of compensation for the requisition of contracted land; and
- (5) The dispute over the inheritance of contracted rural land management right.

Where a member of a collective economic organization lodges a civil action because he fails to actually obtain the contracted rural land management right, the people's court shall inform him that he shall request the relevant administrative department for settlement.

Any civil action in respect of the amount of the distributed land compensation which is lodged by a member of a collective economic organization shall not be accepted by the people's court.

第一条 下列涉及农村土地承包民事纠纷，人民法院应当依法受理：

- （一）承包合同纠纷；
- （二）承包经营权侵权纠纷；
- （三）承包经营权流转纠纷；
- （四）承包地征收补偿费用分配纠纷；
- （五）承包经营权继承纠纷。

集体经济组织成员因未实际取得土地承包经营权提起民事诉讼的，人民法院应当告知其向有关行政主管部门申请解决。

集体经济组织成员就用于分配的土地补偿费数额提起民事诉讼的，人民法院不予受理。
（相关资料：裁判文书 99 篇 相关论文 2 篇）

Article 2 If the parties concerned voluntarily reach a written arbitration agreement, the people's court that accepts the case shall handle the case in accordance with the Articles 145 through 148 of the Opinions on Some Issues concerning the Application of the Civil Procedural Law of the People's Republic of China issued by the Supreme People's Court.

If the parties concerned fail to reach any written arbitration agreement and if one party files an application with the rural land arbitration institution for arbitration but the other party initiates a lawsuit, the people's court shall accept the case and shall give a written notice to the arbitration institution. However, if the other party first accepts the arbitration jurisdiction and then initiates a lawsuit, the people's court shall not accept the case.

If either party concerned refuses to accept the arbitration award and lodges a lawsuit within 30 days after it receives the award, the people's court shall accept the case.

第二条 当事人自愿达成书面仲裁协议的，受诉人民法院应当参照最高人民法院《关

于适用《中华人民共和国民事诉讼法》若干问题的意见》第 145 条至第 148 条的规定处理。

当事人未达成书面仲裁协议，一方当事人向农村土地承包仲裁机构申请仲裁，另一方当事人提起诉讼的，人民法院应予受理，并书面通知仲裁机构。但另一方当事人接受仲裁管辖后又起诉的，人民法院不予受理。

当事人对仲裁裁决不服并在收到裁决书之日起三十日内提起诉讼的，人民法院应予受理。
(相关资料: 裁判文书 2 篇)

Article 3 The parties to the dispute over a contracting contract shall be the contract-issuing party and the contractor.

The “contractor” as mentioned in the preceding paragraph refers to the rural households who contract the rural land of the collective economic organization on the basis of household, as well as the entities or individuals who contract the rural land in any other form.

第三条 承包合同纠纷，以发包方和承包方为当事人。

前款所称承包方是指以家庭承包方式承包本集体经济组织农村土地的农户，以及以其他方式承包农村土地的单位或者个人。

(相关资料: 裁判文书 6 篇)

Article 4 If a rural household comprises several members, the litigation shall be lodged by its representative.

The representative of a rural household shall be determined according to the following circumstances:

(1)The person as specified in the certificate of contracted land management right or in other certificates;

(2)If the rural household fails to be lawfully registered and obtain the certificate of contracted land management right and other certificates, its representative shall be the person who signed the contracting contract; and

(3)If the person as prescribed in the preceding two paragraphs has deceased, loses civil capacity or is unable to lodge the litigation for any other reason, the representative shall be the one designated by the members of the rural household.

II. Settlement of Cases of Household-based Contracting Disputes

第四条 农户成员为多人的，由其代表人进行诉讼。

农户代表人按照下列情形确定：

(一) 土地承包经营权证等证书上记载的人；

(二) 未依法登记取得土地承包经营权证等证书的，为在承包合同上签字的人；

(三) 前两项规定的人死亡、丧失民事行为能力或者因其他原因无法进行诉讼的，为农户成员推选的人。

二、家庭承包纠纷案件的处理

(相关资料: 裁判文书 5 篇)

Article 5 If the relevant contractual stipulations on the taking back and adjustment of contracted land are contrary to Articles 26, 27, 30 and 35 of the Rural Land Contracting Law, these

stipulations shall be determined as invalid.

第五条 承包合同中有关收回、调整承包地的约定违反农村土地承包法第二十六条、第二十七条、第三十条、第三十五条规定的，应当认定该约定无效。

（相关资料：裁判文书 6 篇）

Article 6 The disputes arising from the contract-issuing party's illegal taking back or adjustment of the contracted land, or from contract-issuing party's taking back of the idled land of the contractor shall be handled in light of the following circumstances respectively:

(1) If the contract-issuing party hasn't contracted out the contracted land to a third party and if the contractor requests to return the contracted land, the contractor shall be supported; or

(2) If the contract-issuing party has contracted out the contracted land to a third party, and if the contractor specifies the contract-issuing party and the third party as joint defendants and requests to confirm their contracting contract invalid, return the contracted land and compensate for the losses, the contractor shall be supported. However, if the contractor pleads for any compensation for its idled land, its pleading shall be rejected.

If the "third party" as mentioned in Item (2) of the preceding paragraph asks the beneficiary party to compensate for its reasonable investment in its contracted land, it shall be supported.

第六条 因发包方违法收回、调整承包地，或者因发包方收回承包方弃耕、撂荒的承包地产生的纠纷，按照下列情形，分别处理：

（一）发包方未将承包地另行发包，承包方请求返还承包地的，应予支持；

（二）发包方已将承包地另行发包给第三人，承包方以发包方和第三人为共同被告，请求确认其所签订的承包合同无效、返还承包地并赔偿损失的，应予支持。但属于承包方弃耕、撂荒情形的，对其赔偿损失的诉讼请求，不予支持。

前款第（二）项所称的第三人，请求受益方补偿其在承包地上的合理投入的，应予支持。

（相关资料：裁判文书 15 篇 相关论文 1 篇）

Article 7 If the contracting term as stipulated in the contracting contract or as stated in the certificate of land contracting management right or in other certificate is shorter than that as prescribed by the Rural Land Contracting Law and if the contractor pleads for an extension, the contractor shall be supported.

第七条 承包合同约定或者土地承包经营权证等证书记载的承包期限短于农村土地承包法规定的期限，承包方请求延长的，应予支持。

（相关资料：裁判文书 11 篇）

Article 8 If the contractor violates Article 17 of the Rural Land Contracting Law due to using the contracted land for a non-rural construction purpose or causing unrecoverable losses to the contracted land, and if the contract-issuing party requires the contractor to stop the infringement, resume the original status or compensate for the losses, the contract-issuing party shall be supported.

第八条 承包方违反农村土地承包法第十七条规定，将承包地用于非农建设或者对承包地造成永久性损害，发包方请求承包方停止侵害、恢复原状或者赔偿损失的，应予支持。

Article 9 Before the contract-issuing party takes back the contracted land in accordance with

Article 26 of the Rural Land Contracting Law, if the contractor has circulated its contracted land management right to a third party by way of subcontracting, lease or otherwise and if the circulation term hasn't expired, the disputes arising from the collection of circulation price shall be handled in light of the following circumstances respectively:

(1) If the contractor has, once for all, charged the circulation price and if the contract-issuing party requires the contractor to refund the circulation price of the remaining circulation term, the contract-issuing party shall be supported; or

(2) If the circulation price is paid by stages and if the contract-issuing party requires the third party to pay the circulation price as stipulated in the circulation contract, the contract-issuing party shall be supported.

第九条 发包方根据农村土地承包法第二十六条规定收回承包地前，承包方已经以转包、出租等形式将其土地承包经营权流转给第三人，且流转期限尚未届满，因流转价款收取产生的纠纷，按照下列情形，分别处理：

（一）承包方已经一次性收取了流转价款，发包方请求承包方返还剩余流转期限的流转价款的，应予支持；

（二）流转价款为分期支付，发包方请求第三人按照流转合同的约定支付流转价款的，应予支持。

（相关资料：裁判文书 1 篇）

Article 10 If the contractor's returning of the contracted land doesn't conform to the procedures as prescribed in Article 29 of the Rural Land Contracting Law, the contractor shall not be determined as having voluntarily returned the contracted land.

第十条 承包方交回承包地不符合农村土地承包法第二十九条规定程序的，不得认定其为自愿交回。

（相关资料：裁判文书 6 篇）

Article 11 During the circulation of contracted land management right, if any member of the collective economic organization claims priority under the same conditions for the circulation price, term and other main aspects, he shall be supported with the exceptions as follows:

(1) Failing to claim the priority within the reasonable time limit as specified in the written announcement;

(2) If no written announcement is made and if he fails to claim the priority within 2 months after any non-member of the collective economic organization begins to use the contracted land.

第十一条 土地承包经营权流转中，本集体经济组织成员在流转价款、流转期限等主要内容相同的条件下主张优先权的，应予支持。但下列情形除外：

（一）在书面公示的合理期限内未提出优先权主张的；

（二）未经书面公示，在本集体经济组织以外的人开始使用承包地两个月内未提出优先权主张的。

（相关资料：裁判文书 2 篇）

Article 12 If the contract-issuing party forces the contractor to circulate the contracted land management right to a third party and if the contractor requests for determining the circulation contract concluded between the contract-issuing party and the third party to be null and void, the contractor shall be supported.

If the contract-issuing party obstructs the contractor's lawful circulation of the contracted land management right and if the contractor requests for eliminating the obstruction and compensating for the damage, the contractor shall be supported.

第十二条 发包方强迫承包方将土地承包经营权流转给第三人，承包方请求确认其与第三人签订的流转合同无效的，应予支持。

发包方阻碍承包方依法流转土地承包经营权，承包方请求排除妨碍、赔偿损失的，应予支持。

（相关资料：裁判文书 3 篇）

Article 13 If the contractor, without obtaining the permission of the contract-issuing party, circulates the contracted land management right by way of transfer, the transfer contract shall be null and void except that the contractor disagrees to the transfer with no statutory reason or intentionally delays expressing its stand.

第十三条 承包方未经发包方同意，采取转让方式流转其土地承包经营权的，转让合同无效。但发包方无法定理由不同意或者拖延表态的除外。

（相关资料：裁判文书 8 篇）

Article 14 If the contractor circulates the contracted land management right by subcontracting, lease, exchange or otherwise, and if the contract-issuing party pleads for determining the contract to be null and void on the ground that the contract on the circulation of the contracted land management right hasn't been submitted to it for archival purposes, the contract-issuing party's pleading shall be dismissed.

第十四条 承包方依法采取转包、出租、互换或者其他方式流转土地承包经营权，发包方仅以该土地承包经营权流转合同未报其备案为由，请求确认合同无效的，不予支持。

（相关资料：裁判文书 1 篇）

Article 15 The act that the contractor mortgages its contracted land management right or offsets it against its debt shall be determined to be null and void. As to the losses resulted from the act, if the party concerned has faults, it shall bear the corresponding civil liabilities.

第十五条 承包方以其土地承包经营权进行抵押或者抵偿债务的，应当认定无效。对因此造成的损失，当事人有过错的，应当承担相应的民事责任。

（相关资料：裁判文书 2 篇 相关论文 1 篇）

Article 16 Where there arises any dispute due to the contractor's failure to collect the circulation price or over the stipulations on making payment to the other party, if the parties concerned negotiate to make a modification but fails to reach an agreement and if it is obviously unfair to continue to perform the stipulations, the people's court shall, in accordance with the principle of fairness, handle it in light of the objective circumstances for modification.

第十六条 因承包方不收取流转价款或者向对方支付费用的约定产生纠纷，当事人协商变更无法达成一致，且继续履行又显失公平的，人民法院可以根据发生变更的客观情况，按照公平原则处理。

（相关资料：裁判文书 2 篇）

Article 17 If the parties concerned fail to stipulate or clearly stipulate the subcontracting or time

period for circulation of leased land, the case shall be handled by reference to Article 232 of the Contract Law. Except when the parties concerned stipulated otherwise, or except the contract management of forestland, the time for returning the contracted land shall be after the harvest of agricultural crops or before the next cultivation term.

With regard to the investment made for enhancing the land production capacity, if the other party concerned requests the contractor to make a compensation accordingly, it shall be supported.

第十七条 当事人对转包、出租地流转期限没有约定或者约定不明的,参照合同法第二百三十二条规定处理。除当事人另有约定或者属于林地承包经营外,承包地交回的时间应当在农作物收获期结束后或者下一耕种期开始前。

对提高土地生产能力的投入,对方当事人请求承包方给予相应补偿的,应予支持。

(相关资料:裁判文书 25 篇)

Article 18 If the contract-issuing party or any other organization or individual illegally retains, withholds any proceeds of contracting or proceeds of circulation of contracted land management right and if the contractor requests for a refund, the contractor shall be supported.

If the contract-issuing party or any other organization or individual claims an offset, it shall be rejected.

III Handling of Disputes over Contracting in Other Forms

第十八条 发包方或者其他组织、个人擅自截留、扣缴承包收益或者土地承包经营权流转收益,承包方请求返还的,应予支持。

发包方或者其他组织、个人主张抵销的,不予支持。

三、其他方式承包纠纷的处理

(相关资料:裁判文书 3 篇)

Article 19 Where any member of the same collective organization claims the priority of contracting under the same conditions for the circulation price, term and other main contents, he shall be supported. But if he claims the priority of contracting after the contract-issuing party contracts out, upon democratic discussion procedures as provided for by the law and upon approval of the people's government of the township (town), the rural land to an entity or individual who does not belong to this collective economic organization, he shall be rejected.

第十九条 本集体经济组织成员在承包费、承包期限等主要内容相同的条件下主张优先承包权的,应予支持。但在发包方将农村土地发包给本集体经济组织以外的单位或者个人,已经法律规定的民主议定程序通过,并由乡(镇)人民政府批准后主张优先承包权的,不予支持。

(相关资料:裁判文书 5 篇)

Article 20 Where the contract-issuing party signs 2 or more contracting contracts on the same land, and if both or all of contractors claim the contracted land management right, the case shall be handled in light of the following circumstances respectively:

(1)The contractor that has been registered in accordance with the law shall obtain the contracted

land management right;

(2) If neither or none of them has been registered, the contractor whose contract with earlier or the earliest effective date shall obtain the contracted land management right; or

(3) If it is unable to make a judgment according to the preceding 2 Items, the person who has lawfully occupied the contracted land according to the contracting contract shall obtain the contracted land management right, but the act and fact that one party first occupies the contracted land by force after the dispute has arisen shall not be regarded as a basis for determining the contracted land management right.

第二十条 发包方就同一土地签订两个以上承包合同，承包方均主张取得土地承包经营权的，按照下列情形，分别处理：

（一）已经依法登记的承包方，取得土地承包经营权；

（二）均未依法登记的，生效在先合同的承包方取得土地承包经营权；

（三）依前两项规定无法确定的，已经根据承包合同合法占有使用承包地的人取得土地承包经营权，但争议发生后一方强行先占承包地的行为和事实，不得作为确定土地承包经营权的依据。

（相关资料：裁判文书 21 篇）

Article 21 Where a contractor fails to be lawfully registered and obtain a certificate of contracted land management right and other certificates, but it circulates the contracted land management right by way of assignment, lease, having shares or mortgage, if the contract-issuing party pleads the court for determining the circulation as null and void, it shall be supported except that it is not due to the contractor's reason that the contractor fails to be lawfully registered and obtain a certificate of contracted land management right and other certificates.

Except that the law or these Interpretations has any special provisions, when a contractor circulates the contracted land management right, it shall be handled in accordance with the relevant provisions governing the circulation of contracted land management right of household contracting.

IV Settlement of Disputes over Distribution of Land Requisition Compensation and Inheritance of Contracted Land Management Right

第二十一条 承包方未依法登记取得土地承包经营权证等证书，即以转让、出租、入股、抵押等方式流转土地承包经营权，发包方请求确认该流转无效的，应予支持。但非因承包方原因未登记取得土地承包经营权证等证书的除外。

承包方流转土地承包经营权，除法律或者本解释有特殊规定外，按照有关家庭承包土地承包经营权流转的规定处理。

四、土地征收补偿费用分配及土地承包经营权继承纠纷的处理

（相关资料：裁判文书 1 篇）

Article 22 After the contracted land is lawfully requisitioned, if the contractor requires the contract-issuing party to pay it the already paid compensations for the annexes and young crops on land, it shall be supported.

If the contractor has already circulated the contracted land management right to a third party by

way of subcontracting, lease or otherwise, except when the parties concerned have stipulated otherwise, the compensation for young crops shall be paid to the actual investor and the compensation for the annexes on the land shall be paid to the owner of the annexes.

第二十二条 承包地被依法征收，承包方请求发包方给付已经收到的地上附着物和青苗的补偿费的，应予支持。

承包方已将土地承包经营权以转包、出租等方式流转给第三人的，除当事人另有约定外，青苗补偿费归实际投入人所有，地上附着物补偿费归附着物所有人所有。

（相关资料：裁判文书 59 篇 相关论文 1 篇）

Article 23 If the contracted land is requisitioned lawfully, and if the contracting household who gives up the uniform resettlement requires the contract-issuing party to pay it the already paid compensation for resettlement, it shall be supported.

第二十三条 承包地被依法征收，放弃统一安置的家庭承包方，请求发包方给付已经收到的安置补助费的，应予支持。

（相关资料：裁判文书 15 篇）

Article 24 A rural collective economic organization, committee of villagers or group of villagers may, in accordance with the democratic discussion procedures as provided for by the law, decide to distribute the already paid land compensations within this collective economic organization. If anyone, who has the qualifications for being a member of this collective economic organization when the land requisition plan is decided, requests for his share, he shall be supported unless it is otherwise provided for by any local regulation, autonomy regulation, specific regulation, local government regulation or rules regarding the distribution of land compensations within rural collective economic organizations

第二十四条 农村集体经济组织或者村民委员会、村民小组，可以依照法律规定的民主议定程序，决定在本集体经济组织内部分配已经收到的土地补偿费。征地补偿安置方案确定时已经具有本集体经济组织成员资格的人，请求支付相应份额的，应予支持。但已报全国人大常委会、国务院备案的地方性法规、自治条例和单行条例、地方政府规章对土地补偿费在农村集体经济组织内部的分配办法另有规定的除外。

（相关资料：裁判文书 141 篇 相关论文 2 篇）

Article 25 With regard to the contracting of forestland of household, if the inheritor of the contractor requests to continue to contract it within the contracting term, he shall be supported. With regard to the contracting in any other way, if the inheritor, or successor of the rights and obligations of the contractor requests to continue to contract it, he shall be supported.

V Other Provisions

第二十五条 林地家庭承包中，承包方的继承人请求在承包期内继续承包的，应予支持。

其他方式承包中，承包方的继承人或者权利义务承受者请求在承包期内继续承包的，应予支持。

五、其他规定

（相关资料: 裁判文书 2 篇）

Article 26 When trying the cases of disputes as mentioned in Article 5, Item (2) of the first paragraph and the second paragraph of Article 6 and Article 16 of this Interpretation, the people's court shall lay an emphasis on mediation. Where necessary, it may entrust the people's mediation organization to conduct the mediation.

第二十六条 人民法院在审理涉及本解释第五条、第六条第一款第（二）项及第二款、第十六条的纠纷案件时，应当着重进行调解。必要时可以委托人民调解组织进行调解。

Article 27 This Interpretation shall come into force as of September 1, 2005 and shall apply to cases of the first instance accepted thereafter.

If the judicial interpretations validated before this Interpretation comes into force are contrary to this Interpretation, the latter shall prevail.

第二十七条 本解释自 2005 年 9 月 1 日起施行。施行后受理的第一审案件，适用本解释的规定。

施行前已经生效的司法解释与本解释不一致的，以本解释为准。

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