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Analysis on Mortgage of Farmland Contractual Management Right and Countermeasures

Zhaohua YIN, Zegan XIAO *

School of Humanities, Jiangxi University of Finance and Economics, Nanchang 330032, China

Abstract In recent years, a series of pilot projects in mortgage of farmland contractual management right have been carried out in some regions. However, there is considerable dispute over whether the farmland contractual management right can be mortgaged in the practice of China's legislation on land circulation. We firstly introduced current situations of mortgage of farmland contractual management right in China. Then, we analyzed existing problems in mortgage of farmland contractual management right. Finally, we put forward corresponding countermeasures and recommendations, to bring into full play land use efficiency, more rationally distribute land resource, and further promote development of rural economy.

Key words Farmland contractual management right, Mortgage, Countermeasures

1 Introduction

The farmland contractual management right refers to the right of farmers in rural collective economic organizations and other units and individuals to possess, use and obtain income of farmland. The mortgage of farmland contractual management right is the right of farmland management contractor to take the contractual management right of farmland as guarantee. Once the debtor fails to fulfill the obligation or there is case of realizing mortgage, the creditor has the right to dispose the contractual management right and enjoys priority in compensation. The mortgage of farmland contractual management right concerns vital interests of farmers. Through the mortgage of farmland contractual management right, it can circulate funds for land input and agricultural economic development and solve the problem of lack of fund for farmers. Besides, it is also favorable for safeguarding farmers' contractual management right and helpful for realizing scale operation of farmland. Therefore, it is of realistic significance to study the issue concerning the mortgage of farmland contractual management right.

2 Current situations of mortgage of farmland contractual management right

With the reform gradually entering the "deep water area", the farmland contractual management right gradually changes to property right from the right of credit. Even after the promulgation and enforcement of *Property Right Law*, it is not clear whether the contractual management right of rural land can realize the circulation in the form of mortgage or other forms. As a result, such management right is still incomplete property right. Thus, in some sense, the farmland contractual management right in China is the result of typical institutional change, so it is the deformed usufruct right

that still has the attribute of credit right. Whether it can break through such institutional blockage has become a scale for measuring the progress of the reform of land property system, especially the farmland property system. Existing laws restrict mortgage of farmland contractual management right, and prohibit the mortgage of contractual management right of cultivated land and grassland obtained by household contracting. However, the existing property right law makes definite the attribute of usufruct right and lays legal basis for mortgage of farmland contractual management right.

At present, rural social security system is not fully established in the whole China, and the farmland contractual management right still plays the role of basic living guarantee. With an eye to the whole country, the condition is still not sufficient for opening the mortgage of farmland contractual management right. Nevertheless, with improvement of rural urbanization and industrialization, diversified income sources of farmers, and gradual perfection of rural social security system, the social security function of land is weakening. Besides, there is distinct regional difference in social security function of land. These provide realistic basis for feasibility of studying the mortgage of farmland contractual management right and selection of pilot projects. Whether the farmland contractual management right can be mortgaged is the problem of whether its social security function and financing function can be well combined together. We should not focus on mortgage without touching on rural finance. However, the existing financial guarantee system neither includes China's special property structure, nor considers characteristics of small peasant production. Consequently, in the existing financial guarantee system, it is difficult for the mortgage to make practical achievement. The mortgage of farmland contractual management right needs innovation upon the financial guarantee system. On October 14, 2011, Haw Production Base in Hetao Subdistrict in Chengyang District of Qingdao City successfully obtained the loan of 800 000 yuan from Chengyang Branch of Weifang Bank through mortgage of management right of near 200 mu land. This is the first mortgage loan of

rural land contractual management right granted in Qingdao City, which marks substantial progress of mortgage of farmland contractual management right in this pilot area.

3 Existing problems in mortgage of farmland contractual management right

3.1 Drawbacks in existing related legal provisions For the farmland contractual management right, Article 37 of *Guaranty Law* stipulates that it should not be circulated in the form of mortgage. In *Law on the Contracting of Rural Land and Property Law*, the provisions are also not clear. For example, Paragraph 3 in Article 34 and Paragraph 2 in Article 37 of the *Guaranty Law* stipulate that the land-use right to the land owned by the collectives such as cultivated land, house sites, private plots and private hills may not be mortgaged, with the exception of the land-use right to barren hills, barren gullies, barren hillocks, waste flood land and other unreclaimed land contracted by the mortgagor according to law and consent for the mortgage of such right is obtained from the party granting the contract. Since the farmland contractual management right of farmers can not be mortgaged, they can hardly gain support from banks.

3.2 Imperfect farmland evaluation and registration system

At present, there is no perfect farmland trading market, and there are difficulties of subsequent cash realization and value assessment. The mortgage of farmland contractual management right is in the scope of right mortgage. In China, the development process of right mortgage is not long, so it lacks experience and the evaluation system is not perfect.

At the present stage, legal provisions are not consistent on registration system of farmland contractual management right obtained by different methods. The registration system of farmland contractual management right obtained by household contracting adopts registration antagonism, while that obtained by other methods adopts registration validity doctrine. The registration validity of these different methods runs counter to basic principle of disclosure of property right registration. In the long run, scattered and imperfect registration system will exert negative influence on mortgage of farmland contractual management right, and will be not favorable for development of land trading market.

3.3 Imperfect agricultural insurance mechanism and rural social security system

In China, there is still no special insurance system for mortgage of farmland contractual management right. With acceleration of farmland circulation, the risk of agricultural industrialization and scale operation is also increasing. Without agricultural risk sharing mechanism, natural disasters and market risk will bring risks for normal operation of farmland mortgage financing. This greatly increases the probability of risk of farmland mortgage. Therefore, without perfect agricultural insurance system, the farmland mortgage will face great risk. What's more, since there is no perfect rural social security system and unemployment insurance system, the farmland contractual management right assumes not only the production function, but also farmers' social security and unemployment functions. Farmland contractual management right is the essence of what farmers depend upon to survive and develop. If farmers are allowed to mort-

gage their contractual management right, once they fail to fulfill the obligation and the creditor asks for realization of mortgage, they will lose land. In this case, there will be the social problem of many landless farmers.

3.4 Lack of great support of financial institutions According to survey, some areas have carried out the mortgage loan of rural land contractual management right, but the loan amount is extremely low, only about 1/10 of the value in pledge. However, if such pilot project is expanded, banks will face great risk, and it may destroy the credit environment of entire rural areas. It shows that there are many obstacles to the promotion and extension of mortgage of farmland contractual management right. Thus, many financial institutions are prudent at this.

3.5 Lack of farmland circulation factor market and related professional personnel Since there is no farmland circulation factor market, once operation households break the loan contract and become insolvent, it will increase the difficulty of disposing the mortgage, which will influence promotion of mortgage of farmland contractual management right to some extent. At the same time, in the course of promoting mortgage of farmland contractual management right, it requires professional personnel who are not only familiar with land knowledge, but also financial knowledge. As to this in China, such inter-disciplinary talents are relatively scarce.

4 Countermeasures and recommendations for improving mortgage of farmland contractual management right

4.1 Improving laws and regulations related to farmland contractual management right *Law on the Contracting of Rural Land, Property Law, Guaranty Law*, and other related existing laws should be revised and improved. Through legislation, it is able to enhance property and property right attribute of farmland contractual management right, legally innovate upon land mortgage right system, and realize rights and interests of land property. In the establishment of specific system for future property right laws, we recommend allowing conditional mortgage of farmland contractual management right. Regions may make specific provisions according to actual conditions of their regions.

4.2 Improving agricultural insurance and social security system It should strengthen the cooperation between agriculture related insurance and agriculture related loan. Banks should take the application of agriculture related insurance as the condition of credit granting, to encourage debtors to apply insurance for their land. The state should also determine different rural minimum living security standard in accordance with social and economic development conditions of different areas. If rural land financial institutions realize mortgage right in conformity with legal provisions, part of the income should be used for repaying the loan, and the rest will be used as rural social insurance fund of the mortgagor, so as to provide minimum living security for farmers.

4.3 Establishing specialized organizations for evaluation of rural land value It is proposed to issue special management methods for evaluation of rural land management right, and introduce independent third party to evaluate the mortgage right of farmland contractual management right. Besides, it should estab-

lish scientific farmland asset evaluation system, properly assess rural land value, and gradually form urban and rural integrated management system. In addition, we recommend setting up specialized evaluation mechanism, establishing professional evaluation organizations, training evaluation talents, and setting out relevant laws and codes of practice, to provide evaluation service of mortgage loan of farmland contractual management right for rural credit co-operatives.

4.4 Building barriers for loan risk Local government should establish risk compensation system for agriculture related loan, and provide compensation fund, to support development of local financial industry. In accordance with legal, voluntary and paid principles, without changing the attribute of land collective ownership, land use and not harming rights and interests of farmland contractual management right, it should standardize mortgage process, improve rural loan mortgage guarantee system, and make clear conditions and scopes of mortgage of farmland contractual management right.

4.5 Promoting establishment of farmland circulation market and establishing management system for mortgage land use purpose The establishment of farmland circulation market needs combination of effective and comprehensive legal mechanism. It should establish subject confirmation, pricing, method innovation, market classification, market procedure, market service and market supervision mechanism to promote construction of farmland circulation market. Besides, it is proposed to establish management system for mortgage land use purpose. Specifically speaking, when realizing the mortgage right, the assignee of farmland contractual management right shall not change purpose and attribute of land use. Organizations or individuals that obtain the farmland contrac-

tual management right through realizing mortgage right should not change the purpose of land use either.

4.6 Improving related supporting system Firstly, we recommend improving farmland contractual management right registration system and certificate system, to publicize detailed information of the contractual management right, strengthen the public trust, and lay solid foundation for system innovation and business implementation of farmland finance. Secondly, it is proposed to set up rural land banks in pilot areas, to gradually explore operation mechanism of rural land banks. Thirdly, since the realization of mortgage of farmland contractual management right needs a good many financial talents, both government and universities should cultivate relevant students to command comprehensive knowledge, so as to provide personnel guarantee for realization of mortgage of farmland contractual management right.

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