

THE NEED FOR CERTAINTY AND WRITTEN FORM IN LAND SALE  
CONTRACTS IN CHINA: A LEGAL REFORM RECOMMENDATION

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ABSTRACT

*Despite the significance of land sale contracts, China's Contract Law (the supreme authority in contractual matters) fails to articulate whether written form is mandatory for land sale contracts as a prerequisite for contractual remedies. The result of this ambiguity is that urban and rural courts across China have delivered contradictory judgments on this matter, and Chinese claimants do not have clear rules or authorities to follow. This imposes unfairness on those claimants. This article examines and analyzes the uncertainty and its causes, reaching a conclusion that the solution to addressing the nationwide uncertainty is a legal reform—Contract Law should articulate that writing is mandatory for land sale contracts. The reform would have political, economic, social and legal significance, and would help advance China's supreme power's agenda. The reform is timely because China's supreme legislature is reviewing the future uniform civil code that could include this reform recommendation.*

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## I. INTRODUCTION

This article raises the question of whether or not written form<sup>1</sup> is mandatory for land sale contracts in China as a prerequisite for granting contractual remedies. The underpinning of this requirement in Anglo-American law is the Statute of Frauds that expressly requires land sale contracts to be evidenced in writing.<sup>2</sup> The question of whether writing is mandatory for land sale contracts is clear in Anglo-American law, but is very unclear in China.

Land transactions in China are complicated. In urban areas, the ownership of the land is held by the state,<sup>3</sup> but individuals and organizations can hold the land-use rights which are affixed to the land.<sup>4</sup> Depending on whether the land is used for residential, industrial, commercial or other purposes, the period for which the land-use rights are valid varies from 40 to 70 years.<sup>5</sup> The land-use rights can be renewed after expiry.<sup>6</sup> In rural areas, land is owned by

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<sup>1</sup> Providing written contracts record claimants and their signatures, the real property, the price and other important contractual terms.

<sup>2</sup> The mandatory requirement of writing in those common law jurisdictions derives from the English Statute of Frauds 1677. Statute of Frauds 1677, 29 Cha. 2 c. 3, § 4 (Eng.). There were evidentiary limitations in seventeenth-century England, such as lack of adequate control on juries, dysfunctional parole evidence rules, perjury and frauds. In order to address the evidentiary limitations, the Statute of Frauds was enacted to require certain types of important contracts to be evidenced in writing, including contracts of dispositions of interests in land and contracts of guarantee so that courts had accurate, written evidence on which to rely. JOHN BAKER, *AN INTRODUCTION TO ENGLISH LEGAL HISTORY* 341-49 (4th ed. 2002); WILLIAM HOLDSWORTH, *A HISTORY OF ENGLISH LAW* 388 (1966). As to the writing requirement for land sale contracts in each U.S. state, please refer to RESTATEMENT (SECOND) OF CONTRACTS ch. 5, statutory note (AM. LAW INST. 1981).

<sup>3</sup> XIANFA art. 10, § 1 (1982) (China).

<sup>4</sup> Chengshi Fangdichan Guanli Fa (城市房地产管理法) [Urban Real Property Administration Law] (promulgated by the Standing Comm. Nat'l People's Cong., July 5, 1994, effective Jan. 1, 1995; rev'd by the Standing Comm. Nat'l People's Cong., Aug. 27, 2009), arts. 8-22 [hereinafter URPAL].

<sup>5</sup> Chengzhen guoyou tudi shiyongquan churang he zhuanrang zanxing tiaoli (城镇国有土地使用权出让和转让暂行条例) [Interim Regulations of the People's Republic of China Concerning the Assignment and Transfer of the Right to the Use of the State-owned Land in the Urban Areas] (promulgated by the State Council, May 19, 1990, effective May 19, 1990), art. 12.

<sup>6</sup> Wuquan Fa (物权法) [Property Law] (promulgated by Nat'l People's Cong., Mar. 16, 2007, effective Oct. 1, 2007) (China), art. 149.

the collective and the land-use rights can only be transferred within the collective.<sup>7</sup>

Despite the importance of land sale contracts, China's urban and rural courts have delivered contradictory judgments about whether writing is mandatory for land sale contracts, and this has created nationwide uncertainty. This uncertainty is caused by Contract Law, the national law enacted by the supreme Chinese legislature which applies nationwide.

In urban areas, courts in different provinces have expressed contradictory views about whether written form is mandatory for urban land sale contracts. Contract Law allows any formality to be employed in contract formation (the general informality rule).<sup>8</sup> Contract Law also sets certain exceptions to the general informality rule (for example, building contracts and leases exceeding six months must be in writing).<sup>9</sup> The exceptions do not include land sale contracts.

However, for urban areas, there is legislation which specifically applies to urban areas, Urban Real Property Administration Law ("URPAL").<sup>10</sup> URPAL has lower authority than Contract Law, but mandates writing for urban land sale contracts.<sup>11</sup> Some urban courts apply the writing requirement imposed by URPAL. In contrast, other urban courts consider that this writing requirement contradicts the general informality rule, and because Contract Law outranks URPAL, the general informality rule prevails. Therefore, urban courts struggle with choosing the correct rule and authority to apply, but the contradictory conclusions can both be justified.

Similarly, in rural areas, courts in different provinces have expressed contradictory views in relation to whether written form is mandatory for rural land sale contracts. There is no legislation like UPRAL that applies in rural areas. However, the Supreme People's Court specifies that rural land sale contracts should be in writing; despite the court's persuasive authority, some rural courts have long disregarded it. This is because Contract Law outranks the Supreme

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<sup>7</sup> XIANFA art. 10, § 2 (1982) (China). Sun Wenzhen (孙文楨), *Fangdican Falü Shiwu* (房地产法律实务) [Legal Practice of Real Property] (2010); Zou Xiaoyan (邹晓艳), *Fangdican Falü Zhidu* (房地产法律制度) [Legal System of Real Property] (2010); Song Lingyou (宋令友), *Fangdican Falü Shiwu* (实践中的房地产法律问题) [Legal Issues of Real Property In Practice] (2008) (for a detailed discussion about land transactions in China).

<sup>8</sup> *Hetong Fa* (合同法) [Contract Law] (promulgated by Nat'l People's Cong., Mar. 3, 1999, effective Oct. 1, 1999), art. 10, § 1 [hereinafter Contract Law].

<sup>9</sup> *Id.* at arts. 215, 270.

<sup>10</sup> URPAL, *supra* note 4.

<sup>11</sup> *Id.* at art. 41.

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People's Court. Since Contract Law establishes the general informality rule and does not mandate writing for land sale contracts, the view is taken that the Supreme People's Court cannot overrule Contract Law through mandating writing for rural land sale contracts. Hence, there is no authority for rural courts to follow and rural courts have the unfettered discretion to deliver contradictory decisions on the matter.

The nationwide uncertainty has created a 'legal vacuum' in urban and rural China. Contract Law is silent about whether writing is mandatory for (urban and rural) land sale contracts as a prerequisite for granting contractual remedies. Hence, Chinese urban and rural courts do not have clear or authoritative rules to deliver consistent judgments, and Chinese claimants do not have clear or consistent authorities to follow on this matter. Due to the importance of contractual remedies in land sale contract cases, the uncertainty imposes unfairness on claimants.

This article analyses the causes of the nationwide uncertainty in China and establishes that lack of clarity on this topic in Contract Law is responsible for the uncertainty. The solution is a legal reform to amend the supreme contractual authority—Contract Law should articulate that writing is mandatory for land sale contracts across China. The legal reform seeks to utilize the power of Contract Law to eradicate the uncertainty on contractual formality matters in urban and rural land sale contract cases. This further demonstrates that the most effective solution is to amend Contract Law.

Given the importance of land sale contracts, the contractual remedies in these cases and the land sale industry, the reform would have political, economic, social and legal significance and is in line with the political manifesto and legal reform agenda that is set by China's supreme power.<sup>12</sup> Additionally, the legal reform requires submission to China's supreme legislature ("Supreme Legislature") as the legislature has the authority to amend Contract Law.

In the following discussion, this article first examines the nationwide uncertainty in China, analyzes the causes, and then proposes the solution to addressing the uncertainty, introduces the legal reform and explains the significance of the reform.

## II. CHINA'S NATIONWIDE UNCERTAINTY IN RELATION TO WHETHER WRITTEN FORM IS MANDATORY OR OPTIONAL FOR

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<sup>12</sup> See discussion *infra* Part V.

## URBAN AND RURAL LAND SALE CONTRACTS

As already outlined, Chinese urban and rural courts have delivered contradictory rulings in relation to whether or not written form is mandatory for urban and rural land sale contracts as a prerequisite for granting contractual remedies. This problem and uncertainty does not appear to have been previously identified or discussed in Sino-Civilian literature.

In urban areas, one group of urban courts has held that written form should be mandatory. These urban courts only accept signed contracts as legitimate form to prove contractual terms as a prerequisite for granting contractual remedies. For example, in *Pan Chunsheng v. Fu Yue'e*, the court in Hainan Province ruled that an oral urban land sale contract was invalid and no contractual remedies were available because of the violation of the requirement of writing imposed by URPAL (the law that regulates urban land transactions and only applies in urban areas).<sup>13</sup> Likewise, in *Zhao Delai v. Miao Songlian*, the court in Henan Province held that the oral urban land sale contract in this case violated the writing requirement imposed by URPAL and hence no contractual remedies were available, despite the presence of contractual intention.<sup>14</sup> In *Yan Chengling v. Cai Enuo* and *Guo Xuemei v. Huozhou Municipal Real Property Management Authority*, courts in Fujian Province and Shanxi Province have also confirmed that urban land sale contracts must be in written form to comply with URPAL.<sup>15</sup> Regretfully, some urban courts reached the

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<sup>13</sup> URPAL, *supra* note 4, at art. 41. *Pan Chunsheng Su Fu Yue'e* (潘春声诉符月娥) [*Pan Chunsheng v. Fu Yue'e*], CHINALAWINFO (Haikou Interm. People's Ct. July 4, 2001) (There was an oral urban land sale contract. The claimants agreed that the purchaser made payments by three instalments. The purchaser made payments and the payments were accepted by the vendor. The purchaser later refused to proceed, claiming that the oral contract was invalid and the vendor must return the payments.).

<sup>14</sup> *Zhao Delai Su Miao Songlian* (赵德来诉苗松联) [*Zhao Delai v. Miao Songlian*], CHINALAWINFO (Zhengzhou Interm. People's Ct. Apr. 20, 2009) (The claimants entered into an oral urban land sale contract. The vendor agreed that the purchaser paid by instalment. After making a few instalments, the purchaser failed to pay and the vendor sued. The court considered that the validity of the oral land sale contract was one of the key issues in this case.).

<sup>15</sup> *Yan Chengling Su Cai Enuo* (颜呈灵诉蔡婀娜) [*Yan Chengling v. Cai Enuo*], CHINALAWINFO (Quanzhou Interm. People's Ct. May 29, 2006) (The purchaser paid a deposit and posted the vendor the urban land sale contract that was drafted by the purchaser. The vendor did not accept the terms and the purchaser sued. The court confirmed that writing was mandatory for urban land sale contracts and oral urban land sale contracts should be invalid); *Guo Xuemei Su Huozhoushi Fangchan Guanliju* (郭雪梅诉霍州市房产管理局) [*Guo Xuemei v. Huozhou Mun. Real Prop. Mgmt. Authority*], CHINALAWINFO (Linfen Interm. People's Ct. June 29,

same conclusion that written form should be mandatory for urban land sale contracts, without articulating the statute upon which the conclusion was based, as in the case of *Fang Yinhui v. Fang Tiancai* in Shaanxi Province.<sup>16</sup>

In contrast, the other group of urban courts has held that writing is optional and that oral urban land sale contracts are valid. Some courts have even explicitly set aside the requirement of writing imposed by URPAL. However, those courts do not explain their conclusions. For example, in *Chen WenX v. Li XX*, the court in Guangxi Autonomous Region concluded that the oral urban land sale contract in this case should be enforceable and protected by law, and, clarified that the writing requirement imposed by URPAL was optional and hence refused to render the oral contract invalid for lack of writing, but the court gave no reason to justify its conclusions.<sup>17</sup>

Some urban courts are less explicit in setting aside the requirement of writing imposed by URPAL. These courts simply conclude that employing oral form is legitimate without directly refusing to apply URPAL. For example, in *Xin Runpeng v. Zhao Shidan*, the court in Henan Province held that the oral urban land sale contract in this case should be valid, but the court failed to explain why writing should be optional.<sup>18</sup> This approach is echoed in other cases such as *Su Shangkun v. Lu Chao*<sup>19</sup> and *Ma Changhai v. Jin*

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2015) (The court held that although the payments were made in performance of the oral urban land sale contract, written form was mandatory for urban land sale contracts and hence the oral contract in this case was invalid.).

<sup>16</sup> Fang Yinhui Su Fang Tiancai (房银辉诉房天才) [Fang Yinhui v. Fang Tiancai], CHINALAWINFO (Shangluo Interm. People's Ct. Mar. 8, 2010) (After the formation of an oral urban land sale contract, the purchaser made payments and the vendor accepted the payments. However, the claimants had disputes about the essential terms. The court set aside the oral urban land sale contract due to the lack of writing and the vagueness of the essential terms.).

<sup>17</sup> Chen WenX Su Li XX (陈文 X 诉李 XX) [Chen WenX v. Li XX], CHINALAWINFO (Liuzhou Interm. People's Ct. June 9, 2012) (The claimants had an oral urban land sale contract. The purchaser paid all the payments and occupied the real property. The vendor later denied the validity of the oral land sale contract due to lack of writing. The court considered that the writing requirement imposed by URPAL should be optional and the oral land sale contract in this case should be valid.).

<sup>18</sup> Xin Runpeng Su Zhao Shidan (辛润朋诉赵石旦) [Xin Runpeng v. Zhao Shidan], CHINALAWINFO (Sanmenxia Interm. People's Ct. Mar. 22, 2010) (There was an oral urban land sale contract. The purchaser made a payment and the vendor gave the property's key to the purchaser. The court considered that the oral urban land sale contract was valid and did not violate any law.).

<sup>19</sup> Su Shangkun Su Lu Chao (苏尚堃诉陆超) [Su Shangkun v. Lu Chao], CHINALAWINFO (Fusong People's Ct. May 20, 2015) (The claimants formed an oral

*Yujin*<sup>20</sup> in Jilin Province and *Zeng Qingfa v. Zhu Riguang* in Guangdong Province.<sup>21</sup>

Alternatively, some urban courts outflank the requirement of writing imposed by URPAL through applying Section 36 of Contract Law. Section 36 specifies that where writing is mandated for certain types of contracts by law (such as URPAL), if these contracts are formed orally but are substantially performed, these oral contracts can be treated as valid.<sup>22</sup> Section 36 applies to oral contracts (including oral urban land sale contracts) that fail to comply with the statutory requirement of writing.<sup>23</sup> In practice, some urban courts apply Section 36 and find that after oral urban land contracts are substantially performed, it is unnecessary to insist on the written form, as in the cases of *Wang Li v. Gong Jincan* (the vendor transferred real property ownership)<sup>24</sup> and *Zhao Run'e v. Jiang Zhisheng* (the purchaser made a payment of the purchase price).<sup>25</sup>

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urban land sale contract and the purchaser made all the payments. The vendor failed to transfer the ownership and the purchaser sued.)

<sup>20</sup> Ma Changhai Su Jin Yujin (马长海诉金玉今) [Ma Changhai v. Jin Yujin], CHINALAWINFO (Helong People's Ct. June 26, 2015) (The plaintiff and the defendants had an oral urban land sale contract. The plaintiff made payments and the defendants accepted the payments. The court considered that the oral land sale contract was valid in this case but did not explain why writing was optional.)

<sup>21</sup> Zeng Qingfa Su Zhu Riguang (曾庆发诉祝日光) [Zeng Qingfa v. Zhu Riguang], CHINALAWINFO (Zhuhai Xiangzhou Dist. People's Ct. June 21, 2006) (The plaintiff and defendant had an oral urban land sale contract. The plaintiff made half of the payment and the defendant issued two receipts on two occasions to acknowledge the two payments. The court considered that writing was optional and hence the validity of the oral land sale contract should not be denied merely due to the absence of writing.)

<sup>22</sup> Contract Law, *supra* note 8, at art. 36 (providing that "[w]here contracts shall be in written form as mandated by relevant laws and administrative regulations or as agreed by the parties, if the parties fail to reduce the contracts into the written form, the contracts are nevertheless formed where the main contractual obligations are performed and accepted by the parties.").

<sup>23</sup> Wang Liming (王利明), *Hetongfa Yanjiu Diyijuan* (合同法研究第一卷) [Studies on Contract Law] 526 (2011).

<sup>24</sup> Wang Li Su Gong Jincan (王莉诉贡金灿) [Wang Li v. Gong Jincan], CHINALAWINFO (Wulumuqi Interm. People's Ct. Jan. 12, 2012) (The defendant orally agreed to sell real property. The plaintiff made a full payment. The defendant issued a receipt to acknowledge the payment. However, the defendant did not transfer the real property ownership and the plaintiff sued.); Chai Shize Su Yiyangxian Wenhuaaju (柴石泽诉宜阳县文化局) [Chai Shize v. Yiyang Cty. Dep't of Cultural Aff.], CHINALAWINFO (Yiyang Cty. People's Ct. July 7, 2010) (The purchaser made a payment in performance of the oral urban land sale contract. The court considered that the oral land sale contract had been substantially performed and hence ordered the vendor to transfer the land ownership.)

<sup>25</sup> Zhao Run'e Su Jiang Zhisheng (赵润娥诉蒋志升) [Zhao Run'e v. Jiang Zhisheng], CHINALAWINFO (Anyang Interm. People's Ct. July 03, 2015); Wang Li

However, Section 36 has limitations. Section 36 does not and cannot clarify whether Contract Law has mandated or should mandate written form for land sale contracts as a clear rule. Section 36 is not designed to undermine the writing requirement prescribed by Contract Law, but is designed to address the situation after claimants fail to comply with the writing requirement.<sup>26</sup> Because currently no law mandates writing for rural land sale contracts, Section 36 does not apply to rural land sale contracts and is not conducive to resolving the uncertainty in rural areas. Furthermore, Section 36 only applies after claimants both perform and accept the two main obligations (ownership transfer and making payments) of oral land sale contracts.<sup>27</sup> If the two main obligations are not performed or accepted, or other less important obligations are performed and accepted, it is difficult for courts to apply Section 36 and so whether writing is mandatory continues to be unclear. These limitations explain why the contradictory judgments continue to exist despite the presence of Section 36.

Likewise, rural courts in different provinces have delivered contradictory judgments in relation to whether written form is mandatory for rural land sale contracts. Some rural courts have held that written form should be mandatory, oral rural land sale contracts should be invalid and contractual remedies should be unavailable, as in the cases of *Fan Yuling v. Huang Huotian* in Fujian Province,<sup>28</sup>

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Su Wu Yuping (王莉诉吴玉萍) [Wang Li v. Wu Yuping], CHINALAWINFO (Zhongshan Interm. People's Ct. May 26, 2015) (the purchaser, after making a payment and possessing the real property, claimed that the oral urban land sale contract in this case was formed and should be valid).

<sup>26</sup> Section 36 is known as the 'healing theory' of China's Contract Law. Although the legislative intent and whether China imports the healing theory from Germany reminds unclear, the healing theory has solid foundations to support its existence in Contract Law. However, the application of the healing theory in oral land sale contract has been contradictory and inconsistent. In particular, courts have divergent views about what contractual performance constitutes the main obligations to trigger the application of the healing theory. I have argued that only the conduct of transferring real property ownership and making payments is qualified to be the main obligations, because only these two types of conduct substitute the requirement of writing, advance and are in line with the foundations of the healing theory. I have also proposed a legal reform recommendation to address the minor defects of Section 36. Wei Wen, *Advancing the Healing Theory of China's Contract Law for Oral Land Sale Contracts: A Legal Reform Recommendation*, 19 AUSTL. J. ASIAN L. 1, 1-16 (2019).

<sup>27</sup> *Id.*

<sup>28</sup> *Fan Yuling Su Huang Huotian* (范玉灵诉黄伙添) [Fan Yuling v. Huang Huotian], CHINALAWINFO (Minhou County People's Ct. July 21, 2015) (The claimants orally formed a rural land sale contract and the purchaser made payments. The court ordered that as writing was mandatory for rural land sale contracts, the



*Wang Jiushan v. Wang Jiuwen* in Beijing Region<sup>29</sup> and *Wang Yinliang v. Sun Dexian* in Henan Province.<sup>30</sup> In contrast, the other group of rural courts has held that written form is optional and oral rural land sale contracts should be valid, such as the highest court of Zhejiang Province in *Feng Xiaolan v. Cheng Jianxiang*,<sup>31</sup> the second highest court of Chongqing Region in *Zhang Wojin v. Sun Linmu*<sup>32</sup> and the court of Hubei Province in *Yan Shangyou v. Yang Huanci*.<sup>33</sup> However, those rural courts do not articulate the statute on which their conclusions are based or justify why written contracts should be mandatory or optional.

The uncertainty in urban and rural areas imposes unfairness and risk on the claimants. This is particularly concerning given the importance of contractual remedies in cases dealing with land sale contracts. Because oral land sale contracts are treated as valid by some courts but as invalid by other courts, this uncertainty increases the

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oral rural land sale contract in this case was invalid and the payments should be returned.).

<sup>29</sup> Wang Jiushan Su Wang Jiuwen (王久山诉王久文) [Wang Jiushan v. Wang Jiuwen], CHINALAWINFO (Beijing Huairou District People's Ct. May 18, 2015) (The claimants claimed the existence of an oral rural land sale contract. The court confirmed that writing was optional for rural land sale contracts and accepted the evidence, the payments made and the possession of the real property, to support the contractual claims in this case.).

<sup>30</sup> Wang Yinliang Su Sun Dexian (王银良诉孙德现) [Wang Yinliang v. Sun Dexian], CHINALAWINFO (Henan Tongxu County People's Ct. Aug. 7, 2015) (The plaintiff and defendant had an oral rural land sale contract. The defendant issued the plaintiff a receipt to acknowledge that the defendant received 6% payment from the plaintiff. The plaintiff did not possess the real property. The court held that writing was mandatory for rural land sale contracts, the oral rural land sale contract in this case, even if there was one, would not be enforced and ordered the defendant to return the 6% payment.).

<sup>31</sup> Feng Xiaolan Su Cheng Jianxiang (封小兰诉陈建相) [Feng Xiaolan v. Cheng Jianxiang], CHINALAWINFO (Ningbo Interm. People's Ct. July 6, 2015) (The highest court of Zhejiang Province considered that the validity of the oral rural land sale contract should not be denied if the contractual intention and the meeting of the minds was genuine, particularly given the payments in this case were made.).

<sup>32</sup> Zhang Wojin Su Sun Linmu (张我金诉孙林木) [Zhang Wojin v. Sun Linmu], CHINALAWINFO (Chongqing Interm. People's Ct. June 5, 2015) (The claimants orally formed a rural land sale contract. The vendor gave the purchaser the key to the property and the purchaser occupied the property for twenty years. The court held that writing was optional for rural land sale contracts and that contracts of this kind can be formed orally.).

<sup>33</sup> Yan Shangyou Su Yang Huanci (严尚友诉杨焕词) [Yan Shangyou v. Yang Huanci], CHINALAWINFO (Hubei Province Jingmen City Dongbao District People's Ct. Apr. 11, 2017) (The claimants orally formed a rural land sale contract. The court considered that writing should be optional for rural land sale contracts as a general rule, but the court did not explain why. The contract in this case was set aside for other reasons.).

difficulties of exercising claimants' freedom to arrange their contractual commitments. Moreover, due to the importance of land sale contracts, the nationwide uncertainty hinders the implementation of the political and legal agenda that is set by China's supreme power.<sup>34</sup>

### III. THE ANALYSIS OF THE PROBLEM AND NATIONWIDE UNCERTAINTY IN CHINA

Although the urban and rural courts do not give explanations to justify their conclusions, in order to address the nationwide uncertainty effectively, Part III of this article analyzes the causes of the uncertainty in both urban and rural areas in sequence, and then explains why the solution is a legal reform to amend Contract Law. These uncertainty issues, and their causes, do not appear to have been previously addressed.<sup>35</sup>

Contract Law is the highest national authority in contractual matters and is enforced across China's urban and rural areas, because Contract Law is enacted by the Supreme Legislature (the National People's Congress). Section 10(1) of Contract Law reads "claimants can employ written form, oral form or other forms to form contracts."<sup>36</sup> Section 10(1) articulates that claimants can choose any form to form all types of contracts (the general informality rule)<sup>37</sup> and does not expressly mandate written form for (urban or rural) land sale contracts. Although Contract Law sets out exceptions to the general informality rule and expressly mandates writing for certain types of contracts, these exceptions do not include land sale contracts.<sup>38</sup> Further, Contract Law does not have rules that are specifically about land sale contracts or whether writing is mandatory for land sale contracts.

In urban areas, Section 41 of URPAL (the law that regulates urban land transactions and only applies in urban areas) provides "[u]rban real property sale contracts shall be in written form" and

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<sup>34</sup> See discussion *infra* Part V.

<sup>35</sup> Sino-Civilian literature has not identified the uncertainty or analyzed the causes of the uncertainty. Sun, *supra* note 7; Zou, *supra* note 7; Song, *supra* note 7.

<sup>36</sup> Contract Law, art. 10 § 1.

<sup>37</sup> Wang, *supra* note 23, at 501; Han Shiyuan (韩世远), *Hetongfa Zonglun (合同法总论)* [Contract Law] 61-62 (2011).

<sup>38</sup> For example, Contract Law, art. 197 § 1 (loan contracts that are not between natural persons); Contract Law, art. 342 § 2 (technological transfer contracts); Contract Law, art. 330 § 3 (technology development contracts); Contract Law, art. 276 (construction contracts involving superintendence); Contract Law, art. 270 (construction contracts) and Contract Law, art. 238 § 2 (financial lease contracts).

imposes the requirement of writing on urban land sale contracts.<sup>39</sup> However, because URPAL is enacted by the Standing Committee of National People's Congress while Contract Law is enacted by the National People's Congress, URPAL has lower authority than Contract Law and cannot contradict the principles and rules of Contract Law.<sup>40</sup> Hence, URPAL appears to contradict Contract Law's general informality rule through mandating written form for urban land sale contracts. This is the root of the uncertainty in urban areas, as evidence suggests some urban Chinese courts struggle with choosing the correct authority to apply.

For the urban courts that view writing as optional, there are two reasons that can be advanced to explain their decisions. The first reason is that those courts genuinely see a conflict between Contract Law's general informality rule and URPAL's writing requirement. Although URPAL is a relevant authority that mandates writing for urban land sale contracts, Contract Law has higher authority than URPAL. Due to the hierarchy of authorities, those urban courts consider that the general informality rule of Contract Law (the higher authority) should prevail, outrank and override the writing requirement imposed by URPAL (the lower authority), resulting in the conclusion that writing should be optional. This explains why those courts are reluctant to refer to URPAL and even refuse to apply the writing requirement imposed by URPAL.

The second reason why some urban courts may consider writing to be optional lies in Section 10(2) of Contract Law. Section 10(2) specifies where the requirement of writing is prescribed by law (such as URPAL), such requirement shall be observed.<sup>41</sup> Hence, Contract Law appears to indirectly permit the application of the writing form requirement imposed by URPAL. However, some urban courts consider that, since Contract Law establishes the general informality rule, only Contract Law itself has the authority and power to articulate whether the writing form is mandatory for land sale contracts as a clear exception. Those urban courts are comfortable to impose the writing form requirement only if this is expressly allowed by Contract Law. Take construction contracts as an example, because Contract Law clearly mandates the writing form for construction contracts,<sup>42</sup> all

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<sup>39</sup> URPAL, *supra* note 4, at art. 41.

<sup>40</sup> Lifa Fa (立法法) [Legislation Law] (promulgated by the Standing Comm. Nat'l People's Cong., Mar. 15, 2000, effective July 1, 2000; rev'd by the Standing Comm. Nat'l People's Cong., Mar. 15, 2015), art. 7, CHINALAWINFO.

<sup>41</sup> Contract Law art. 10 § 2.

<sup>42</sup> *Id.* art. 270.

Chinese courts must apply this rule and require the existence of signed construction contracts before granting contractual remedies. Unfortunately, this is not the case in urban land sale contract cases. Because Contract Law does not expressly mandate the writing form for land sale contracts, those urban courts solely apply Contract Law's general informality rule due to the highest contractual authority ranking of Contract Law, leading to the conclusion that the writing form should be optional for urban land sale contracts. This can also explain why some urban courts expressly refuse to apply the writing form requirement imposed by URPAL.

In contrast, those urban courts that see the writing form to be mandatory do not see a conflict between Contract Law and URPAL. Those urban courts consider the writing requirement imposed by URPAL as an exception to Contract Law's Section 10(1) (the general informality rule) in urban land sale contract cases. This is because URPAL is the special law that governs urban land transactions and is the correct authority to apply, and the writing form requirement imposed by URPAL prevails, particularly given that Contract Law does not expressly or specifically prohibit written form from being mandatory for urban land sale contracts and Section 10(2) of Contract Law allows other laws to impose the written form as a requirement. Hence, this group of urban courts strictly applies the writing requirement imposed by URPAL and refuses to give contractual remedies in the oral urban land sale contract cases.

Therefore, since Contract Law does not expressly mandate the writing form for land sale contracts, the urban courts struggle with choosing the correct rule and authority to apply. The result is that the urban courts have two contradictory conclusions, but both conclusions could be justified. This gives all urban courts wide leeway to decide whether the written form should be mandatory for urban land sale contracts as a prerequisite for granting contractual remedies—a very fundamental threshold matter that should have been decided and clarified by Contract Law, the supreme contractual authority.

With respect to rural areas, although Contract Law applies in rural areas, it is silent about whether the written form is mandatory for rural land sale contracts. There is no authority for rural courts and rural claimants to follow.<sup>43</sup> Although the Supreme People's Court has specified that writing should be mandatory for rural land sale contracts

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<sup>43</sup> Sun, *supra* note 7; Zou, *supra* note 7; Song, *supra* note 7.

in principle,<sup>44</sup> some rural courts have openly and continuously disregarded this direction and have been insisting that writing should be optional for rural land sale contracts, as in the cases of *Zhang Wojin v. Sun Linmu* and *Feng Xiaolan v. Cheng Jianxiang*. The result is that the uncertainty in rural areas continues to occur despite the Supreme People's Court's direction.

Clearly, the absence of a powerful and clear authority and rule is the root of the uncertainty in rural areas. Unless the supreme contractual authority (Contract Law) makes further clarifications, rural courts can unilaterally decide whether writing should be mandatory for rural land sale contracts even without the need to justify their conclusions, resulting in the contradictory cases in rural areas that have been discussed. This is because Contract Law is made by the Supreme Legislature, and the Supreme People's Court's directions cannot replace, change or supersede the rules of Contract Law.<sup>45</sup> Hence, although the Supreme People's Court may issue directions to further implement Contract Law's existing rules, the Supreme People's Court does not have the authority to add exceptions to the general informality rule or mandate writing for land sale contracts. Only Contract Law has this power and authority. For this reason, the directions of the Supreme People's Courts are not particularly relevant or helpful to resolve the uncertainty.

Moreover, as the doctrine of *stare decisis* in the Anglo-American legal context does not apply in China, judgments of higher Chinese courts do not legally bind lower Chinese courts in the same way that they do in common law jurisdictions.<sup>46</sup> In addition, guiding cases of

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<sup>44</sup> Guanyu Fanhuai yu Guomingshua Fangwu Maimai Shifou Youxiao Wenti de Fuhan (关于范怀与郭明华房屋买卖是否有效问题的复函) [The Supreme People's Court's Reply to the Inquiry about the Validity of Real Property Sale Contract in *Fan Huai v. Guo Minghua* Case] (promulgated by the Sup. People's Ct., Jul. 9, 1992, effective Jul. 9 1992) (China).

<sup>45</sup> Geji Renmin Daibiao Dahui Changwu Weiyuanhui Jiandu Fa (各级人民代表大会常务委员会监督法) [Law of Supervision of Standing Committees of People's Congresses at Various Levels] (promulgated by the Standing Comm. Nat'l People's Cong., Aug. 27, 2006, effective Jan. 1, 2007), art. 32, 33 (China); Wang Cheng (王成), *Zuigao Fayuan Sifa Jieshi Xiaoli Yanjiu* (最高法院司法解释效力研究) [*Studies on the Effects of the Supreme People's Court's Judicial Interpretations*], 1 *Zhongwai Faxue* (中外法学) [PEKING U. L. J.] (2016).

<sup>46</sup> The Supreme People's Court has published a series of guiding cases periodically since 2011. However, this does not substantively change the guiding and non-binding nature of higher courts' judgements. Guanyu Anli Zhidao Gongzuo de Guiding de Tongzhi (关于案例指导工作的规定的通知) [Notice on Issuing the Provisions in relation to Guiding Cases] (promulgated by the Sup. People's Ct., Nov. 26, 2010, effective Nov. 26, 2010) (China); Guanyu Anli Zhidao Gongzuo de Guiding Shishi Xize (关于案例指导工作的规定实施细则) [Detailed Rules of the

higher Chinese courts cannot expressly appear in judgments of lower courts, or be cited as authorities or precedents on which judgments of lower courts are based.<sup>47</sup> The general situation in China is that judges in lower courts can make rulings that are either consistent with or contrary to rulings of higher courts.<sup>48</sup> Because judges in lower courts are able to exercise this degree of discretion, lower urban and rural courts can and already have delivered contradictory judgments, regardless of whether higher courts have consistent rulings. Furthermore, the Supreme People's Court has not delivered a judgment specifically in regards to whether written form is a mandatory prerequisite for contractual remedies in urban or rural sale of land contract cases.<sup>49</sup>

As a result, Contract Law is held responsible for this nationwide uncertainty. If Contract Law were amended to specifically articulate that written form is a mandatory prerequisite for contractual remedies in urban and rural sale of land contract cases as a clear exception to the general informality rule, all urban and rural sale of land contracts would be regulated by the same law and the same rule. The legal reform aims to ensure that all urban and rural Chinese courts, at all levels (including the Supreme People's Court), would be bound by Contract Law's clear rules and deliver consistent judgments, regardless of hierarchy of courts and the absence of *stare decisis*. This would effectively eradicate the nationwide uncertainty.

The more specific results of the legal reform would be that all urban courts would have to apply the writing requirement, regardless

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Implementation of the Provisions in relation to Guiding Cases] (promulgated by the Sup. People's Ct., Apr. 27, 2015, effective May 13, 2015) CHINA GUIDING CASES PROJECT, English Guiding Cases Rules, June 12, 2015 Edition (China); Huang Yaying (黄亚英), Goujian Zhongguo Anli Zhidao Zhidu de Ruogan Wenti Chutan (构建中国案例指导制度的若干问题初探) [*Some Issues on Constructing China's Case Guiding System*], 2 Bijiaofa Yanjiu (比较法研究) [COMP. L. J.] (2012); Liu Zuoxiang (刘作翔), Zhongguo Anli Zhidao Zhidu de Zuixin Jinzhan Jiqi Wenti (中国案例指导制度的最新进展及其问题) [*The Latest Development of Chinese Case Guidance System and its Problems*], 3 Dongfang Faxue (东方法学) [ORIENTAL L.] (2015).

<sup>47</sup> Liang Huixing, Minfa Zongze Zhongyao Tiaowen de Lijie yu Shiyong (《民法总则》重要条文的理解与适用) [*The Interpretations and Application of the Important Sections of General Provisions of Civil Law*], 4 SICHUAN DAXUE XUEBAO (四川大学学报 [哲学社会科学版]) [JOURNAL OF SICHUAN UNIVERSITY (SOCIAL SCIENCE EDITION)] 51, 52 (2017).

<sup>48</sup> *Id.*

<sup>49</sup> I have searched the rulings of the Supreme People's Court (including the guiding cases published by the Supreme People's Court) and has not found a ruling that is specifically about whether written form is mandatory for land sale contracts as a prerequisite for contractual remedies.

of their willingness or reluctance to apply URPAL, because Contract Law (the supreme authority in contractual matters) would clearly mandate the written form for urban sale of land contracts. In rural areas, despite the irrelevance of URPAL, Contract Law would also clearly mandate the written form for rural sale of land contracts. Hence, all rural courts would have to consistently apply Contract Law's clear rules on this matter, regardless of their willingness or reluctance to follow the Supreme People's Court's directions. Likewise, all Chinese claimants would have clear rules to follow—employing written form for urban and rural sale of land contracts, in compliance with Contract Law, ensures that their contractual rights are protected by the same law. This would make dispute resolutions consistent and predictable, and remove any potential unfairness imposed on Chinese claimants. Furthermore, the certainty that would be introduced by the legal reform would advance China's supreme power's agenda.<sup>50</sup>

#### IV. THE PROPOSED LEGAL REFORM RECOMMENDATION TO CHINA'S SUPREME LEGISLATURE FOR AMENDING CONTRACT LAW

Foreign experience may inform the Supreme Legislature in relation to the need for legal reform and the desirability of written form. The English, German and Taiwanese legislatures have tightened up the formality requirements for land contracts due to the high economic value of land<sup>51</sup> and the uniqueness of land.<sup>52</sup> China should follow this example.

Further, the legal reform has theoretical and practical underpinnings, because it has been clearly argued that the contractual form of writing has attributes in both Sino-Civilian and Anglo-American literature.<sup>53</sup> Writing has evidentiary attributes, as signed

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<sup>50</sup> See discussion *infra* Part V.

<sup>51</sup> LIFAYUAN GONGBAO (立法院公報) [Legislative Yuan Gazette], Vol. 88, Issue 13, at 267.

<sup>52</sup> Law Commission, *Transfer of Land Formalities for Contracts for Sale, etc. of Land*, 5.3–5.4 (Working Paper No. 92, 1985); Law Commission, *Transfer of Land Formalities for Contracts for Sale, etc. of Land*, 2.12 (Law Commission No. 164, 1987), available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/228611/0002.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/228611/0002.pdf).

<sup>53</sup> Lon L. Fuller, *Consideration and Form*, 41 COLUM. L. REV. 799, 800 (1941); Wei Wen, *How American Common Law Doctrines May Inform Mainland China to Achieve Certainty in Land Sale Contracts*, ASIAN-PAC. L. & POL'Y J. 1, 16-18 (2015).

contracts accurately record contractual content to increase legal clarity and accuracy in contractual cases.<sup>54</sup> Writing has cautionary attributes because the action of signing written contracts urges claimants to be prudent and cautious about contractual content.<sup>55</sup> Writing also has certainty attributes (channeling attributes), meaning the presence of writing enables claimants to have contractual remedies for complying with statutory requirement of writing and the absence of writing does the opposite, and this gives claimants clear rules with which to comply.<sup>56</sup> Although Sino-Civilian scholars do not appear to recognize the Anglo-American channeling attributes, the certainty introduced by the channeling attributes is more important in China, particularly because the judgments of Chinese courts in land sale contract formality matters are contradictory and this does not give claimants clear authorities to follow.

Contract Law currently makes written form mandatory for seven types of contracts (such as leases exceeding six months),<sup>57</sup> but these contracts are less important than land sale contracts. If lease contracts deserve the mandatory requirement of writing in Contract Law, then so do land sale contracts.

In particular, two decades ago when Contract Law was reviewed by the Supreme Legislature, the draft of Contract Law once mandated a written form for land contracts.<sup>58</sup> The reasons for removing this requirement in the later drafts of Contract Law remain unknown and undocumented.<sup>59</sup> However, in order to introduce certainty and the attributes of writing in land sale contract cases, it is suggested that it

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<sup>54</sup> Fuller, *supra* note 53, at 800; Eric Posner, *Norms, Formalities, and the Statute of Frauds: A Comment*, 144 U. PA. L. REV. 1971, 1985 (1996); Wen, *supra* note 53, at 13-16; Wang, *supra* note 23, at 485.

<sup>55</sup> Fuller, *supra* note 53, at 800; Wen, *supra* note 53, at 16-18; Wang, *supra* note 23, at 485.

<sup>56</sup> Han, *supra* note 37.

<sup>57</sup> *Id.*

<sup>58</sup> Legislative materials document that when Contract Law was drafted two decades ago, the requirement of writing was once mandatory for land sale contracts. However, the relevant materials do not document why the requirement was removed. Quanguo Renda Changweihui Fazhi Gongzuo Weiyuanhui Mingfashi (全国人大常委会法制工作委员会民法室) [Civil Law Division of Sub-Committee of Legislative Affairs of the Standing Committee of the National People's Congress]; Zhonghua Renmin Gongheguo Hetongfa Jiqi Zhongyao Caogao Jieshao (中华人民共和国合同法及其重要草稿介绍) [Introduction to Contract Law and Its Important Drafts] at 113, 127, 162-63, 177, 225-26, 240 (2000).

<sup>59</sup> Quanguo Renda Changweihui Fazhi Gongzuo Weiyuanhui Mingfashi, *supra* note 58; Zhonghua Renmin Gongheguo Hetongfa Jiqi Zhongyao Caogao Jieshao, *supra* note 58.



is time to put this requirement back into Contract Law. Accordingly, it is recommended that the National People's Congress adds a section stating that "*Land sale contracts shall be in written form and signed by claimants*" to Contract Law (or the equivalent), in the same format used by Contract Law to mandate writing for other types of contracts.

The proposed legal reform utilizes the power of the Supreme Legislature and the supreme contractual authority (Contract Law) to eradicate the nationwide uncertainty in urban and rural China, so that all Chinese courts and claimants will be given clear rules about the writing requirement of land sale contracts. Other positive results include written contracts will provide clear evidence (the evidentiary attributes), encourage claimants to be more cautious (the cautionary attributes), and provide them with clear rules to apply and obey (the certainty of the channeling attributes). Further, as the Supreme Legislature has the authority to amend Contract Law, the legal reform recommendation must be submitted to the National People's Congress.<sup>60</sup>

#### V. THE SIGNIFICANCE OF THE LEGAL REFORM RECOMMENDATION

The proposed reform requires the attention of the Supreme Legislature (the National People's Congress). This can be further explained by the significance of the legal reform.

First, the proposed reform would have political significance. The certainty and fairness introduced by the reform promotes the agenda outlined by China's supreme power (the Central Committee of the Communist Party) about "letting Chinese claimants feel fairness and justice in every single case" and "developing a fair, efficient and authoritative judicial system."<sup>61</sup> The values added by the reform to the political agenda are further magnified by the importance of land contract cases. Additionally, as the reform unifies the rules in relation to land sale contract formality issues across China's urban and rural areas, the reform advances the agenda of "integration of urban and

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<sup>60</sup> Lifa Fa (立法法) [Legislation Law] (promulgated by the Standing Comm. Nat'l People's Cong., Mar. 15, 2000, effective July 1, 2000; rev'd by the Standing Comm. Nat'l People's Cong., Mar. 15, 2015), arts. 7-8.

<sup>61</sup> This political agenda was set and approved at the 3<sup>rd</sup> plenary session of the 18<sup>th</sup> Central Committee of the Communist Party of China (CCCPC). 18<sup>th</sup> Central Committee of the Communist Party of China (CCCPC), *Decision on the CCCPC on Some Major Issues Concerning Comprehensively Deepening the Reform* (Jan. 17, 2014), [http://www.china.org.cn/chinese/2014-01/17/content\\_31226494.htm](http://www.china.org.cn/chinese/2014-01/17/content_31226494.htm).

rural areas” that is set by China’s supreme administrative authority (the State Council).<sup>62</sup>

Second, the reform would have legal significance. As Contract Law is China’s highest contractual authority, all urban and rural Chinese courts, including the Supreme People’s Court, would be bound by Contract Law to deliver consistent and fair judgments in relation to contractual written form matters in land sale cases nationwide. These positive outcomes effectively eradicate the nationwide uncertainty, remove the risk of imposing unfairness on Chinese claimants and reduce the risk of weakening the authority of the law across China. Hence, all Chinese claimants would then have the same ability to enjoy legal certainty. This is particularly important in China’s rural areas where the rules about land sale contractual formality matters are currently totally unclear.

The Supreme Legislature plans to enact and pass a uniform civil code that includes the law of contract.<sup>63</sup> The existing rules of the current Contract Law may be changed and subsequently included in the new uniform civil code. Hence, the reform proposed in this article is timely, because it can be included in the future uniform civil code. Although Chinese scholars have proposed several drafts of the civil code, there are no sections in the drafts concerning whether written form is mandatory for land sale contracts.<sup>64</sup> Hence, the suggested reform fills the gap in those drafts and adds the values of the legal certainty into the future civil code.

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<sup>62</sup> Zhengfu Gongzuo Baogao Zai Shier Jie Quanguo Renda Yici Huiyi Shang (政府工作报告-在十二届全国人大一次会议上) [*Gov’t Report at the 12th Nat’l People’s Congress*], Zhongyang Zhengfu (中央政府) [The Central Gov’t] (Mar. 18, 2013), [http://www.gov.cn/2013zfbgjjd/content\\_2363807.htm](http://www.gov.cn/2013zfbgjjd/content_2363807.htm).

<sup>63</sup> Shierjie Quanguo Renda Changweihui Lifa Guihua (十二届全国人大常委会立法规划) [*Legislative Plans of the 12th Standing Committee of National People’s Congress*], Zhongguo Renda Wang (中国人大网) [Nat’l People’s Congress Web] (June 1, 2015), [http://www.npc.gov.cn/npc/xinwen/2015-08/03/content\\_1942908.htm](http://www.npc.gov.cn/npc/xinwen/2015-08/03/content_1942908.htm); Zhongguo Minfazongze Caoan Chushen Minfadian Shijianbiao Mingque (中国民法总则草案初审 民法典时间表明确) [*First Reading of China’s General Principles of Civil Code, the Timetable of Enacting Civil Code is Clear*], Zhongxinwang (中新网) [China News Serv. Web] (June 27, 2016), <http://www.chinanews.com/gn/2016/06-27/7919168.shtml> (the timetable is clarified by the Chair of Sub-Committee of Legislative Affairs of the Standing Committee of the National People’s Congress).

<sup>64</sup> Liang Huixing (梁慧星), Zhongguo Minfadian Caoan Jianyigao (中国民法典草案建议稿)[A Draft of Civil Code of China] 166 (2011); Wang Liming (王利明), Zhongguo Minfadian Xuezhel Jianyigao Ji Lifa Liyou Zhaifa Zongzhepian Hetongpian (中国民法典学者建议稿及立法理由 债法总则篇合同篇)[Civil Code Draft and Its Legislative Rationale, Law of Obligations and Contract] 202 (2005).

Third, the reform would have economic significance. The real property industry constitutes a significant portion of China's economy.<sup>65</sup> The industry keeps growing there and land transfer becomes more important. This is due to the de facto full private ownership of urban land,<sup>66</sup> and because the emerging rural land market has great potential as a result of China's supreme power's decision of loosening the restrictions imposed on rural land transactions.<sup>67</sup> As pointed out by China's supreme administrative authority, a functional legal system is crucial to develop a market economy.<sup>68</sup> Accordingly, the certainty introduced by the reform would assist to make China's existing legal system more consistent and functional in order to boost and secure the increasingly prosperous land market in urban and rural China. This would also assist to build a more robust real property sector in the second largest economy by GDP in the world.

Fourth, the reform would have social significance. Given the high cost of real property, the certainty introduced by the reform would assist the Chinese people to pursue real property ownership with greater certainty and confidence, as they could expect their aspirations to be protected by the highest contractual authority across China.

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<sup>65</sup> The real property industry accounts for approximately 6.5% of China's GDP in 2016. The proportion is approximately 4.6% in 2005, 4.8% in 2006, 5.2% in 2007, 4.7% in 2008, 5.5% in 2009, 5.7% in 2010, 5.7% in 2011, 5.7% in 2012, 5.9% in 2013, 6% in 2014 and 6% in 2015, respectively. The percentage is calculated by the author of this article by reference to the statistics provided by Jinzhuang Guojia Lianhe Tongji Shouce (金砖国家联合统计手册) [Joint Stat. Handbook of BRIC Countries 2017], Guojia Tongjiju (国家统计局) [Nat'l Bureau of Stat. of China] (Sept. 1, 2017), <http://www.stats.gov.cn/ztc/ztsj/jzgjltjsc/jz2017/201709/P020170901624005980115.pdf>.

<sup>66</sup> Donald Clarke, *China's Stealth Urban Land Revolution*, 62 AM. J. COMP. L. 323, 329–45 (2014).

<sup>67</sup> Zhonggong Zhongyang Bangongting Guowuyuan Bangongting Yinfu Shenhua Nongcun Gaige Zonghexing Shishi Fangan (中共中央办公厅 国务院办公厅印发《深化农村改革综合性实施方案》) [The Plan Issued by General Office of the Central Committee of the Communist Party and General Office of the State Council in Relation to Implementing and Deepening the Reform in Rural Areas], Zhongyang Zhengfu Wangzhan [State Council Web] (Nov. 2, 2015), [http://www.gov.cn/zhengce/2015-11/02/content\\_5003540.htm](http://www.gov.cn/zhengce/2015-11/02/content_5003540.htm).

<sup>68</sup> Zhongguo Tese Shehui Zhuyi Falü Tixi Baipishu (《中国特色社会主义法律体系》白皮书) [The White Paper of China's Legal System with Socialist Characters], Zhongguo Zhengfu Wang [Central Gov't Web] (Oct. 27, 2011), [http://www.gov.cn/jrzg/2011-10/27/content\\_1979498.htm](http://www.gov.cn/jrzg/2011-10/27/content_1979498.htm).

## VI. CONCLUSION

This article has identified China's nationwide uncertainty in relation to whether written form is mandatory for land sale contracts as a prerequisite for contractual remedies. Urban courts have delivered contradictory judgments on this matter because Contract Law establishes the general informality rule but is silent about whether writing is mandatory for urban land sale contracts. Similarly, in rural areas, rural courts have also delivered contradictory judgments, because Contract Law gives no clear rules for the rural courts to apply and hence there are no unified, powerful or clear authorities relating to whether writing is mandatory for rural land sale contracts. The nationwide uncertainty potentially imposes unfairness on Chinese claimants.

In order to address the nationwide uncertainty, it is recommended that Contract Law should be amended by the National People's Congress to articulate written form is mandatory for land sale contracts. In particular, "*Land sale contracts shall be in written form and signed by claimants*" should be added into Contract Law as a new exception to the general informality rule. The legal reform seeks to utilize the power of Contract Law (China's supreme contractual authority) to eradicate the nationwide uncertainty.

Given the significance of land sale contracts, the proposed legal reform would have political, economic, social and legal significance in China and advances the agenda that is set by China's supreme powers (the National People's Congress, the Central Committee of the Communist Party and the State Council). The reform deserves to and must be submitted to the Supreme Legislature to amend Contract Law as recommended.