

**Gap:** Expropriation and Compensation.  
**Source:** Lucy Wayne, Indochina Consulting Services Ltd., and Elaine Chiew, Chandler & Thong-ek.  
 "Vietnam's land law: an area to tread carefully", *Asian Corporate Law*.  
**Date:** May, 1993.  
**Details:**

Under the Law on Land, the State has the right to expropriate land under limited circumstances, including if the land is needed to meet "State or social demands" (p.16 of source). In the event that land use rights are expropriated, the State must pay compensation to the dispossessed party.

The practical definition of "State or social demands" may concern some investors. In addition, investors may be concerned over the compensation provision. It is not clear how compensation will be calculated. Will it include indirect losses incurred, or will it be limited to the land value?

It should be noted here that it is not certain how frequently this provision to expropriate land is actually invoked in practice.

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**Deficiency:** Restrictions on Vietnamese Contribution of Land Use Rights to JVs.  
**Source:** Fred Burke, Baker & McKenzie (Hong Kong). *Indochina Law Quarterly*.  
**Date:** June, 1993.  
**Details:**

There are two ways for JV enterprises to acquire land use rights. One way is for the enterprise to apply to the local People's Committee for a land use certificate, and the other way is for the Vietnamese partner to a JV to make its capital contribution in the form of its existing land use rights. To date, the large majority of JVs have acquired land use rights through the latter method.

Fred Burke notes that article 26 of Decree 18 upsets this trend. As stated in the article, the Vietnamese partner may only contribute its share of the legal capital in the form of rights over the use of land "in necessary cases". The State has realized that since it owns all of the land, it is financially better to lease the land to the JV's foreign partner than allow the Vietnamese partner to contribute its own land use rights on which it pays nominal rent.

## 2.8 Dispute Resolution

### 2.8.1 Law on Foreign Investment

**Gap:** "Competent Government Body" Not Identified.  
**Source:** Fred Burke, Baker & McKenzie (Hong Kong). In *Indochina Law Quarterly*.  
**Date:** July, 1993.  
**Details:**

Article 102 of Decree 28 states that disputes between Vietnamese Government agencies and foreign invested enterprises, or the foreign partners to a BCC, shall be settled first through conciliation. Should conciliation fail, "the case shall be brought before a Government competent authority".

Unfortunately, the Decree does not identify the actual Government body that the Government has in mind. Of more concern to investors, however, is the use of a Government body instead of an independent authority.