

Committees may be reluctant to punish their own personnel. As John Gillespie comments, "basic principles of natural justice are normally offended where an administrative body is made judge in its own cause" (page 419).

Deficiency: Unclear Ability to Use Land Rights as Security.
Source: Laurence Brahm, "Legal Developments in Vietnam", in *Asia Money & Finance Lawyer*.
Date: April 1992.
Details:

In April 1992, Laurence Brahm noted that "one of the major drawbacks for financing ventures in Vietnam is the inability of lenders to take security over real property in Vietnam" (p. 29). At the time, other students of Vietnam believed that the National Assembly was planning to correct this deficiency and allow land and the buildings on it to be mortgaged⁴ – indeed, the draft to the 1993 Law on Land did allow for such mortgages.

The actual 1993 Law on Land, however, is not clear on the issue. Article 77 of the Law extends the right to use land as security only to those persons who use "agricultural land or forestry land for afforestation", and to persons "who use land for habitation". Since the same rights are not extended to any other circumstances, it seems that foreign invested enterprises are not allowed to mortgage land or non-residential buildings on the land⁵.

Deficiency: Arbitrary Land Rents for Foreigners.
Source: Business International, IL&T, Indochina.
Date: April 1992.
Details:

In response to complaints about high rental costs, the SCCI and Ministry of Finance set maximum rents for foreign investors (see Inventory). These rents, however, have not been enforced. Reports suggest that local People's Committees often ignore the official rates.

Gap: Right to Use Land; Right to Own Buildings.
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:

In Vietnam, land may not be privately owned. Private ownership of buildings on the land, however, is recognized. Lucy Wayne and Elaine Chiew point out two gaps in land use legislation that concern the interaction of these two conditions.

First, it is not clear in the Law on Land what happens to a building owned by a foreigner when the right to use the land under the building expires. Does the ownership of the building remain with the foreigner, or is it transferred to the State? And if it is transferred to the State, how is the foreigner compensated? Or, if ownership remains with the foreigner, does the foreigner have to pay to demolish or relocate the building?

Second, if the foreigner transfers the ownership rights over a building, is the right to use the land under the building automatically transferred to the new building owner? An automatic transfer, say the authors, is not guaranteed because the Law on Land restricts land use transfers except in stated circumstances. The authors advise investors that the transfer of land use rights and the transfer of building ownership must be made concurrently but separately.
