

Land Rights in Forest Areas in Thailand

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A key aspect of legal due diligence in Thai real estate transactions is to identify whether the target land is located in a designated forest area and any related land use issues. This exercise is especially important when land is located outside metropolitan areas, such as on islands, or in rural or remote areas, due to the risk of encroachment of forest areas. In this article, we look at the types of forest areas under Thai law, the method of acquiring land rights under each type of forest area, and the consequences of breaching applicable forestry and property laws.

There are several Thai laws that deal with land rights in forest areas which are categorized based on the type of forest: (i) **Permanent Forest**, (ii) **National Reserved Forest**, and (iii) **National Park**.

1. Permanent Forest

Definition

A Permanent Forest is a forest area in accordance with the Cabinet Resolution dated 14 November B.E. 2504 (1961) ("**Cabinet Resolution**"). The Cabinet Resolution categorizes the land into two groups: (i) the land which is a forest area that shall be permanently reserved as a national treasure; and (ii) the land that is not reserved as a forest that shall be used for agricultural purposes or other useful purposes.

The definition of a Permanent Forest also lies within the definition of a "forest" in section 4(1) of the Forest Act B.E. 2484 (1941) as amended ("**Forest Act**") which states that a forest means the land that no one has acquired in accordance with the Land Code.

It is important to highlight the definition of a Permanent Forest is different from other types of forests since the Permanent Forest area is not defined in any specific laws but is defined by the Cabinet Resolution and the Forest Act.

Therefore, it can be concluded that a Permanent Forest is a forest area that shall be permanently reserved as a national treasure and other forest area shall be used for agricultural or other useful purposes.



2. National Reserved Forest

Definition

Section 6 of the National Reserved Forest Act B.E. 2507 (1964) as amended ("**National Reserved Forest Act**"), provides that a forest area that has been categorized as a National Reserved Forest according to the laws on forest reserve and protection, before the National Reserved Forest has been enacted, shall be considered as a National Reserved Forest. If the Cabinet deems that other

forests should become a National Reserved Forest in order to preserve the forest's condition or other natural resources, the Cabinet shall issue a Ministerial Regulation which indicates the map of the forest area that shall become a National Reserved Forest.

Therefore, it can be summarized that a National Reserved Forest is a forest area that is specified by law that it shall be a National Reserved Forest. The applicable laws can be either (i) the previously issued laws on forest reserve and protection; (ii) a Ministerial Regulation; or (iii) Royal Decree.

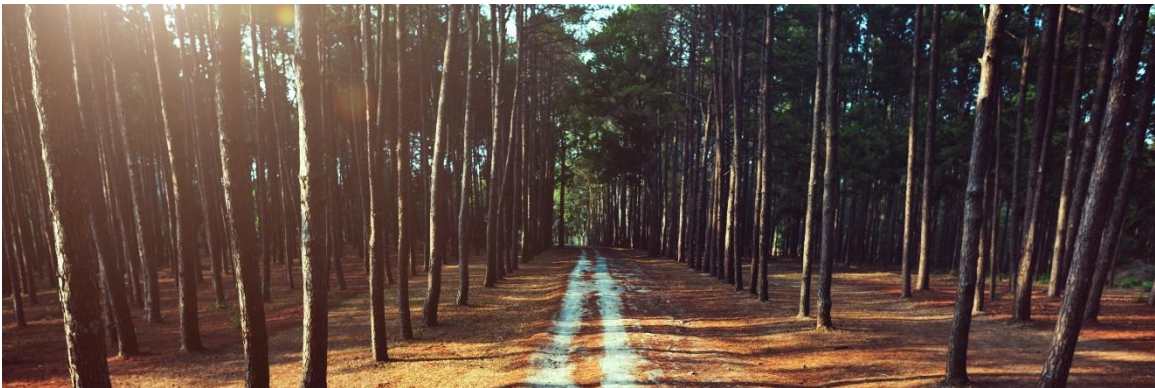
3. National Park

Definition

Pursuant to section 4 of the National Park Act B.E. 2562 (2019) (“**National Park Act**”), a National Park means an area which possesses such particularly distinct natural beauty or possesses such biological diversity, ecosystem, natural resources, environment and rare or endangered wild animals or wild plants or such geological distinctiveness or cultural heritage as to deserve sustainable conservation or preservation for the benefit of the people of the nation or as a place for the nature study or public recreation.

Moreover, if any area happens to have the qualities that shall be considered as a National Park, the Department of National Parks may issue a Royal Decree which shows the map of the area that shall become a National Park.

In conclusion, the National Park area, is the area that the law specifies to be a National Park, which in this case is prescribed by Royal Decree.



Acquisitions of Land Rights

It can be seen from the definitions of Permanent Forest, National Reserved Forest, and National Park that such areas do not affect land rights which have been guaranteed or granted by the Land Code to a private party **before** the area of Permanent Forest, the National Reserved Forest or National Park was announced and designated.

Therefore, a private party who acquires land rights before the Permanent Forest, National Reserved Forest, or National Park (as applicable) has been designated may request for a certificate of utilization or title deed from the relevant land office that states their rights in respect of such land.

Nonetheless, in order to obtain such certificate of utilization or title deed, a private party must provide evidence proving that they have been using and possessing the land before the area of Permanent Forest, National Reserved Forest or National Park has been announced or designated. The evidence may include, for example, an aerial photomap or aerial photograph issued by the competent officer, or a land possession notice form.

Once all evidence is provided to the competent officer, the private party may file an application for a certificate of utilization, title deed issuance, or an up-grade of the land possession notice form at the relevant land office where the land is situated. Prior to acquiring land which overlaps the forest area, it is essential as part of due diligence to conduct a public land search to prove that the land has been lawfully utilized and possessed before the announcement of the National Reserved Forest, the Permanent Forest or the National Park.

In the event that no supporting evidence can be provided as a proof of right or land utilization before the Permanent Forest, National Reserved Forest or National Park area was announced and designated, the private party has no right to use and possess such land.

All land rights with a certificate of utilization or title deed remain valid until such right has been revoked. Moreover, the certificate of utilization or title deed can be sold or purchased. However, in some cases, financial institutions may view that land located in a forest area is high-risk, which may result in the bank not approving the loan for certain investments.

In summary, if you wish to acquire land rights in the **Permanent Forest, National Reserved Forest, or National Park**, it is critical that supporting evidence signifying that such land has been **continuously utilized** by a private party (may be a third party not related to you) can be provided to the competent official.

Consequences of Breach

If a private party acquires land in a forest area without a right, such party risks being deemed as encroaching on forest area, which may result in eviction from the land and criminal penalties regarding the encroachment of the forest area specified under applicable laws on forestry.

In this regard, there have been a number of high-profile cases reported in Thai media regarding the unlawful issuance of lands certificate concerning land which encroaches on forest area. For example, in 2016, an ex-land officer in Phang Nga Province was alleged to have fraudulently issued land certificates in Phang Nga and Phuket Provinces in a forest area. In another controversial case in relation to a hotel in Phuket Province, the Supreme Administrative Court rendered the final verdict that the land where the hotel project was located was a forest area and the land certificate had been illegally issued. Therefore, the Court ordered the hotel and/or any structure over such land plot to be demolished due to encroachment of the forest area.

Conclusion

A number of legal issues may arise in connection with land acquisition and forest areas in Thailand. Therefore, investors should consider having the legal due diligence performed on the target land prior to any land acquisition. This exercise can assist investors protect their investment, by identifying and mitigating legal risks.

Siam Premier has extensive experience performing land due diligence throughout Thailand for a broad range of clients including property developers, hotel operators and other investors.

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