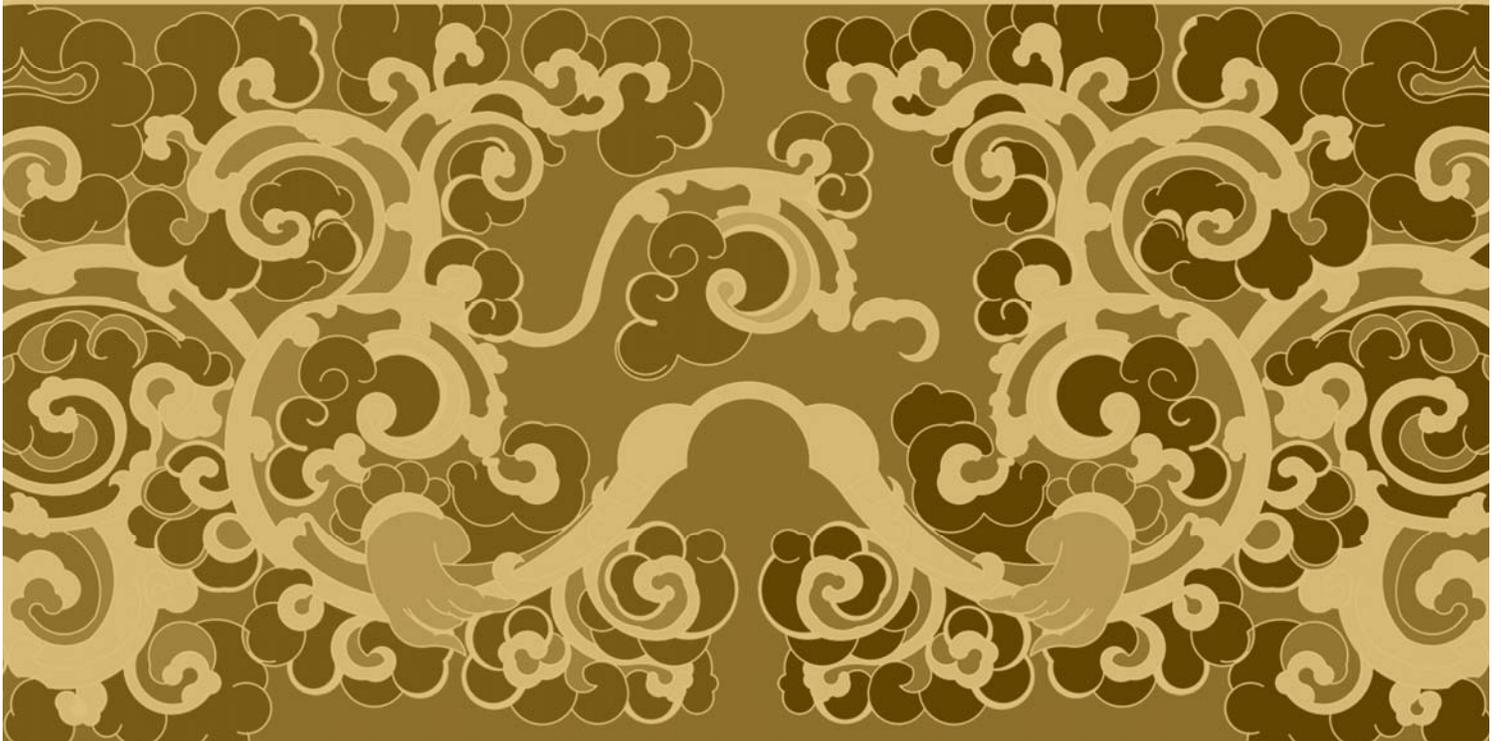




LAND POOLING AND READJUSTMENT REGULATION 2018

Royal Government of Bhutan
Ministry of Works and Human Settlement
Department of Human Settlement

April 2018





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ROYAL GOVERNMENT OF BHUTAN
MINISTRY OF WORKS & HUMAN SETTLEMENT
THIMPHU: BHUTAN



April 30, 2018

Foreword

Bhutan accords strong emphasis on protection of environment, conservation of cultural heritage sites and food self sufficiency. The constitution mandates more than 60% of the total land to remain under forest cover for all time. Of the total land area of 38,394 sqkms, around 8% of the land is used for cultivation and human settlement occupy less than 1 % of the land. Besides, Bhutan is located in geologically fragile area and it is vulnerable to multiple natural hazards. In view of competing demand for land and infrastructure services, it is imperative to promote integrated approach towards management and development on land.

Traditionally people contributed land and right of way for common services and amenities such as; Lhakhang, footpath, drain and community open spaces. But with the increasing development programmes and projects, mobilization of land for planning and development has not only been difficult but expensive. Therefore, *Land Pooling* as a preferred planning scheme over the unpopular practice of land acquisition was adopted as provided under the provision of existing legislations such as Land Act of Bhutan 2007.

The Land Pooling Rules 2009 (LPR 2009) was framed to promote and facilitate land pooling scheme as a preferred planning technique and to ensure harmonious and safe development on land. However, due to rapid urbanization and changing times particularly with the advent of sustainable planning tools and greener construction technologies, some of the provisions within these rules have either become redundant or inappropriate. Thus, the LPR-2009 was reviewed and revised.

The *Land Pooling & Readjustment Regulation 2018*, is not restricted to urban areas but applicable to all areas of the land including rural. Beside others, the Regulation provides more discretion to local government at the time of using the scheme for planning such as; differential contribution ratio in the event there is substantial disparity between the special benefit to the plots; creation of reserve plots to generate funds for infrastructure development; and requirement for an investment plan to prioritize resources for development.

The Regulation has been framed with the objective of enabling reconfiguration of plot boundaries and facilitating provision of infrastructure in land pooling areas to promote appropriate development of land. Further, it is envisioned that the Regulation would ensure integrated approach to settlement planning and at the same time planning benefits are equitably shared. I urge the adoption and implementation of the Regulation by all stakeholders in true spirit and intention.


Dorji Choden
Zhabtlog Lyonpo

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In exercise of the power vested by section 300 of the Local Government Act 2009, the Ministry of Works and Human Settlement, being a Ministry responsible for the coordination of Local Governments, makes the following Regulations:

Chapter 1 - Preliminary

Title and commencement

1. This Regulation shall:
 - a) Be called the Land Pooling & Readjustment Regulation 2018;
 - b) Extend to the whole of Bhutan;
 - c) Come into force with effect from the day approved by the Ministry.

Objective of this Regulation

2. The objective of this Regulation is, consistently with the objectives of spatial planning in Bhutan, to:
 - a) enable the reconfiguration of land boundaries in land pooling areas to facilitate appropriate development;
 - b) facilitate the provision of infrastructure in land pooling areas;
 - c) obtain contribution to the cost of infrastructure from the owners of land receiving special benefit from that infrastructure.
3. Where this Regulation provides for public notice to be given, the local government shall consider giving additional notice, as it considers appropriate in the circumstances.

Repeal

4. Upon enactment of this Regulation, the Land Pooling Rules 2009 shall be repealed.

Savings

5. The offender or violations made prior to the Land Pooling & Readjustment Regulation 2018 shall be dealt as per the fines and penalties set under Land Pooling Rules 2009.

Chapter 2 – Establishing a land pooling scheme

Principles for establishing a land pooling scheme

6. A local government in making a decision whether to establish a land pooling scheme, shall take into consideration the following principles:
 - a) a land pooling scheme should be consistent with the objectives and requirements of spatial planning controls applying to the land, or which are likely to apply to the land after establishment of the scheme;
 - b) a land pooling scheme may be appropriate where it is desirable to adjust to land boundaries in an area;
 - c) a land pooling scheme may be appropriate where it is desirable to provide infrastructure within an area, for which land will be required;
 - d) under a land pooling scheme:
 - i) proposed infrastructure should be of special benefit to the owners of land in the scheme; and
 - ii) if there are substantial spill over benefits to land which is not in a land pooling area, adjustments may be made to the indicative contribution ratio on the grounds of equity;
 - e) taking into consideration the likely reduction of the land holdings of land owners in the area as well as the likely benefit to be obtained by land owners, a land pooling scheme should operate to the overall benefit of land owners; and
 - f) it is relevant to consider the number and area of developed plots in the area and the extent to which the scheme will cause disruption and cost to the owners of developed plots.

Feasibility study

7. If it appears to a local government that land may be suitable for land pooling, the local government may, after notifying the Ministry in writing, undertake a feasibility study:
 - a) in response to a petition from owners of land in the area; or
 - b) of its own initiative.
8. Notwithstanding section 7, a community or real-estate developers may also initiate the land pooling scheme, if the land is suitable for the land pooling scheme.
9. If a local government undertakes a feasibility study, it shall:
 - a) encourage active public participation in the preparation of the study; and
 - b) conduct at least one public consultation meeting.
10. A feasibility study shall address the following issues:
 - a) existing use of the plots, indicating the proportion of the plots which are vacant;
 - b) the number of land owners;
 - c) the size of the plots;

- d) household survey;
 - e) topography;
 - f) the likely environmental impact of a scheme and the safeguards which can be established;
 - g) the need for, and the potential to provide, environmental screening; and
 - h) whether the scheme is likely to produce special benefit to land owners in the area (with a description of that special benefit).
11. A feasibility study shall include a preliminary cost estimate of the scheme, including the cost of:
- a) establishing and administering the scheme;
 - b) acquiring land; and
 - c) establishing infrastructure on land in the land pooling area.
12. A feasibility study shall include a preliminary financing plan identifying how the cost of the scheme is to be financed, including:
- a) an estimate of the number, area and value of reserve plots which are to be created;
 - b) an approximate estimate of other funding sources from the proposed scheme, taking into consideration experience with other similar schemes; and
 - c) an estimate of the amount of funding which is to be required from other sources.

Public support for a proposed scheme

13. After a feasibility study has been conducted, the local government may give public notice of the proposed declaration of a land pooling scheme based on the feasibility study.
14. A public notice shall:
- a) identify the land affected by the proposal;
 - b) describe the proposal;
 - c) specify places where the feasibility study may be viewed;
 - d) set out the local government's estimate of the contribution ratio for the scheme calculated under Chapter 4 and the special benefit which may be caused by the scheme;
 - e) state that owners of land in the area may indicate support for, or opposition to, the declaration by giving notice in writing to the local government; and
 - f) specify a date by which an indication of support for, or opposition to, the declaration must be received by the local government.
15. The date specified in section 14 f) shall not be less than 21 days from the date of publication of the public notice.
16. The local government shall ensure that during the period from publication of the public notice until the closing date for submissions a copy of the feasibility study is available for viewing:

- a) at the offices of the local government, during normal business hours;
 - b) at one or more other places open to members of the public; and
 - c) on the local government's website.
17. The local government shall consider any submissions received on or before the closing date for submissions.

Declaration of a land pooling area

18. The local government may declare the land pooling area if:
- a) it has considered any submission received on or before the closing date for submissions;
 - b) it has received written notification of support from the owners of two-thirds of the plots in the area on or before the closing date for submissions; and
 - c) it has consulted with the Ministry in relation to the proposal.
19. A declaration of a land pooling area may include minor variations from the original proposal.
20. If the local government declares a land pooling area it shall give public notice of the declaration.

Negotiation and acquisition of land from non-consenting owners

21. After the declaration of a land pooling area the local government shall continue to seek the support of land owners who have not notified their support.
22. In the event that a land owner fails to give support to the implementation of a land pooling scheme the local government shall acquire the plot in accordance with the *Land Act 2007*.

Moratorium

23. A moratorium applies to land in a land pooling area for a period of 12 months commencing on the day on which public notice is given under section 20 of the declaration of a land pooling area.
24. During a moratorium a person shall not:
- a) commence a development of land within the land pooling area; or
 - b) transact or subdivide land within the land pooling area.
25. The local government shall, by public notice, extend the period referred to in section 23 for one additional six month period:
- a) if finalisation of the land pooling plan is delayed due to failure to provide information required from other agencies; or
 - b) for other reason specified in the public notice.
26. The following transactions may occur within a land pooling area during the period referred to in section 23:

- a) the owner of a plot may sell that plot to the local government;
 - b) the owner of a plot may sell that plot where:
 - i) the purchaser acknowledges, in writing, that the land is subject to a proposed land pooling scheme and that the land may be reconfigured and reduced in size under that scheme; and
 - ii) the owner provides written notification to the local government of the sale;
 - c) the local government may sell land to the owner of a plot.
27. The local government may exempt designated areas or types of development from the application of a moratorium if it considers that the exemption will not adversely affect the land pooling scheme.
28. If the local government, by public notice, declares that a proposed land pooling scheme is abandoned, section 23 shall not apply.

Chapter 3 – Finalisation of the land pooling scheme

Consultative Committee

29. As soon as practicable after the declaration of a land pooling area the local government shall establish a Consultative Committee.
30. The functions of a Consultative Committee are to:
 - a) provide a forum for consultation about the land pooling scheme; and
 - b) consider and make recommendations to the local government about issues affecting the development of the land pooling scheme including:
 - i) contribution ratios, taking into consideration plot classification;
 - ii) the number, size and location of reserve plots; and
 - iii) infrastructure needs and standards.
31. The Consultative Committee shall comprise of:
 - a) a Chairperson selected by the committee;
 - b) an officer of the local government with knowledge of land pooling;
 - c) not more than three other persons selected by the local government; and
 - d) not more than four members who are owners of land in the scheme area, elected by owners of land in the scheme area.
32. If the Chairperson is unable to attend a meeting, the meeting shall be chaired by:
 - a) another person selected by the local government for the purpose; or
 - b) if no selection is made under section 32 a) one of the Committee members, as selected by the Committee.
33. The Chairperson shall determine the procedure of the meeting.

Draft Land Pooling Plan

34. As soon as practicable after the declaration of a land pooling area the local government shall commence preparation of a draft local pooling plan.
35. A local government shall encourage active public participation in the preparation of a draft land pooling plan.
36. A draft land pooling plan shall include:
 - a) a detailed report about the scheme;
 - b) a layout plan;
 - c) the criteria used in establishing the layout plan.
 - d) if reserve plots are proposed, an infrastructure budget;
 - e) a schedule of contributions.

Layout plan

37. A layout plan shall show the overall area, including:
 - a) existing features, including:
 - i) topographical features;
 - ii) existing infrastructure;
 - iii) buildings and structures;
 - iv) plot boundaries;
 - v) government owned land; and
 - b) proposed features, including:
 - i) plots (including proposed reserve plots);
 - ii) precincts (if any);
 - iii) infrastructure, including main access roads, main drainage, electricity, water and telephone networks and main sewers (if piped sewerage is intended) and community infrastructure.

Schedule of contributions

38. A schedule of contributions shall show the indicative contribution ratio for contributing land in the land pooling area.

Zones of a land pooling area

39. The local government may divide a land pooling area into zones to:
 - a) facilitate consultation at a local level; or
 - b) to enable the scheme to be phased appropriately.

Chapter 4 – Contribution to the cost of a scheme

Calculation of indicative contribution ratio

40. In order to calculate a contribution ratio, the local government shall estimate:
- a) the area of land required for infrastructure;
 - b) the area of proposed reserve plots (if any); and
 - c) the area of all contributing land, calculated in accordance with section 41 and 42.
41. Subject to section 42, contributing land comprises of:
- a) plots in the area, including:
 - i) plots owned by the Government;
 - ii) plots which the Government or the local government has acquired or decided to acquire in accordance with section 43; and
 - iii) any other plot in the area, irrespective of how the owner came into ownership of it; and
 - b) land owned by the Government which is not in a plot, but which, taking into account topography, physical characteristics and location, is capable of use.
42. For the purposes of calculation under section 40 c), contributing land does not include land which is not reasonably capable of development.
43. The local government or the Government shall acquire land to be used for the purposes of a land pooling scheme (or proposed land pooling scheme) in order to reduce the scheme's contribution ratio.
44. If the local government considers it appropriate to do so, it may make different calculations for different parts of the land pooling area, based on the areas with each of those different parts.
45. The local government shall calculate an indicative contribution ratio using the formula:

$$\text{ICR (percentage)} = \frac{\text{IR} + \text{ARP}}{\text{ACL}} \times 100$$

Where:

ICR (percentage)	=	Indicative contribution ratio, expressed as a percentage
IR	=	Infrastructure requirement, being the estimated area of land calculated under section 40 a);
ARP	=	Area of proposed reserve plots, being the estimated area of land calculated under section 40 b);
ACL	=	Area of contributing land, being the estimated area of land calculated under section 40 c).

Adjustment of indicative contribution ratio

46. The local government may adjust the indicative contribution ratio in respect of a plot to take into account of prior land contribution made by a plot owner if:
 - a) the contribution was made by the current owner of the plot;
 - b) no compensation was paid (or land provided in lieu of compensation) for the contributed land; and
 - c) the land contributed will comprise part of the infrastructure to be provided under the land pooling scheme.
47. The local government may also adjust the indicative contribution ratio if there is a substantial disparity between the special benefit to plots.
48. In deciding whether to adjust the indicative contribution ratio, the local government shall take into consideration the principle of equitable contribution.
49. The contribution ratio in respect of a plot is the indicative contribution ratio expressed as a percentage, adjusted under this Regulation.

Preliminary infrastructure budget

50. If a local government intends to create reserve plots in accordance with section 52, it shall prepare a preliminary infrastructure budget.
51. A preliminary infrastructure budget shall set out:
 - a) an estimate of the cost of providing infrastructure in the land pooling area, including the cost of purchasing land needed to provide that infrastructure (in addition to land contributed under the scheme);
 - b) a description of the number, size, location and configuration of reserve plots which are to be created to generate funds to contribute to the cost of the infrastructure; and
 - c) options for the disposal of the reserve plots.

Reserve plots

52. A land pooling scheme may provide for plots, to be known as reserve plots, created through contribution by private land owners for the purpose of sale to generate funds.
53. The number, size, location and configuration of the reserve plots must be consistent with the infrastructure budget.
54. A reserve plot which vests in the local government in accordance with section 83:
 - a) is held by the local government for the purposes of the land pooling scheme until it is sold in accordance with this Regulation, and is not community land; and
 - b) may be sold by the local government, by private agreement or by any other process which it considers to be appropriate.
55. The proceeds of the sale vest in the local government, to be used for the purposes of the land pooling scheme.

56. Notwithstanding section 52, the local government may:
- a) retain a reserve plot temporarily; or
 - b) after consultation with owners of land in the area, use a reserve plot for public purposes.

Residual land

57. In a land pooling scheme, the land which cannot be allocated to proposed new plots or used for infrastructure or services, is residual land.
58. Residual land which vests in the local government in accordance with section 83:
- a) is held by the local government for the purposes of the land pooling scheme until it is sold in accordance with this Regulation, and is not community land; and
 - b) may be sold by the local government, by private agreement or by any other process which it considers to be appropriate.
59. Residual land may be sold, retained or used as if it were a reserve plot.
60. The local government may enter into, and implement, an agreement with the owner of a plot under which:
- a) the local government agrees to add residual land to that owner's reconfigured plot; and
 - b) the owner pays to the local government an amount which has been agreed between the parties.

Developed plots

61. If a plot has been developed so that it is not appropriate for the full contribution ratio to be applied to the plot, the local government may calculate an amount payable by the plot owner in lieu of some or all of the contribution which would otherwise be required under the contribution ratio.
62. If the local government calculates an amount payable under section 61:
- a) the local government shall reduce the contribution ratio for that plot, based on the calculation; and
 - b) the amount calculated is payable by the owner to the local government within 60 days after publication of the public notice under section 79.

Application of proceeds

63. The local government shall use the following money as a contribution to the cost of the land pooling scheme:
- a) the proceeds of the sale of a reserve plot or residual land;
 - b) payment under an agreement with an owner made under section 60;
 - c) payment made by an owner payable under section 62.

Chapter 5 – Reconfiguration of plots

Principles to be applied

64. In designing a proposed configuration of plots and other land in a land pooling area the local government shall apply the following principles:
- a) the configuration should be consistent with any spatial plan which applies to the area, or which is likely to be applicable in the near future;
 - b) changes to plots should be minimised;
 - c) if it is not practicable to create a plot which occupies some of area occupied by the original plot it is to replace:
 - i) consultation with the owner of the plot should take place, and where practicable the views of the owner should be accommodated; and
 - ii) the replacement plot should have similar characteristics and be of similar value (taking into account the contribution ratio);
 - d) land which the local government or the Government has acquired under section 43 forms part of the pool of land to be reconfigured and does not create an entitlement to a replacement plot.

Contribution ratio limit

65. Except as provided in section 66, a local government shall configure plots and other land in a land pooling area so that contribution ratio does not exceed 30%.
66. A local government may implement a land pooling scheme which has a contribution ratio exceeding 30% if:
- a) the topography or other characteristics of the area otherwise make it inappropriate to obtain an adequate area of land; or
 - b) additional contribution, over the limit, is required to create reserve plots.

Allocation of land at another location

67. If necessary, after applying the principles set out in section 64, the local government may allocate a plot to an owner which is not in the same location as the original plot.

Plot size

68. If a plot after reduction in accordance with the indicative contribution ratio would be smaller than the minimum permitted size under an applicable spatial plan, the local government may:
- a) consolidate the plot with other small plots, and allow joint ownership to create a standard size plot; or
 - b) sell residual land or a reserve plot (or part of it) to the owner of the plot, to be consolidated with the plot; or
 - c) retain the calculated plot size with appropriate development regulations.

Chapter 6 Public consultation

Public notice of draft land pooling plan

69. After the local government has prepared a draft land pooling plan, it shall give public notice:
- a) identifying the land pooling area;
 - b) stating that a draft land pooling plan has been prepared for the area;
 - c) specifying the proposed contribution ratio;
 - d) specifying places where the draft land pooling plan may be viewed; and
 - e) stating:
 - i) that property owners and members of the public may make written submissions to the local government;
 - ii) that submissions must be lodged on or before the closing date for submissions; and
 - iii) the place where submissions should be lodged.
70. The local government shall ensure that a copy of the draft land pooling plan is available for viewing, for 21 days after publication of the notice:
- a) at the offices of the local government, during normal business hours;
 - b) at least one other place open to members of the public; and
 - c) on the local government's website.
71. The local government shall consider submissions which are received by it within 21 days after the date of publication of the notice.

Public presentation

72. The local government, in consultation with the Consultative Committee, shall organise at least two public consultation meetings in the land pooling area in relation to a draft land pooling plan.
73. The local government shall give not less than 14 days' public notice of the public consultation meeting.
74. At a public consultation meeting, the local government shall:
- a) make a presentation about the proposals set out in the draft land pooling plan; and
 - b) give opportunity to the people attending meeting to ask questions and make comments.

Chapter 7 – Implementation of the land pooling scheme

Final Land Pooling Plan

75. After compliance with Chapter 6, the Local Government may make a final land pooling plan.
76. A final land pooling plan shall contain:
 - a) a detailed report about the scheme;
 - b) the final layout plan, showing adjusted land ownership;
 - c) the criteria used for land categorisation;
 - d) the infrastructure budget (if one was prepared); and
 - e) the final schedule of contributions, showing the contribution ratio.

Approval of Land Pooling Scheme

77. The Local Government shall obtain approval of the final land pooling plan in accordance with the province of the Local Government Act 2009.

Implementation of the scheme and vesting of the land

78. The local government may implement a land pooling scheme only if:
 - a) it has made a final land pooling plan in accordance with section 75 and 76;
 - b) the contribution ratio complies with this Regulation; and
 - c) it has notified the Minister of its intention to do so.
79. Subject to section 78, a local government shall give public notice of its decision to implement a land pooling scheme on a date specified in the public notice, being not less than 30 days after the date on which the public notice is given.
80. If the local government gives public notice under section 79, all land in the land pooling scheme which is not included in a plot vests in the local government on the implementation date.
81. The local government shall apply for updating of the Thram in relation to plots shown in the final land pooling plan so that the Thram is consistent with the adjusted land ownership shown in the final land pooling plan:
82. An application under section 81 shall be made:
 - a) if application has been made to the Review Board under section 87 – as soon as practicable after the application is determined by the Review Board, but subject to any order of the Review Board;
 - b) if no application has been made to the Review Board under section 87 – as soon as practicable after the implementation date.

Effect of registration

83. When the Thram is updated in accordance with the final land pooling plan:
- a) ownership of plots is as shown in the updated Thram in accordance with section 61 of the *Land Act 2007*;
 - b) the prohibition on development or transfer imposed by section 23 shall not apply.
84. Except as provided in section 85, the local government shall pay compensation for immovable property and objects (including cash crops) which are acquired for the implementation of a land pooling scheme.
85. No right of compensation arises from:
- a) the prohibition on transfer or dealings imposed by section 23;
 - b) the reconfiguration of plots, the reduction of land ownership caused by application of the contribution ratio or the transfer of ownership of land or the updating of the Thram in accordance with this Regulation; or
 - c) acquisition of immovable objects which have been placed on land in breach of section 23.
86. An obligation or liability relating to an original plot of land is transferred to the corresponding new plot of land.

Review of decisions

87. A land owner who is dissatisfied with a decision of the local government under this Regulation may apply to the Review Board for review of that decision.
88. A request shall:
- a) be in writing;
 - b) state the grounds on which the review is sought; and
 - c) be made within 21 working days after public notice is given under section 79.
89. After receiving a notice under section 87, the Review Board shall conduct a hearing.
90. After conducting a hearing, the Review Board may make an order cancelling or varying the decision or dismissing the application.
91. A person aggrieved by a decision of the Review Board may appeal it to the court on a question of law or jurisdiction only.
92. An application for review received by the Review Board shall be rejected by the Chairperson without a hearing if the matter complained of is not within the jurisdiction of the Review Board.

Chapter 8 Miscellaneous

Definitions

93. In this Regulation, unless the contrary intention appears:

Community infrastructure means facilities intended for community use.

Contributing land means land described in section 41.

Contribution ratio means the ratio specified in section 49.

Corresponding new plot means a plot which, after reconfiguration of plots, corresponds with an original plot in accordance with section 86.

Development infrastructure means physical infrastructure, including land (whether or not developed) intended for use as a road, right of way, off-street pedestrian facility, infrastructure easement, public facility or open space.

Review Board means a board of that name constituted by the Ministry for the purposes of this Regulation;

Draft land pooling plan means a draft land pooling plan described in section 36;

Final land pooling plan means a final land pooling plan produced under section 76.

Implementation date means the date specified in a notice under section 79;

Infrastructure includes development infrastructure and community infrastructure;

Layout plan means a layout plan required by section 37;

Local government means a local government under the *Local Government Act 2009*;

Minister means the Minister responsible for the Ministry.

Ministry means the Ministry of Works and Human Settlements or a successor ministry responsible for spatial planning in the Kingdom.

Public notice means an advertisement in a national newspaper.

Reserve plot means a plot described as a reserve plot in section 52 & 54.

Residual land has the meaning given to it in section 57.

Zone means an area created under section 39.

Scheme means a land pooling scheme.

Special benefit, in relation to land, means a benefit which is greater than the benefit (if any) to land in the local government area generally.

Topographical features includes:

- a) land forms (contours);
- b) rivers and natural drainage lines.

Transact, in relation to land, means buy, sell, exchange or give or accept a gift of the land.

Transitional provisions

94. A land pooling scheme which has been commenced, but not completed, on the day that this Regulation come into operation shall be deemed to have been commenced under this regulation.