



*The future generation living near an exploration site in Guinea (Wall, E)*

# Part 1

## Examining Foundations, Trusts and Funds (FTFs) in the Mining Sector



The World Bank



## 1) The Mining Sector and Foundations, Trusts and Funds

On a global scale, the overall increase in the number of multinational corporations<sup>3</sup> has led to a greater presence of private corporations in communities around the world. This factor, combined with a global decline in public sector development assistance<sup>4</sup> has cast the private sector as an important player in social and economic development. Increasingly located in remote areas of impoverished countries, mining operations are highly exposed to this changing development dynamic.

Beyond geography, the mining industry has a number of characteristics which draw it into the delivery of development at local, regional and sometimes national levels:

- Operations often exist in environments where government institutions may be absent, weak, lacking in capacity or corrupt, leaving gaps in essential public service provision;
- The social and environmental footprint of mining operations often has impacts on local communities, requiring compensation and mitigation programmes;
- The remote location of many operations accentuates the expectation for employment and economic development within host communities; and
- The enclave nature of the mining industry can limit the “trickle down” of benefits unless specific social investment programmes are undertaken.

In addition to the factors above, a series of changes in the mining industry have also caused an increase in the level of and approach towards benefit sharing from mineral projects in recent years:

- Sectoral Changes - Between 1989 and 2001, more than 75 countries liberalised their investment regimes for mining, oil and gas exploitation and privatised state mining companies<sup>5</sup>. This had the dual effect of increasing foreign investment by multinational mining companies in developing countries and reducing the provision of “social wages” for workers in state-owned companies such as subsidized housing, education and healthcare. Coupled with technological improvements reducing the labour needs of mining projects, and an increase in fly-in fly-out operations, many of the traditional benefits received by communities have diminished over time and pressure has risen to replace them with new benefit sharing instruments;
- Operational Drivers – Improved communications access across the world and an increase in the number of advocacy groups focused on the mining sector have led to increased community expectations from mineral developments. These expectations then inform the benefit sharing

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<sup>3</sup> Warhurst (2001)

<sup>4</sup> ibid

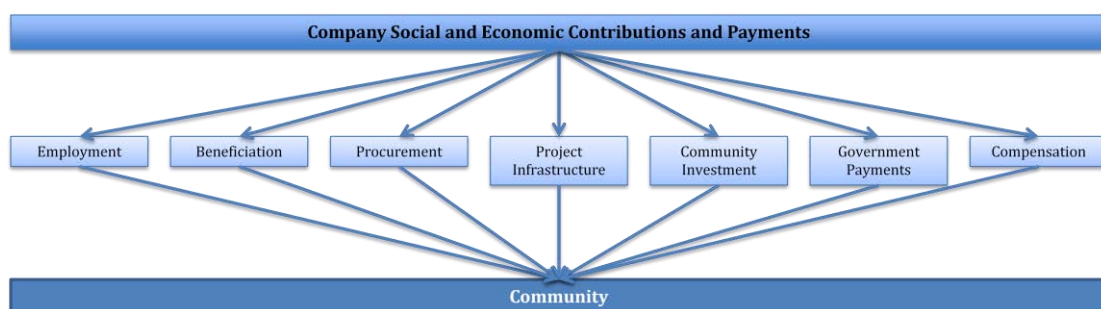
<sup>5</sup> ibid

approaches required from a company in order to gain and retain its social license to operate. Employees have also raised their expectations of the companies they work for, increasing the focus on corporate social responsibility within operations;

- Corporate Social Responsibility (CSR) Expectations – The growth of CSR across all industries has led shareholders and affected stakeholders to review the social contribution of private industry in far more detail than in the past. Peer performance has also raised the bar for more strategic and effective community investment with a long-term view of sustainable development<sup>6</sup>, and commercial investors also review these commitments and contributions. These expectations have been captured in a number of voluntary codes and commitments endorsed by stakeholders in the mining industry, such as the ICMM Sustainable Development Principles and the UN Global Compact; and
- Mineral Prices – Escalating mineral prices have focussed the attention of both communities and governments upon the benefit sharing arrangements in place. Countries with multinational mining corporations using *ad valorem* taxation and royalty schemes have in many cases observed the majority of windfall profits exiting their national borders, causing a re-assessment of the means by which both production and profit can be shared.

The mining industry makes social and economic contributions and payments to communities and governments through a number of channels, as illustrated in Figure 1. This figure highlights contributions and payments necessary due to the impacts generated by the project (compensation), those payable as part of the mineral lease conditions (government payments including taxes and royalties), direct benefits (employment, procurement, beneficiation (eg diamond industry) and project infrastructure) and community investments.

Figure 1 Channels for Social and Economic Contributions and Payments<sup>7</sup>



Implementing employment, procurement and project infrastructure programmes are within the day-to-day business of a mining company, and are typically kept within the operational control of the business. Similarly, taxes and royalties typically follow a specified format, with transactions occurring between companies, communities and various levels of Government. Greater variation

<sup>6</sup> ICMM (2005)

<sup>7</sup> Adapted from IFC (2010)

exists in the manner through which companies (and increasingly Governments and communities) manage community investment and compensation programmes. Four implementation mechanisms for community investment (some of which can also be applied to compensation) have been defined by the International Finance Corporation (IFC)<sup>8</sup>:

- Third party implementation – where a company engages a partner, such as a local or international NGO, to work with local communities in designing and implementing projects, or a company supports an existing initiative being implemented by others;
- Company Foundation – where a company establishes a separate legal entity (foundation or trust) to carry out the community investment or compensation programme;
- Internal community relations department – where a company works directly with communities to design and implement projects using its own staff; and
- Hybrid model – a model that either uses two or more of the other models together, or combines elements of both of them.

Identification of the appropriate implementation model depends on a range of considerations, including: the sustainability of the model chosen, participatory structures for decision making and governance, multi-stakeholder mechanisms and partnerships, the building and development of local capacity and ongoing owner involvement and oversight. The International Finance Corporation's *Community Investment Strategies Good Practice Handbook* provides detailed guidance to assist businesses to take this decision. Potential reasons for businesses, Government or communities to choose a foundation model may include the need for independence between the funding party and the organisation, the desire to seek alternative external financing, long time horizons for operation of the organisation or the desire to serve a broader population than would strictly be defined as the project affected community.

### **a) An Introduction to Foundations, Trusts and Funds**

In general trusts are employed in countries using common law and foundations are preferred in countries adhering to civil law. Funds can occur in virtually any jurisdiction as the designation “fund” does not confer a separate legal status, but is rather a general term which can be used to describe a trust, foundation or a company budget item. Other relevant distinctions between FTFs include:

- The term “foundation” applies to an institution “used for charitable or family purposes, while a “trust” is one form such an institution can take”<sup>9</sup>;
- Foundations, trusts and funds may be closely associated with the founding actor or actors (such as a mining company) or in the case of trusts and foundations, may be deliberately established as stand-alone entities with independent status;

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<sup>8</sup> ibid

<sup>9</sup> Warhurst (2002)

- The terms foundation, fund and trust are often used loosely in vernacular conversation, and even in the names given to particular institutions: the Anglo American Chairman’s Fund, for example, is legally incorporated as a trust, and the Rössing Foundation is also legally incorporated as a trust.

**Structural Elements of Foundations, Trusts and Funds Commonly Addressed in Legal Frameworks**

- Legal processes for establishment;
- Purpose for which the entity may be established;
- Permissible economic activity;
- Provisions for supervision and management;
- Provisions for accountability and auditing;
- Provisions for amendment of statutes or article of incorporation or dissolution;
- Tax status of donors; and
- Tax status of the foundation, trust or fund.

Recognizing that the attributes of funds, trusts and foundations vary from country to country, a series of typical characteristics for each mechanism are defined below:

**Trusts** – Representing a legal relationship between the settler of assets, the trustee, and the beneficiaries that give

a trustee specific responsibilities, which can make this mechanism less flexible than a foundation approach. Attributes include:

- Trusts are governed by a Board of Trustees.
- Trustees can be held liable for their management responsibilities and are required to exercise “all reasonable care” which is a stronger concept, legally, than other instruments.
- This model often has lower public domain information requirements than other mechanisms.
- The establishment of a trust is a juridical act, and a trust only secures ‘absolute certainty’ when a court proclaims the trust to be valid.
- A trust may conduct profit-making activities.

**Foundations** – Often incorporated as legal entities, foundations are relatively flexible in the activities they are able to undertake to fulfil their objectives. Attributes include:

- Foundations are separate legal entities that own the assets under their control although unlike a trust, assets do not need to be transferred to a foundation.
- The duty of care of a foundation council member is to act in accordance with the regulations and the law and to act in the “best interest” of the foundation (less legally onerous than a Trust).
- For a foundation to exist, its Charter must be registered at the Public Registry thereby establishing it as an entity with juridical personality.
- Typically a foundation will have a management board or some other form of committee governing its activities.

Two main types of foundation structure exist: company/corporate foundations and community foundations:

- Corporate/company foundations – Created by companies as separate legal entities with the purpose of delivering social development projects. The level of involvement of the company within the foundation structure varies significantly;

- Community foundations – “An independent, nonprofit, philanthropic organization working in a specific geographic area which, over time, builds a collection of endowed funds from many donors in the community. It provides services to the community and its donors, makes grants, and undertakes community leadership and partnership activities to address a wide variety of needs in its service area. A community foundation is a vehicle for local donors who wish to contribute their cash, trusts, bequests, or real property to create permanent endowments that will benefit the community in perpetuity. Using the investment earnings on each endowed fund, a community foundation makes and builds capacity within the community to address local needs and opportunities. Their task is to build substantial, permanent funds from which grants are made to local charitable and community organizations”<sup>10</sup>

While the majority of foundations used by the mining sector are company-based foundations, there are a number of community foundations being developed either by mining companies or within mining areas.

**Funds** - Used as a term to describe a mechanism which may be legally defined as a trust or foundation, or can be used to refer to a designated line item within a company budget.

Using the general descriptions provided, foundations arguably provide greater flexibility than trusts, and funds require an implementation vehicle of some sort to be actioned. The inconsistency in definitions of foundations, trusts and funds globally, however, illustrates the point that the specific type of instrument is less important than the defining attributes of the FTF instrument.

## **b) A Growing Phenomenon**

Over the past 20 years, FTFs have become increasingly prevalent in the mining industry. While philanthropic foundations have existed in the mining sector since the 1930s<sup>11</sup>, most FTFs reviewed for this Sourcebook were established between the late 1980s and the present (2010). Between 1950 and 1980, approximately five foundations, trusts or funds were in operation, and this had increased to sixty-one in the developing world alone by 2008<sup>12</sup>, twenty-seven of which were established since 2000. Furthermore it appears that the growth of foundations, trusts and funds in the mining industry has exceeded that of other industries<sup>13</sup>.

FTFs in the mining industry have not only grown in quantity, but have also evolved their structures and programme execution tactics. The Alcoa Foundation and Phelps Dodge Foundation (now closed) were both established in the 1950s and used a corporate foundation model to support philanthropic

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<sup>10</sup> Wings (2010)

<sup>11</sup> Yakovleva (2005)

<sup>12</sup> An additional 20 foundations related to mining operations in developed countries are known to be in existence but were not included in this study.

<sup>13</sup> BSR (2010)

donations to local initiatives across their global operating locations. The foundations formed in the 1970s in Southern Africa, by contrast, became major actors in national development initiatives, in some cases displacing the government as the dominant social institutions in some areas, as can be seen in the Rössing Foundation and the Palabora Foundation case studies in Part II of this Sourcebook. In the 1980s, locally managed funds with targeted objectives were created, such as the Fundación Montelibano in Colombia which focussed on providing scholarships for the education of employees' children.

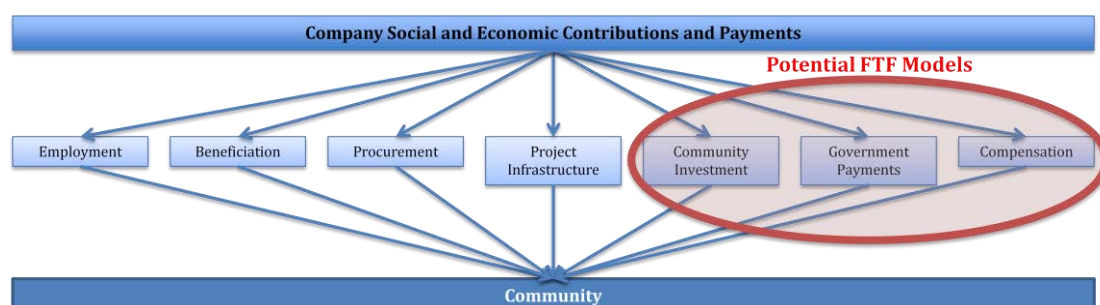
The last two decades have seen the emergence of a sustainable development philosophy within foundations, trusts and funds. They have also heralded the use of FTF models by a broader audience in the mining sector, including the emergence of community foundations (such as the Greater Rustenburg Community Foundation case study in Part II) and government mandated corporate foundations (used extensively in Peru and highlighted in the case studies in Part II). The past two decades have also seen an increase in the use of FTF models to manage a greater range of social and economic contribution and payments channels, in particular compensation and benefit sharing arrangements with governments (the Papua New Guinean integrated benefits package approach and Fondo Social La Granja in Peru highlight these trends in Part II).

### c) How Does the Mining Sector Use FTFs?

Based on analysis conducted as part of this study, the vast majority of foundations, trusts and funds are initiated by companies. Governments, however, have also played significant roles in facilitating FTF creation and influencing FTF attributes and management structures. The mining charter in South Africa, for example, has had considerable influence in stimulating the large number of trusts within the national mining industry, whereas licensing and land access agreements have been significant factors in Peru, the Philippines and indigenous communities in Indonesia, Australia and Canada.

To determine the rationale behind the increased use of FTFs in the mining sector, it is worth revisiting the channels for social and economic contribution and payments from mining companies to communities. Figure 2 highlights the areas of potential applicability for the FTF model and in this section a review of the benefits of using the FTF model for community investment, government payments and compensation is conducted.

**Figure 2 Potential Applications of FTF Model in the Mining Sector**



## i) Community Investment

While growth in the use of FTFs has been seen in a variety of applications, the most significant rise is in the use of the model for community investment. The IFC define community investment as “voluntary actions or contributions by companies, beyond the scope of their normal business operations, intended to benefit local communities in their area of operations”<sup>14</sup> and note that this is distinct from a company’s obligations to mitigate or compensate local communities for environmental and social impacts caused by the project. The overall company goals of community investment can be summarised as:

- “To establish and maintain positive, mutually beneficial long-term relationships with local stakeholders;
- To contribute to long-term improvements in quality of life; and
- To help create an environment conducive to investing”.<sup>15</sup>

The drivers for mining company community investment depend on the stakeholder, as represented in Table 1.

**Table 1 Drivers of Community Investment by Mining Companies<sup>16</sup>**

<b>MINING COMPANY</b>	<b>COMMUNITIES</b>	<b>GOVERNMENT</b>
<ul style="list-style-type: none"> <li>• Social License to Operate</li> <li>• Access to Land</li> <li>• Risk and Reputation Management</li> <li>• Productivity Gains</li> <li>• Positive Legacy</li> <li>• Company of Choice (for next project)</li> </ul>	<ul style="list-style-type: none"> <li>• Long-term improvements in quality of life</li> <li>• Access to opportunities</li> <li>• Community better off due to company presence</li> </ul>	<ul style="list-style-type: none"> <li>• Greater benefit sharing from private sector</li> <li>• Reduced pressure on Government for local community investment</li> <li>• Utilisation of effective implementation system held by company</li> <li>• Retained support at local level for industry responsible for generating significant GDP contribution</li> </ul>

The choice of FTFs, as compared to the other models of benefit sharing, to implement community investment programmes in the mining sector is based upon on a number of advantages identified with this model. While individually these advantages are not limited to FTFs, the combination can present a significant benefit to different stakeholders. The use of FTFs can:

- Signal commitment and establish a formal, professional and systematic approach to development which can in turn help to win and retain social licence to operate.
- Support long-term, multi-year development projects without necessarily being tied to annual company budgeting cycles.

<sup>14</sup> IFC (2010)

<sup>15</sup> ibid

<sup>16</sup> Adapted from IFC (2010)

- Foster stakeholder participation in the management and operation of community investment programmes. Independent foundation and trust management and governance structures can provide a more formal approach to shared decision making and community, NGO and government inclusion.
- Build bridges to other development actors, including the formalisation of collaboration between a company and other stakeholders through providing a “neutral” facilitator. This role as a neutral party can also increase the likelihood of being able to source external funding.
- Separate legal liability for the actions of community development programmes from those of a mining company, thereby minimising company risk.
- Where funds are endowed, FTFs can provide a guarantee of financial support for development independent of the boom-bust cycle of mining investments.
- Provide financial benefits, such as tax advantages, which may not be available through other mechanisms of community investment.
- Develop long-term institutional knowledge and attract and retain specialised expertise from the development sector, which can be more challenging for programmes run internally by mining companies.
- Represent a participatory, transparent and accountable mechanism for investment of revenues in development, particularly in situations where there may be high levels of corruption or distrust of public and private institutions.
- Provide a clear definition of the types of projects a company is prepared to invest in, the criteria and components of project financing, the locations where it will invest and the service providers for implementation.

Foundations, trusts and funds will not be appropriate in all community investment situations in the mining sector. Negative repercussions for companies from poor governance or financial controls within an FTF can be significant, and the application of an FTF model does not in and of itself reduce opportunities for corruption especially given the potential requirement for significant up front costs and time investment in developing these structures.

## ii) Government Payments

In this Sourcebook, “government payments” refers to taxes and royalties as well as other payment schemes, including voluntary contributions, which may exist between mining companies and various levels of government which will be redistributed to communities through some form of benefit sharing mechanism. Governments may establish their own FTFs or promote the use of FTFs within the sector for a variety of reasons, including:

- Bypassing existing structures, processes and politicians to establish direct channels to beneficiaries;
- Managing mandatory or voluntary funds received from companies through royalties, taxes or fees;

- Stabilizing economic contributions from the mining sector to weather severe fluctuations in commodity prices; or
- Transitioning communities/regions towards a sustainable development path beyond the life of the mine.

There is a wide array of taxes (including royalties), which are used by governments to derive benefit from the mining industry for the nation. The two main groups of taxes are *in rem* and *in personam* taxes<sup>17</sup>. *In rem* taxes include taxes on fixed costs of production (such as property taxes and import taxes) and taxes on variable costs of production (such as unit based royalties and sales taxes). In contrast *in personam* taxes are charges against some definition of net revenue, and as such, are tightly linked to the profitability of the mining project. This distinction in forms of taxation can become critical for a government, and a host community, when attempting to stabilise the benefits gained from the mining industry and ensure the host country receives a “fair share” of the benefits during boom times.

Taxation arrangements for mining projects are agreed in the contract negotiation period, and typically form part of the legislation permitting the project to proceed. As such, any changes to the taxation and royalties scheme generally requires existing contracts with companies to be re-negotiated. Re-negotiation of contracts can, however, have negative consequence for investor confidence in the country.

Given these considerations, governments are increasingly using and promoting FTF models under a variety of conditions:

- Governments may find that investing a portion of the taxation and royalties received from mining into a stabilisation fund can help to balance annual budget and allow the government to plan for longer-term projects. This approach is particularly relevant where taxation is strongly based upon *in personam* taxes, upon which the government can exert little or no control, and where mining constitutes a significant portion of the national GDP. Examples of this approach have been seen in both Chile and Papua New Guinea<sup>18</sup>.
- Where benefit sharing is predominantly based on *in rem* taxation, governments and communities can derive little additional benefit from windfall profits during mining boom times, potentially raising community and national discontent with the industry. Rather than renegotiating contracts to change the taxation basis, some governments have turned to the implementation of “voluntary contributions” from companies, and the use of FTF models to manage these contributions for immediate implementation at the community level.
- Mining projects often exist in areas where government capacity may be weak or the government may simply be absent. When public services are inadequate, governments may promote the establishment of a company FTF model to provide complementary resources to fill in gaps in public

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<sup>17</sup> Otto et al (2006)

<sup>18</sup> The Mineral Resource Stabilisation Fund in Papua New Guinea has subsequently been dismantled.

service or extend the scope of services being provided. These programmes are increasingly being targeted towards capacity building for local governments. The use of FTFs in this situation may allow a beneficiary to experience more rapid development than would otherwise have resulted from government distribution of revenues or infrastructure due to resource limitations, capacity, political factors and corruption. Implicit within this model, however, is a blurring of the roles between the private sector and government, with the potential that governments may cease to provide support to areas where company foundations have been established.

- In some jurisdictions the negotiation of mineral licenses identifies the whole “package” of benefits and payments due to communities. This integrated benefits approach can generate large lumped sums of money, payable to communities over an extended period of time. This model is discussed further in the next section, however there are clear advantages for governments to support an FTF model in these cases to ensure transparency between government, company and communities.

Where FTF models are being adopted or promoted by governments as part of improved management of existing payments, significant efficiencies can be realised. The situation becomes less clear when governments use the establishment of company FTFs as a means to fill in gaps in public service provision, or to change the benefit sharing arrangements contractually agreed with companies.

### iii) Compensation

Payments made by mining companies as compensation for social and environmental impacts can be of considerable size. This is particularly relevant when compensation payments include both direct cash compensation to individuals and financing for development projects at the community level over an extended period of time. Effective management of the financing for these community projects and time lag compensation payments often lends itself to the use of a trust structure. In these cases, the compensation payments are typically kept separate from community investment projects a company may be undertaking, to ensure there is no confusion between the origins of the financing amongst the beneficiaries.

The range of payments and contributions received by communities as part of the agreement for a project to proceed can be vast. The integration of all benefits and compensation into a single package, known as an “integrated benefits package” has been applied in some jurisdictions, making it clearer for community members and landowners to determine the balance of impacts, compensation and benefits expected from a project. Integrated packages often have components which require investment over a period of time and again trusts are often used to facilitate this investment in a transparent manner. The combination of compensation and community investment in a single trust vehicle can have unintended consequences, however, as seen in Papua New

Guinea where there is a widespread belief that all monies paid as part of the integrated package are for compensation alone<sup>19</sup>.

#### d) Influence of Political Economy

Foundations, trusts and funds vary widely in their specific characteristics and attributes. In part this is due to differences in the legal and regulatory frameworks of the jurisdictions in which they are incorporated as described earlier, however the political economy in which they are created has an even greater impact.

Beyond establishing their own FTFs, governments provide the regulatory framework determining the need for and primary attributes of FTFs instituted by companies, civil society and other stakeholders. The regulatory environment can shape choices of foundations, trusts or funds, governance structures, funding approaches, stakeholder participation, programme objectives and geography and programme execution tactics.

Not all government influence on FTF selection and application is through regulation, as can be seen in the examples in the box below.

#### **Government Actions to Encourage Use of Foundations, Trusts and Funds**

In South Africa, the **Broad Based Socio-Economic Empowerment Charter** has been a key driver behind company social investment initiatives. A considerable number of trust funds have been established to fulfil social obligations as part of the conversion of 'old order' mining rights.

The **Philippines Mineral Law** of 1995 requires that companies obtain consent from indigenous cultural communities for use of their ancestral lands and that royalties be paid into a trust fund "for the socio-economic well-being of the indigenous cultural community".

In 2007, 40 companies and the Peruvian Government signed an agreement to make a voluntary contribution (*Aporte Voluntario*) to local and regional funds for the poorest provinces and regions of Peru. The payment addressed perceived inequities, emerging from rising commodity prices, between project revenues and anticipated royalty and tax benefits. The agreement also included company commitments to good management of these funds to help circumvent bureaucratic difficulties in disbursement and management of royalties to provinces and municipalities. Xstrata, Rio Tinto and Vale have also established '**social trusts**' as part of their payments to secure the Las Bambas, La Granja and Bayovar development projects in Peru.

In Papua New Guinea, **land rights agreements**, such as those established between landowners and Lihir Gold have included the creation of trust funds for development purposes. The Papua New Guinea Sustainable Development Program was created as part of a **divestiture agreement** with the PNG Government.

The new **Laotian Minerals Law** will make Community Development Funds a standard requirement for investors.

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<sup>19</sup> Imbun (2007)

## **e) Key attributes**

The key attributes of mining foundations, trusts and funds lie not in their legal structure, but rather in their approach to a number of parameters outlined below:

- Programmatic Approach;
- Financing;
- Geographic Reach;
- Participation;
- Governance and Influence;
- Programming Focus; and
- Timing.

In this section, each of these considerations will be addressed and examples from both the global literature review and detailed case studies included where relevant.

### **i) Programmatic Approach**

The decision on whether to run community development projects internally within a company or externally is well addressed in the IFC Community Investment Strategies Good Practice Handbook (2010) and will not be further addressed in this Sourcebook. Instead this section assumes a decision has been taken to pursue an FTF model and provides guidance on the approaches available within this framework.

There are two main programmatic approaches within FTFs: grant making and operational or implementation approaches. Grant making organisations provide grants to other organisations whereas operational or implementation based organisations use their funds or endowment to achieve goals directly. It is useful to consider these approaches as endpoints on a spectrum as many organisations use a mixture of both approaches.

#### **(a) Grant making**

Grant making foundations provide funds to other development initiatives already in place or support new initiatives to develop. Grant making is particularly applicable when there are other development actors already working – or able to work – with beneficiary communities or when resources are too limited to support permanent staff. Grant making can help to avoid the duplications of effort and can support capacity building within civil society to develop projects themselves.

There is no limit placed upon the geographic focus of grant making FTFs and these decisions are typically influenced by the broader purpose and goal of the

FTF. For example, regional networks as seen with the Greater Rustenburg Community Foundation (focussed on the Greater Rustenburg region in South Africa) are applicable given its community foundation basis; while national approaches used by the Anglo American Chairman’s Fund (operating across the nation in South Africa) are more appropriate given its corporate philanthropy role.

Grant making FTFs can transfer financial resources directly to development projects to support development organisations (sometimes referred to as the Donor Foundation approach). In most cases grant applications are competitive and grant making FTFs apply a rigorous process of project selection and oversight.

<b>Grant making FTFs</b>	
<b><i>Advantages</i></b>	<b><i>Disadvantages</i></b>
<ul style="list-style-type: none"> <li>• Approach can be applied at any level</li> <li>• Can become a conduit for funds from a variety of sources and beneficiaries potentially improving the sustainability of the FTF</li> <li>• Requires a smaller number of employees</li> <li>• Encourages community ownership/initiation of projects</li> <li>• Creates opportunity for capacity building (depending on skills held by FTF staff)</li> <li>• May increase project sustainability</li> </ul>	<ul style="list-style-type: none"> <li>• Unless strong transparency approach, disbursements may be opaque and may not reach the correct beneficiary</li> <li>• Can result in high percentage of failure unless there are strong project evaluation and monitoring criteria and capable staff</li> <li>• No direct contact at project level</li> <li>• Significant administrative time for small amounts of investment</li> <li>• Size of grants budgets needs to be appropriate for number of grant applicants</li> <li>• Reputational benefit for company can be diluted</li> </ul>
<b><i>Mitigation Actions</i></b>	
<ul style="list-style-type: none"> <li>• Pairing financial and technical assistance, especially in communities where local organisations have limited capacity and experience</li> <li>• Automated systems for grants evaluations</li> <li>• Provision of assistance with grants applications</li> <li>• Partnership with third party for monitoring and oversight of grant projects</li> <li>• Clear delineation of funding parties objectives from grant making.</li> </ul>	

*(b) Operational or Implementation FTFs*

On the other end of the spectrum of programmatic approaches lie FTFs which use their funding to implement projects directly. “Operational” FTFs can be preferable when operated in a region with few development actors and where the FTF is expected to have a presence for a number of years. Many rural

communities where “mining is the only game in town” present situations in which the operational FTF approach may be applicable, as seen with the Rössing Foundation (Namibia).

This approach requires more staffing than the grant making approach and ideally staff will have specific expertise in the development projects being implemented. It is also more applicable to FTFs focussed on local or regional development, as staff will need to be able to gain access to all project locations. Where operational FTFs operate across a broader geographic region they typically need to establish multiple offices, raising the overhead costs for the FTF.

The development of an operational FTF often requires significant start-up costs, including the hiring of a range of development specialists. A company or community’s ability to absorb these costs at the start of a project may be limited, leading to a number of operational FTFs being established after the first few years of project operation.

<b>Operational FTFs</b>	
<i><b>Advantages</b></i>	<i><b>Disadvantages</b></i>
<ul style="list-style-type: none"> <li>• Can develop significant experience of their own</li> <li>• High degree of interaction with communities</li> <li>• Clearer opportunities for company branding and connection to social license to operate</li> <li>• Opportunities exist to seek external financing if a good reputation is developed</li> </ul>	<ul style="list-style-type: none"> <li>• Higher overhead costs and initial start-up costs</li> <li>• Time lag from decision to establish FTF to delivery of first project</li> <li>• Risk of dependency and/or potentially viewed as replicating the role of Government</li> </ul>
<i><b>Mitigation Actions</b></i>	
<ul style="list-style-type: none"> <li>• Funding commitments should be made in advance to allow longer term projects to be developed;</li> <li>• Focus to be placed on capacity building and spinning-off successful programmes (as has occurred with mixed success at the Palabora Foundation (South Africa));</li> <li>• Facilitate community input into project selection and implementation.</li> </ul>	

Within both the grant making and operational approaches, FTFs may pursue partnerships with other development actors with similar objectives or with designated beneficiaries. Potential partners can include government agencies, local and international NGOs, community based organisations, and other mining operations. Partnerships can add specific value by a) addressing regional or national issues that impact and influence local conditions, b) bringing resources or complementary skills to programmes or, conversely, c) expanding the scope of successful programmes.

Partnerships with local organisations can be distinct from those with large established national and international development agencies (such as the implementation partnerships between Fondo Minero Antamina and Caritas and ADRA in Peru). Partnering with local organisations to build their capacity requires more resources and a longer timeframe for implementation where a more experienced partner may have immediate impact.

## ii) Financing

There are three key aspects to the financing of an FTF within the mining sector: structure, sourcing and management. Funding structure, in this context, refers to the means by which the FTF is financed, be it annually, or through an endowment fund. There are a number of sources of financing for mining sector FTFs, including company financing, community funding, government funding and mixed funding. The management of the finances of FTFs can “make or break” them, incorporating both considerations around corruption and the comparison of administrative costs to development spending. All three aspects of financing are addressed below:

### (a) Funding Structure

The funding structure for an FTF has significant implications for its long-term sustainability and its ability to commit to multi-year projects. There are two main approaches to structuring the funding of an FTF (with a combination of both often employed):

- Endowment; and
- Annual budget allocation.

Broadly speaking, endowment funding favours FTFs seeking to exist beyond the period of a mining operation, and budget cycle allocations are better suited to FTFs established to deliver benefit while a mining project is operational.

The endowing of funds in an FTF supports the long-term sustainability of an FTF, although for this model to be effective a sufficient sum needs to be endowed and the time between endowment and total reliance upon the interest cannot be too short. In endowed FTFs, administrative budgets are often sourced from the interest derived from the endowed investment while additional annual contributions are made from a mining operation or other funding parties to support development projects. Ideally, by the time annual contributions from a company cease, the endowed fund is of sufficient size to support the administrative and development project budgets of the FTF for a number of years post mining. The Papua New Guinea Sustainable Development Program (PNGSDP) employs both an endowed fund (the “long term fund”) and a development fund intended for immediate use with the ultimate goal of continuing to use the long term fund for a minimum of 40 years post closure of the Ok Tedi mine. Even where the capital of an endowed fund is used as part of the annual budget for the FTF, having such a fund can make it easier for FTFs to contribute to or support multi-year projects by providing a funding guarantee.

Endowed FTFs are also better protected from price fluctuations and external influences on the mining industry which can cause annual budget allocations to vary considerably. Both the Rössing and Palabora Foundations, following periods of financial difficulty within the mining companies causing a cessation of payments to the Foundations, instituted endowment funds to increase their protection from market vagaries. However, for an endowment to be most effective it should be set up as early as possible, at a time when the cost of money is highest for companies.

<b>Endowment Funding</b>	
<b><i>Advantages</i></b>	<b><i>Disadvantages</i></b>
<ul style="list-style-type: none"> <li>• Greatly enhances the sustainability of an FTF where administrative costs are sourced from the interest generated on the endowment</li> <li>• Facilitates multi-year project commitments</li> <li>• Can protect FTFs from fluctuations in mineral prices affecting mining operations</li> <li>• Potentially provides an exit strategy for companies when mining operations cease</li> </ul>	<ul style="list-style-type: none"> <li>• Ideally requires investment of development funding early where possible, when money is most expensive</li> <li>• Large sums of money can attract corrupt practices and/or poor financial management</li> </ul>
<b><i>Mitigation Actions</i></b>	
<ul style="list-style-type: none"> <li>• Financial management for the endowed fund should be handled professionally</li> <li>• Transparent management of the funds invested and appropriate reporting of the financial management should be undertaken</li> <li>• Endowment funds can be established after the first few years of profit generation from a mining operation, reducing the cost of the money</li> </ul>	

Financing FTFs through annual budget allocations is common practice and allows FTF financing to be run through existing budgeting structures for companies and some NGOs. Providing funding on an annual or budget cycle basis allows funding to be scaled and modified depending on external factors affecting the source of the funding. For example, political changes can significantly alter the allocation of funding to local and provincial governments, affecting their ability to contribute to FTFs (either at the project or structural level). Similarly, companies facing adverse mineral prices have the flexibility of changing their contribution to development projects using this approach.

An annual budget allocation approach can provide a strong driver for effective monitoring and evaluation programmes as decisions on the success of programmes are typically reviewed prior to committing the next year's budget. The close dependency between the funding source (especially if this is the mining company) and the FTF can enhance collaboration between the two parties, although it can also create tension when funding is unavailable.

<b>Annual Budget Allocations</b>	
<b><i>Advantages</i></b>	<b><i>Disadvantages</i></b>
<ul style="list-style-type: none"> <li>• Can drive the development of a strong monitoring and evaluation programme</li> <li>• Can foster close collaboration between funding source and FTF</li> <li>• Retains flexibility for funding sources to moderate their contributions based on external influences</li> <li>• Allows funding to be managed through existing accounting systems</li> </ul>	<ul style="list-style-type: none"> <li>• Potential limiting factor for multi-year projects as commitments can only be made per budget cycle</li> <li>• Threatens the long-term sustainability of the company funded FTFs as entirely new funding source would need to be found when operation closes.</li> </ul>
<b><i>Mitigation Actions</i></b>	
<ul style="list-style-type: none"> <li>• A proportion of budget cycle allocations can be retained to act as a reserve, allowing FTF to commit to multi-year projects</li> <li>• Long-term sustainability can be improved through employing capacity building approaches in all projects, and supporting projects to seek alternative financing</li> <li>• Alternative financing sources can be sought and pursued from FTF inception to reduce dependence on any one project</li> </ul>	

*(b) Source of Financing*

An FTF can have a variety of sources of financing, each of which is addressed in this section:

**Company Funding**

The most common source of financing for FTFs in the mining sector is from mining companies themselves. Company funding may be provided through a number of different mechanisms:

- Centralized corporate budget that makes portfolio decisions to support operating assets or beneficiaries in various locations;
- Localized company funding that is derived from business or operating unit budgets; and
- Voluntary or mandatory contributions via the local fiscal system.

For both central and local contributions, one of the key challenges faced by companies is the determination of the ‘appropriate’ amount to invest. A common method of addressing this dilemma is the application of set percentage of revenue payment, as seen in the Mozal Community Development Trust’s 1% approach.

**Percentage of Revenue** – Companies typically prefer payments or fees that are on a before/after tax basis rather than assessed directly on revenues. From a government or community perspective, production based payments are often

preferred as they offer a guarantee of financial contribution regardless of company profit. Linking contributions to revenue is likely to cause significant variations in funding as commodity prices swing. To make this model successful, an FTF needs to employ financial discipline to invest during the boom times to support operations during the bust. “Corrections” on floor and ceilings on payments can be introduced to minimise these risks to communities and companies.

Company	Foundation	Funding Strategy	Management Structure
Freeport Copper	McMoran Freeport Partnership Fund for Community Development (LPMAK)	Fund receives 1% of mine revenues. Total contributions since inception: \$242 million. Funds in excess of Foundation approved budget placed in provident fund for future investment (\$45.5million as of end 2006). Commitment to invest 10% of all future receipts in long-term fund.	Fund is administered and disbursed by an organisation called the Lembaga Pembangunan Masyarakat Amungme dan Kamoro (LPMAK). LPMAK is managed by Board of Commissioners consisting of representatives from the local government, Papuan regional leaders, leaders from the Amungme and Kamoro communities and PT Freeport Indonesia.

**Percentage Before Profit (EBITDA)** – As with most companies, it is normally preferable for companies to fund their mining project expenses before committing to other financial obligations. By assessing fees on a before profit basis and allowing companies to deduct their contributions as an expense, this model can effectively create a burden sharing arrangement between companies and governments for each dollar spent. The disadvantage of this approach is that if there is no profit then there are no FTF contributions (unless a minimum floor is established).

Company	Foundation	Funding Strategy	Management Structure
BHP Billiton	Minera Escondida Foundation	Percentage of Minera Escondida’s community investments totalling 1% of pretax annual profits based on 3 year rolling average. Total contributions; over USD 9 million.	Citizen Advisory Council comprising community representatives in the public and private sectors and civil society determine foundation investment with Board of Directors consisting of representatives from community and

**Percentage of Capital or Operating Expenditures** – By determining the community investment value through a percentage of expenditures, this helps to assure that contributions are forthcoming, and provides a degree of predictability for companies and FTFs. The contributions can then be treated as expenses or depreciated in the case of capital. The disadvantage to this approach is that cost overruns by the company can create an exponential cost if the percentage is directly applied to the total amounts.

**Annual Negotiations** – Rather than using a “percentage” calculation, another approach is to determine the annual contribution from the company to the FTF based upon an internal company assessment of funding availability. This approach retains almost complete control within the company, however it can be seen to be highly opaque, especially in tight financial times. A compromise approach is to agree a fixed yearly sum as a contribution, however this also risks raising tension if windfall profits are received and no additional contributions are made.

Combining a number of the approaches outlined here can “correct” disadvantages in a specific approach. An example of a combined approach from Newmont is illustrated below.

Company	Foundation	Funding Strategy	Management Structure
Newmont	Community Foundation	1% net operational profit (pre-tax) from Ahafo South mine plus \$1 per oz of gold from Ahafo (estimated conservatively at USD 0.5million annually)	Ahafo Social Responsibility Forum (ASRF) participates in company decisions, deliberates on issues of mutual interest, determines allocation of Community Development Funds and elects Board of Trustee members representing the community.

### Community Funding

Communities or local NGOs may provide funding to company foundations, even at low levels, in order to establish their direct, vested interest in FTF outcomes. An alternative is to facilitate minority equity ownership for beneficiaries directly in the mining project or venture as has been seen in the Mining Scorecard requirements in South Africa described in more detail in Part II. One of the benefits of an equity approach is that it puts the beneficiaries on the same financial footing (proportionately) as the project developer. The funds (or portions thereof) that they receive can in turn be invested in, or managed by, the FTF for channelling to local community needs. The disadvantage of this approach is that the onus of risk is placed directly on the beneficiaries who in this situation will be subject to the same risks as any investor. Notwithstanding

this concern, equity based approaches may offer interesting alternatives for long-term capacity building, local accountability and development.

Rather than contributing funding to existing FTFs, communities can choose to use their own funding to develop a community foundation. Community foundations rely upon community members to donate to a shared foundation to advance social development projects within their local area. The community foundation model is very popular in the United States<sup>20</sup> and increasingly is spreading to other countries with similar philanthropic giving characteristics. The model has potential application in mining regions due to the often significant differential in wealth between those receiving mining salaries and the rest of the community – a differential in wealth is normally necessary for this model to show success. The Greater Rustenburg Community Foundation (described in detail in Part II) provides an example of a community foundation in a developing country mining region. Interestingly, one of the biggest challenges it faces currently is competition for securing financing amongst other development actors, including company foundations.

#### Community Foundations

In 1996, PT Freeport Indonesia (PTFI) committed 1% of annual revenues to Papuan development via the PTFI Partnership Fund for Community Development. The **Amungme and Kamoro Community Development Organisation (LPMK)** is a Papuan community organisation formed to manage and implement these funds and uses a community foundation model. While PTFI has representation in the LPMK governance structure, the balance of control rests with nominated community leaders and representatives. Freeport McMoran Copper and Gold Inc (FCX) is planning A similar community foundation for its Tenke Fungurume project in Democratic Republic of Congo and supports a community foundation at its Cerro Verde mine in Peru.

**Fundación Sierra Madre (FSM)** is the community development foundation for the Goldcorp owned Marlin mine in Guatemala. FSM was established as a company foundation with plans to transfer it to a community foundation over time. While FSM was launched in 2003, the transition has not yet occurred.

The **Greater Rustenburg Community Foundation (GRCF)** is a community developed foundation located in platinum rich area of Rustenburg in South Africa. There is no direct company involvement in the GRCF.

#### Government Funding

Governments normally draw upon payments made by the mining sector as part of either a) payments for concessions, licences or land access or b) government accessed royalties, taxes or fees, to contribute to development projects. Governments can use these funding sources as an opportunity to initiate a new government FTF or channel them through an existing FTF mechanism (as a co-founder). In addition, governments can establish fund mechanisms that require direct company contributions, such as closure bonds and trusts. Finally

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<sup>20</sup> Graddy et al (2009)

government can use purchase payments made through privatisation acquisitions by private sector mining companies to invest in social development.

#### EXAMPLES OF GOVERNMENT FUNDING MECHANISMS

**Government Operated** - The *canon minero* royalty payment in Peru directs a large percentage of the Government's royalties to the region hosting the mineralisation for development projects.

**Government Directed** - The Namibian Government is now requiring that all mining companies establish an Environmental Trust Fund (ETF) to accumulate over the lifespan of the mining project of a scale sufficient to conduct all environmental obligations associated with mine closure (Mesik 2009).

**Payments for Concessions** - 50% of the purchase price of the Rio Tinto La Granja concession payable to the Government of Peru as part of the privatisation process is to be invested in an FTF to be used to provide development programmes in the La Granja area while the project progresses from purchasing to potential operation.

**Government Co-Financing** - Again in Peru, *canon minero* financing is being used to support *Aporte Voluntario* projects effectively increasing the implementation record of *canon minero* monies and at the same time expanding the reach of the *Aporte Voluntario* commitments.

#### Mixed Funding

A well-established FTF may enjoy funding from a number of sources, and in many cases this is used as a criteria of success of FTFs associated with the mining sector. Such diversity can help to minimize the boom and bust effects associated with funding derived from mining profits or revenue alone and can be a key step in developing a sustainable future. Potential funders include NGOs, governments (as highlighted in the examples above), communities, other FTF organisations and in some cases other mining companies. Asociación Ancash (Peru) is now sourcing up to 12% of its financing from external sources.

While co-financing is often set up as an operational goal, it can have unintended consequences as the individual reputational benefit associated with projects can be diluted when shared with through multiple partners. This concern is most relevant when different mining companies work together to support a single project, as has been the case with Grupo Norte contributing funding to ALAC projects in Peru (as described in Part II).

Finally, funding may also be derived from activities of the FTF itself where it is allowed to invest in profit generating activities on the condition that profits are reinvested in FTF programmes or to sustain its operating and administrative costs.

#### (c) Financial Management

Establishing and running FTFs involves transaction and operating costs. In the rush to capitalise on the advantages of company FTFs in particular, there is a risk of imbalance in the level of transaction/operational costs and direct spending on social investment projects. A number of the FTFs impose limits on the “administrative” proportion of spending, for example, ALAC (Peru) limits its administrative costs to 15%, and the Palabora Foundation (South Africa) has a limit of 20%. In determining the appropriate level for administrative expenses, FTFs should consider the comparative “development impact” of a dollar spent through other mechanisms.

**Corruption Risks** – In many locations where the mining industry works, the potential for corruption related to the handling of funds employed in socio-economic development is present. A number of safeguards can be employed to minimise this potential as highlighted below:

- Development of clear requirements in the FTFs Charter or Deeds requiring annual independent third party financial audit by a competent party and Board of Trustees/Directors review of the resulting report;
- Mandatory incorporation of formal monitoring and evaluation programmes representative of development sector best practice along with independent third party evaluation;
- Detailed line item costing for all proposals submitted;
- Deployment of internal company expertise (in the case of corporate foundations) to review particular aspects of projects/proposals, eg, using the engineering manager at a mine site to review a proposal for construction of a school block, including review of materials and labour quantities and a visit to the construction site during the process of building the facility;
- Established minimum of two bids for most projects/proposals;
- Incorporation of specific prohibitions on types of projects that will not be funded by the FTF in the Charter/Deeds of the FTF;
- Frequent field monitoring of funded projects by company personnel who are competent to observe and investigate these sorts of projects; and
- Prohibition of grants being made to individuals.

### iii) Geographic Reach

Defining the geographic reach of the FTF is typically linked directly to defining the purpose or goal of the FTF and the type of the FTF (company based, community based or Government mandated). In general, five potential levels of geographic focus for FTFs can be defined:

- **Area of Influence** – This is the area defined as being influenced by a specific mining operation, and is normally identified during a project’s social and environmental impact assessment. Mapping FTF activities across a mining project’s area of influence is particularly relevant when the FTF has been established to implement the company’s community investments programmes. The Palabora Foundation (South Africa) in its current format is a good example of this approach;

- **Special Focus Groups** – In some situations, FTFs are established to benefit a subset of the mine’s impacted population or to benefit a specific group who may not otherwise have received benefits from the project but who are considered to need special assistance. Examples of this approach have been seen in the Philippines with the establishment of trust funds for indigenous groups impacted by mining projects.

#### THE DEFINITION OF “LOCAL”

Mining companies often struggle with the definition of “local”, whether it be related to community investment, compensation payments, employment preferences or procurement sources. Under the Peruvian *Aporte Voluntario* scheme, companies were to use existing definitions of local and regional communities within their Department to whom different levels of project financing would be directed. “Local” communities were to receive the majority of the financing, so to ensure the poorest regions in the Department received as much new financing as possible. Fondo Minero Antamina revised their definition of “local” to include these regions regardless of physical location.

- **Regional** – Expanding the focus of FTFs and mining sector benefit sharing mechanisms to the regional level was traditionally the remit of governments. Over and above royalty payments to regions, governments have also set up FTFs to better coordinate social and environmental issues in regions, such as the Mineral Foundation of Goa (India). The Peruvian Government has also been instrumental in expanding the impact of FTFs to cover broader regions, through the *Aporte Voluntario* scheme. A few companies have now also begun to experiment with regionally focussed FTFs. Some companies have created foundations that support all or a portion of their mines within a specific geographical region. The Rio Tinto Western Australia Future Fund, for example, organises long term partnerships that address regional development needs in a region where Rio Tinto operates a significant number of iron ore mines. On a smaller scale, the Goldfields Ghana Foundation is intended to benefit communities impacted by the company’s Tarkwa and Damang mines, while also including support from key suppliers and a separately owned mine nearby. Finally, regional approaches can suit community foundation approaches, as seen with the Greater Rustenburg Community Foundation (South Africa).

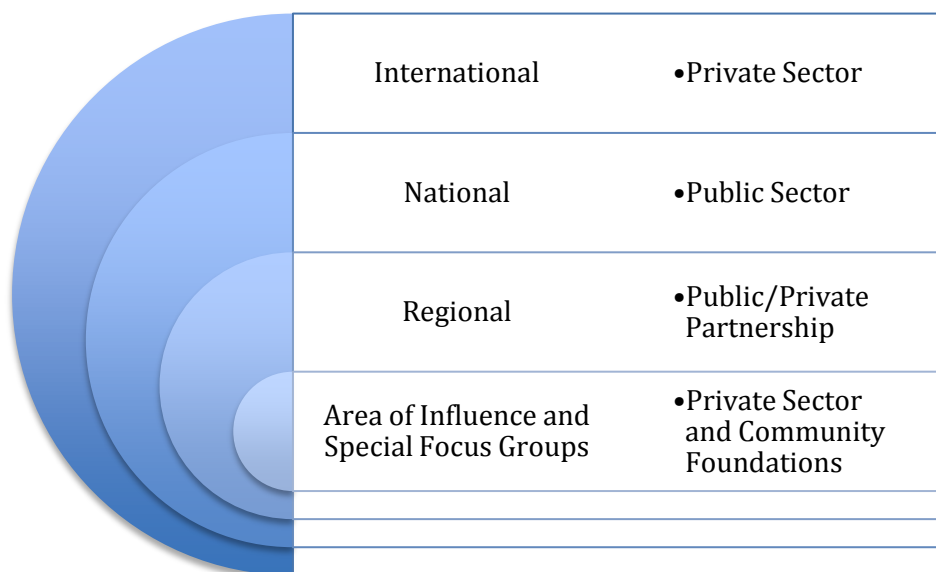
- **National** – Mineral wealth is often ascribed to the nation, and as such it should not be surprising that a number of national FTF organisations exist. From a company perspective, national FTFs are typically employed when a company has a very significant national footprint, and seeks to contribute (often at a philanthropic level) to national development issues, outside of the immediate influence areas of its operations. The Anglo American Chairman’s Fund (South Africa) is a dedicated instrument through which Anglo American’s Southern African businesses channel additional grant making in South Africa. Namdeb (Namibia) is a 50:50 venture between the Namibian Government and De Beers which allocated 1% of its profits after tax for donations and grants and is currently streamlining its corporate grants into a single FTF model called the Namdeb Foundation. The Namdeb Foundation will utilise a “section 21 company” (not for profit) format and will provide grants across the whole

country<sup>21</sup>. National FTFs are also pursued by governments, as was seen in the Papua New Guinean Mineral Resource Stabilisation Fund (no longer in existence).

- **International** – Utilised by companies with a large global footprint, international FTFs can provide mining companies with a means to support charitable organisations in the countries hosting their headquarters where those countries don't contain any mining activity. The Anglo American Group Foundation, established in the United Kingdom (UK), is now one of the key conduits for Anglo American's social investment, representing approximately 4-5% of total group spending on social programmes, and directing a proportion of this spending to the UK. The Alcoa Foundation is another example of a foundation serving global interests. It is governed by the corporate centre with a set of guidelines, focus areas/strategic themes, and criteria for local activity. Alcoa also directs all proposals for funding to local Alcoa Foundation representatives, leveraging global resources and portfolio decisions while integrating local needs. Alcoa's portfolio of social investments are developed with input from regional and business unit teams and community advisory groups worldwide.

Approximately half of the FTFs reviewed (33) as part of the literature review are directly related to individual mine sites. Of the remainder, a large number are trusts which have been created to support broad based black economic empowerment in South Africa, or to serve either national or global interests. An additional six FTFs serve more than one mine site, whether regional clusters or the entirety of global operations. The experience to date would seem to indicate that the zone of interest for an FTF is defined in part by the ownership structure of the FTF, as highlighted in Figure 3.

Figure 3 Relationships Between Geographic Reach and Ownership



<sup>21</sup> Mesik (2009)

#### iv) Participation

Community and stakeholder participation within an FTF can be effected through a number of avenues ranging from formal governance structures through to the process for project generation. Highly participative models are typically considered leading practice for FTFs, however the method of participation remains at the discretion of the owner. High levels of participation can ground the FTF within a community, enhance its sustainability through a sense of shared ownership and build capacity amongst its stakeholders. Participation can also bring with it considerable time constraints, potentially delaying FTF processes.

Five avenues for participation have been identified in this Sourcebook: FTF design, governance, project generation, co-financing and public reporting. The participation aspect of each of these avenues is discussed below, with further detail on the broader considerations around governance provided the next section.

##### (d) FTF Design

A collaborative process engaging with a wide range of stakeholders to firstly identify the needs of the beneficiary community and then develop approaches to address those needs provides a solid basis for the design of FTF structures. Depending on the size of the stakeholder group and the group's experience with FTF structures in the past, collaboration of this form can take considerable time. Newmont has undertaken highly participative design processes for both its ALAC foundation in Peru and in the development of the forthcoming Newmont Ghana Development Trust. In both cases the design phase has extended over a two-year period, and has been made possible in part through the pre-existence of community investment which continued to operate during this design phase (Yanacocha's community relations activities and the Newmont Ahafo Community Development Funds in Peru and Ghana respectively). This timing consideration may limit the applicability of a highly participative approach to FTF design to situations where a company or government is already providing community investment programmes through another mechanism.

<b>Collaborative Forums to Design an FTF</b>	
<b><i>Advantages</i></b>	<b><i>Disadvantages</i></b>
<ul style="list-style-type: none"><li>• The greater the participation of beneficiaries in the design of the FTF, the greater the sense of ownership amongst the beneficiary community</li><li>• Through engaging stakeholders in design discussions the design is likely to better represent the needs and desires of the community</li></ul>	<ul style="list-style-type: none"><li>• Cannot be undertaken with "speed" or necessarily according to the timetable of the owner organisation</li><li>• Slow "start-up" of an FTF, most critically in project delivery, can generate discontent amongst communities</li><li>• Can be inappropriate in situations where "quick runs on</li></ul>

	the board” are considered critical
<b>Mitigation Actions</b>	
	<ul style="list-style-type: none"> <li>• Rather than developing an FTF design in isolation to minimise delays, owner groups may be able to implement an interim community investment structure, reducing the pressure on the organisation for immediate implementation and allowing space for collaborative discussions.</li> </ul>

*(e) Participation in Governance*

Governance is discussed more fully in the next section, however participation considerations in governance deserve specific attention. FTF governance at its most simple can be described by the membership of the Board of Directors or Trustees. The level of participation, ie, inclusion of stakeholder representatives derived from groups other than the owning entity, on these governing bodies varies widely. The most participative governance structures are seen in community foundation approaches, however with the exception of the Greater Rustenburg Community Foundation (South Africa), LPMak (Indonesia), and Cerro Verde Fundación (Peru) there is relatively limited experience of using this model in the mining sector.

Within corporate or company foundations, participation is evidenced through the composition of the governing bodies. It is important to note that community and/or government representation does not necessarily equate to representation of beneficiaries. For example, the Papua New Guinea Sustainable Development Program Board while comprising four independent Directors does not specifically include representatives of beneficiaries from the planned and delivered projects within the Board structure. Participation can be further enhanced through the appointment of a community representative as the Chairperson of the governing body of the FTF, as is described in the Fondo Social La Granja (Peru) case study in Part II.

**Participation and Capacity**

High levels of participation of community members in FTF governance structures is generally considered to be a positive attribute of an FTF. The benefit of this participation may be compromised, however, by the capacity held by community representatives to contribute to the governing of the FTF. The **Integrated Development Action Plan (IDAP)** of the Sadiola and Yatela mines in Mali employs a highly participative independent governance structure. This approach has allowed programmes to achieve considerable grounding in local communities, but has proved challenging when developing strategic plans and planning for mine closure.

Expanding the representativeness of a governing body can have an impact on the level of control exerted by the owning body. Control and potential time and resource implications are typically cited as the most common reasons for companies to resist greater community and government participation in their FTF governance structures.

### *(f) Project Generation*

The generation of projects for consideration by an FTF can provide good opportunities for a participative approach. Regardless of whether the FTF employs a grant making or operational approach, projects can be generated either internally or externally or using a combination approach. Where FTFs seek applications either for grants or projects from community members, ideally guidelines for areas of interest relevant to the FTF will be made available. Where project selection is undertaken largely internally, decisions may be informed by social impact and needs based assessments conducted by a mining company as part of their licensing process.

Involving representatives of beneficiaries in the review process for proposed projects (possibly through a technical review committee) can help to build understanding within communities of the strategic interests of the FTF and applicability criteria for FTF support. The more transparent the review and evaluation process is, the more likely decisions taken by the FTF will gain community support.

### *(g) Co-Financing*

The trend towards co-financing of projects with beneficiaries is evident across the development sector. Co-financing can be undertaken at the project or FTF level, although is more likely to be seen at the project level when working with beneficiary communities. The contribution from communities is more often in kind (such as labour or supplies) rather than a strict financial contribution.

#### **Paying for Participation**

Marlin's Fundación Sierra Madre (Guatemala) provides some fully funded development activities, but for others it requires participants to pay a small fee for participation. Through co-investing it is felt that participants gain a sense of ownership of the activity and place greater value upon it.

### *(h) Reporting to Stakeholders*

Building upon the notion of transparency, community participation can also be achieved through interviewing beneficiaries as part of the monitoring and evaluation process used and incorporating some of this feedback in an annual report to stakeholders. Annual reports for FTFs can also generate significant reputational benefit for companies, however both of these benefits need to be weighed against the administrative demands of generating the report when determining its length and presentation.

## v) Governance and Influence

The governance structure of an FTF is often seen as the primary control over the FTF. A strong governing body can provide clarity of vision and mission for the FTF and exert control over all processes to ensure they are undertaken in accordance with FTF principles.

FTFs require a governing body of some form to be considered separate legal entities. The composition of these bodies varies from representation from the owner group only, through to multi-stakeholder bodies representing beneficiaries, civil society, government authorities and technical experts. Greater diversity within a governance structure can support a system of checks and balances with complementary roles played by different partners. Companies developing FTFs with these multi-stakeholder governance structures can find they have multiple benefits including the visible demonstration of corporate responsibility and engagement with stakeholders and potential for leveraging additional resources in the community via other donors. A summary of the advantages and disadvantages of a multi-stakeholder representative governance structure are provided below.

<b>Multi-Stakeholder Representative Governance Structures</b>	
Advantages	Disadvantages
<ul style="list-style-type: none"> <li>• Can retain some level of company control or influence – alignment with the corporate agenda and reduced risk</li> <li>• Enhances relevance, effectiveness and sustainability of foundation by creating beneficiary ownership</li> <li>• A consistent approach and centralised administration can be retained</li> <li>• Provides a means of holding beneficiaries accountable particularly if they participate in decision making</li> <li>• Provides local stakeholders with a “voice”</li> <li>• May provide enhanced platform for attracting additional or more diverse sources of funding</li> </ul>	<ul style="list-style-type: none"> <li>• May not necessarily result in true ownership of entity or agenda for beneficiary/stakeholder</li> <li>• With clear governance protocols, can result in conflicting agendas and priorities</li> <li>• Typically requires substantial time for capacity building to ensure community participation is effective</li> <li>• Link to company objectives can be diminished unless overall participation in FTF already has broad business case “buy-in”</li> <li>• Can be more expensive in the short term to set up and run given administrative and training costs associated with additional participants</li> <li>• Good will credited to FTF may not attributed so clearly to a company sponsor</li> <li>• Interests of supporting donor agencies are not always compatible with company’s business interests.</li> </ul>

At the opposite end of the spectrum from multi-stakeholder governance structures are those governing bodies comprising representation from the owners alone. These FTFs may be simpler to govern, and in the case of company FTFs, can often fall within company oversight, almost as an additional company department. High levels of company control can be beneficial when there is a lack of local capacity and this structure can improve the flexibility to react to changed environments, in particular the changing economic situation of a mining

company. The “owners” approach however allows little or no room for stakeholder input into governance, unless alternative participation structures are developed, such as community advisory groups, or technical advisor teams providing input to governing body decisions. This style of governance is less likely to support an FTF to become sustainable beyond the closure of the mine.

While the governance structure often conveys the relative influence of different stakeholders over the FTFs activities, it may not present a complete picture of “influence”. The best examples of this distinction between governing power and influence are seen where an FTF’s structure, mandate, vision and existence have been controlled through regulatory processes however no governmental representation is evident on the FTFs governing body.

#### vi) Programming Focus

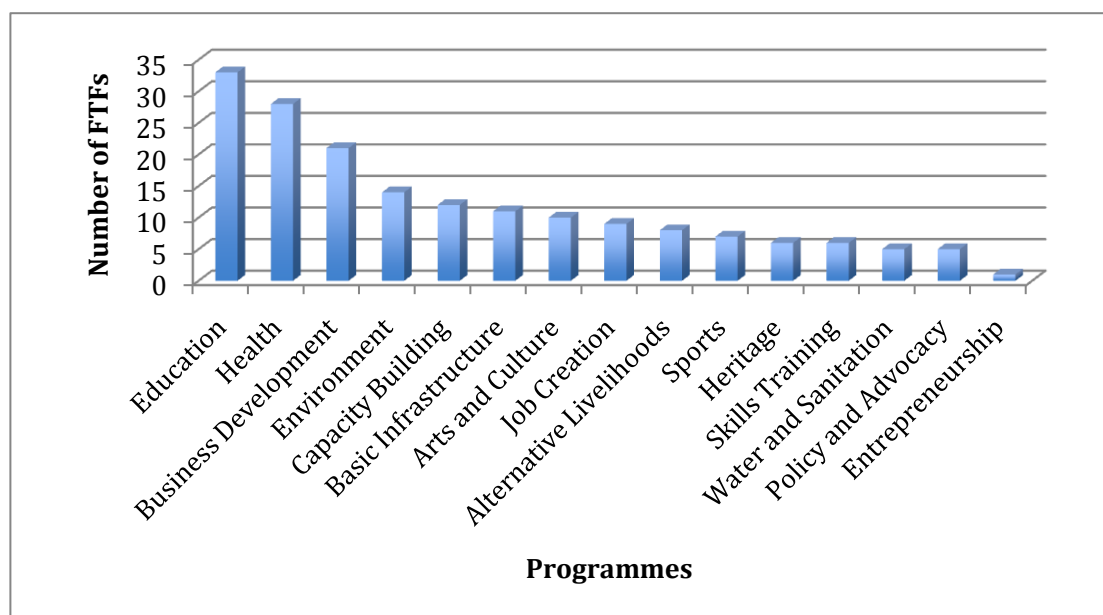
The mission, vision and objectives of an FTF should be grounded in a deep understanding of beneficiaries’ needs, owner priorities and gaps in existing development activities, all of which will guide the programme choices made. Understanding a beneficiaries’ needs can require a considerable investment of time up-front, however well targeted programmes, meeting community expectations and needs are likely to make the investment cost effective over time.

The timing and location of FTF establishment and implementation can be a critical variable in determining objectives and programming choices. Common programming areas focussed on by FTFs in the mining sector include:

- Local economic and business development;
- Health and wellness;
- Education and vocational training;
- Basic infrastructure;
- Employment and income generation;
- Environment; and
- Capacity building of local authorities and community based organisations.

A general programming trend progressing from basic infrastructure, health and education programmes at inception through to supporting alternative livelihood projects and a focus on capacity building as FTFs mature can be seen in many FTFs. The review of FTFs conducted as part of this research generated the results illustrated in Figure 4. Within the 41 FTFs reviewed, education, health and business development programmes were the most dominant, comprising over 45% of all the programmes across the FTFs (this analysis does not take into consideration the size of the programmes).

Figure 4 Programming Trends



#### APPROACHES TO IDENTIFYING NEED

**Company staff knowledge of beneficiaries** - For example, the AngloGold Ashanti Fund (South Africa) uses local area committees of company staff to identify community needs, and subsequent projects for funding by the centrally managed corporate trust.

**Partner knowledge of beneficiaries** - Grant-making foundations in particular rely on the applicant's knowledge of beneficiaries' needs. Asociación Ancash (Peru) funds initiatives generated by local organisations, working groups or other associations. Escondida (Chile) adopted national government targets for child education as a shared priority and working closely with the Regional Government of Antofagasta and the *Junta Nacional de Jardines Infantiles* (JUNJI - National Kindergarten Board) to meet this previously defined need.

**Formal consultation with intended beneficiaries, as part of existing company consultation processes or separately** - The Goldfields Ghana Foundation works with standing community committees created by the company to facilitate communication between the company and communities to generate development project ideas. The Inti Raymi Foundation (Bolivia) carried out a two-stage process involving: 1) diagnosis and characterisation of its area of action; and 2) a series of community workshops designed to identify and prioritize infrastructure needs.

**Baseline/needs assessment at the regional or local level sponsored by the company, foundation or government** - All of the VALE Foundation's "territorial development" initiatives are based on a thorough baseline assessment.

As with all development programmes, monitoring and evaluation of the programmes being implemented by an FTF is an essential component of programme management. Many texts have been written focussing on this issue and in this Sourcebook only considerations pertinent specifically to monitoring and evaluating FTF programmes are included.

### Approaches to Impact Measurement

- **Asociación Los Andes de Cajamarca** (ALAC in Peru) uses a common set of fifteen indicators which are monitored throughout the implementation of economic development grant projects and ultimately used to evaluate effectiveness; these include six impact indicators: the number of direct jobs created, the number of people who have improved their technical capabilities for production, number of new production activities, sales and value of family assets.
- **Fondo Minero Antamina** (Peru) conducts evaluation by focus area. Each focus area has impact goals against which projects are monitored. Goals are designed using a logical framework model. Common economic development project indicators include income generation, job creation, new sales and number of microfinance loans repaid.
- The **Anum Lio Foundation** (Indonesia) employed a set of community indicators which were measured in baseline and end-line surveys and could be used by community and government to continue to monitor impact after completion of closure programmes.

Monitoring and evaluating the impacts of development projects conducted or facilitated through an FTF will guide the FTF in recognising changes to the operational environment, and allow modifications to strategy to be made as necessary. These feedback loops may come through regular programme reports from grantees, internal tracking of key performance indicators, third party review or audit, or community feedback processes. Community participation in monitoring can be one of the most effective methods of gauging community sentiment and building community capacity.

### vii) Timing

The majority of FTFs are created once mining operations have already commenced. While this is unsurprising given the lack of project revenues prior to this time, earlier establishment of FTFs can lend strong support to a company's attainment of a social license to operate.

Project Phase	Number of FTFs Established
Licensing or land access agreements (aboriginal communities)	5
Licensing or land access agreements (non-aboriginal communities)	2
Pre-Operations (exploration, feasibility and construction)	7
Operations	12
Closure	1
Other (Divestiture, expansion, changes in ownership, disputes)	6

An increasing trend of early development of FTFs is being seen, often through the influence of government expectation and community development agreements signed as part of the mining contract.

### Early Inception FTFs

In 2004, Xstrata Copper successfully bid on the option to purchase the La Bambas copper project in Cotabambas and Grau Provinces in Peru. As a condition of this privatisation transaction (facilitated by ProInversion, the Peruvian Government's agency for the promotion of foreign investment in Peru), USD45.5 million of Xstrata Copper's payment to the Peruvian Government was allocated to a Social Trust Fund for the Cotabambas and Grau Provinces. The Trust Fund was managed by ProInversion and Provincial Mayors with one representative from Xstrata until 2010 when a civil entity called **Las Bambas Social Fund** (FOSBAM) was created to improve fund management. This social fund has been delivering programmes focussing on regional health, education, infrastructure and development throughout the exploration period for the Las Bambas project. The Social Fund is supported by Xstrata's own sustainable development programmes in the region. More detail on this model is seen in Rio Tinto's **Fondo Social La Granja** case study in Part II.

## 2) A Snapshot of the Experience from Part II Case Studies

Part II of this sourcebook presents fourteen case studies drawn from South Africa (4), Mozambique (1), Namibia (1), Peru (5) and Papua New Guinea (3). While mining investment plays a significant role in the national, regional and local economies of each of these countries, the purposes for which FTF structures have been applied and the parties implementing them vary significantly. Some of this variation is related to the company, project and the era of development of the FTF vehicle, however another part of this divergence relates to the national setting and the influence of government policy. In this section, the experiences of these fourteen FTFs are considered using the framework of key attributes described earlier in Part I.

### a) The Importance of Context

To compare the FTF experience of Peru, Papua New Guinea and Southern Africa, it is necessary to first consider the different histories and political economies in which these FTFs have developed. While these three areas have long histories of mining activity, the role that mining is expected to play in development has changed significantly over time within each region and varies across the regions. The political economy surrounding these three regions is described in Part II, with a summary of the different experiences indicated below.

In both Peru and South Africa, the influence of government policy on social investment in the mining industry is evident. The conditions outlined in the Peruvian *Aporte Voluntario* explicitly required companies to establish an independent entity to manage the new funds and the South African Mining Scorecard, while not requiring companies to establish an independent investment entity, is directive in its expectations of social and economic development deliverables from mining companies. By comparison, the foundations, trusts and funds in Papua New Guinea were developed in an environment with limited formal policy and were responding to changing stakeholder expectations.

The large-scale mining industries in Peru and South Africa have had considerable time and experience through which to mature and for society's expectations to have risen with regard to the contribution the sector makes to community development. These expectations are seen in the politicization of mining projects in Peru in particular. By comparison, Papua New Guinean citizens have high expectations around compensation payments and these payments often overshadow or obfuscate community development projects being undertaken. It is interesting to note that two of the three case studies from PNG have the management of compensation monies as one of their core responsibilities. In contrast, in Peru and South Africa the model appears to have been to minimise

the inclusion of compensation within foundations, trusts and funds so as to maintain a strict development role.

**b) The Use of FTFs**

The case studies in Part II illustrate FTFs being used, to some extent for all three of the channels described previously: community investment, government

	Government Payments	Community Investment	Compensation
Fondo Social La Granja	X		
Asociación Los Andes de Cajamarca		X	
Fondo Solidaridad Cajamarca	X		
Asociación Ancash		X	
Fondo Minero Antamina	X		
Anglo American Chairman's Fund		X	
Impala Bafokeng Trust		X	
Greater Rustenburg Community Foundation		X	
Palabora Foundation		X	
Mozal Community Development Trust		X	
Rössing Foundation		X	
Ok Tedi Fly River Development Program			X
Papua New Guinea Sustainable Development Program		X	
Lihir Sustainable Development Plan Trust			X

payments and compensation (Figure 5).

The majority (9) of the case studies are using FTF models for community investment purposes. The government requirement for establishment of FTFs to facilitate benefit sharing has only been seen in Peru to date, although significant government influence was used to establish one of the FTFs in Southern Africa.

The notion of mixed purpose FTFs, as seen in PNG through the integration of benefits and compensation into a single package, presents a different approach to FTF use. While an integrated package is likely to significantly improve a communities understanding of the full suite of benefits and impacts generated by a new mining investment, the experience from PNG suggests that it also blurs the

distinction between compensation and community investment. Blurring this distinction in these cases has resulted in development projects and spending being assumed to be compensation based, losing the reputational and stakeholder benefit normally attributed to a company for its community investment programmes.

While explicit expectations of delivering compensation projects through the FTF are limited to the PNG case studies, a number of the other case studies also noted challenges faced when they were established and needed to differentiate themselves from existing company compensation programmes, as is described in the Asociación Ancash example. There are no purely compensation focussed FTFs within the case studies included in Part II, however a number of advantages of FTF frameworks could be useful in managing compensation funds in future projects. These advantages include the ability to endow funds payable at a later date through staggered compensation payments; the independence of an FTF structure from a mining company; transparent management of funds; and joint governance of those funds.

### c) Programmatic Approaches

The decision between grant making or operational delivery of projects typically has significant impacts on the staffing size of the FTF. Nine (9) of the case studies primarily employ grant making approaches, with five (5) primarily implementing projects directly, although it should be noted that both approaches are seen within a number of the case studies. The comparative difference in staffing levels is evident in the examples highlighted in Table 2. While it might be expected that operational implementation approaches would be more prevalent in more remote sites where implementing partners are absent, there are no obvious trends within the case studies linking the selection of a grant making or operational model to project location (remoteness).

**Table 2 Comparative Staffing Levels**

	Staffing Complement	
	Grant Making FTF	Operational FTF
Asociación Los Andes de Cajamarca and Fondo Solidaridad Cajamarca (combined)	20	
Asociación Ancash	6	
Palabora Foundation		100
Ok Tedi Fly River Development Program		60

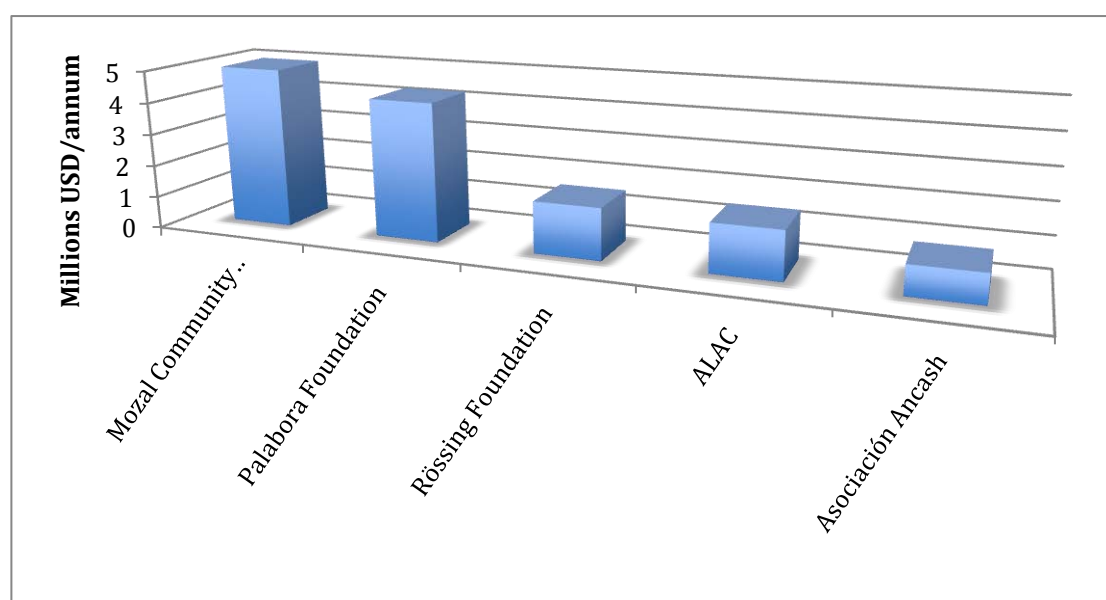
### d) Financing

Three aspects of financing were discussed in Part 1: funding structure; sources; and management. The financial structure of an FTF can play a critical role in its long-term sustainability. Within the case studies developed, four (4) have established endowment funds, five (5) rely on budget cycle contributions and the

remaining five (5) operate with funding commitments over an extended period. Interestingly, of the four with endowed funds, only one started with this approach from FTF inception, while the rest have developed an endowment over time to better manage variable company contributions and to support the future sustainability of the FTF.

The development budgets of the fourteen FTFs reviewed in Part II vary significantly. This variance reflects their different objectives and the “channel” of investment which the FTF is serving. Figure 6 provides an overview of the relative scale of the FTF budgets (for FTFs which have variable expenditures, rolling averages were used) for community investment based FTFs. Figure 6 demonstrates that “greater FTF spend” does not necessarily equate to greater reputation or benefit derived from the FTFs activities, with both ALAC and the Rössing Foundation enjoying strong reputations.

**Figure 6 Comparison of Development Budgets Across Community Investment FTFs**



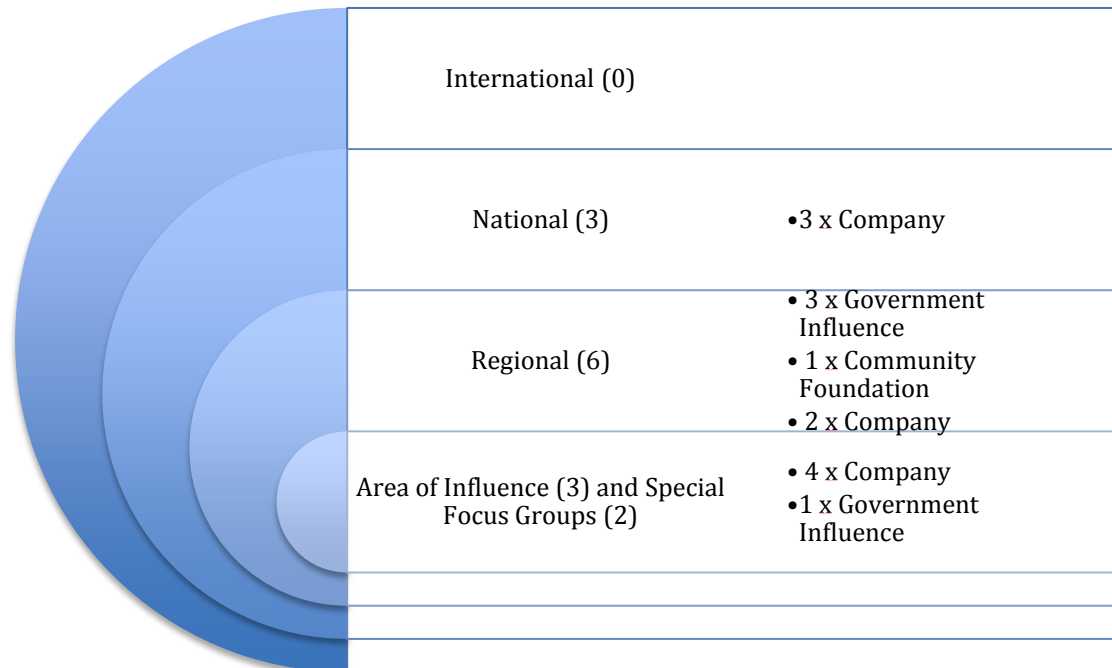
The third arm of financing relates to the management of the finances held by the FTF. While the importance of limiting administrative overheads was recognised by many of the case studies, only ALAC and Palabora Foundation formally apply an administrative cap of 15% and 20% respectively.

#### **e) Geographic Focus**

In a number of the case studies, an external party or factor played a major influence in the selection of the geographic focus of the FTF. For example, the focus of the Fondo Social La Granja is dictated within legislation associated with the mineral lease, and the project areas included within the Ok Tedi Fly River Development Program’s mandate are linked to community agreements made with Ok Tedi Mining Limited over compensation payments. Using the model developed earlier in Part I, Figure 7 reviews the range of geographies across which the fourteen case studies operate. It was proposed earlier that Governments would likely play the key role in nationally focussed FTFs, however

the experience gathered in Part II demonstrates a stronger connection between government influence and regional development initiatives. It is also interesting to note that while company foundations are often assumed to operate at a local level, focussing on their direct area of influence, five of the nine company foundations reviewed here operated at either regional or national levels. It should be noted that the purpose of these FTFs has likely had a far stronger influence over their geographic reach than their basic structure.

**Figure 7 Influences over Geography**



The discussion on geography earlier also suggested that the geographic focus of an FTF would be influenced by its type (community foundation, company foundation or government mandated contribution). For example, a community foundation would be expected to operate within a limited area of influence, while a government mandated contribution may extend to a broader region. These assumptions are well supported by the experience from the case studies.

**f) Participation**

Focussing specifically on the governance aspects of participation, Table 3, illustrates the variation seen within both the size of the governing body and the representativeness of that body across the fourteen FTFs. The chairmanship of the governing body, often ascribed considerable power, has been handed to an external party in three of case studies, and in only two of the case studies is the governing body comprised solely of representatives of the owning entity.

As noted earlier however, multi-stakeholder governance structures do not necessarily imply that development beneficiaries have been included in the structure.

Table 3 Participation through FTF Governance Structures

FTF	Country	Number of Governing Body Members	Number of Community/Govt Representatives on Governing Body	External Chairmanship of the Board
Fondo Social La Granja	Peru	3	1 (33%)	Yes
Asociación Los Andes de Cajamarca (ALAC)	Peru	7	3 (43%)	No
Fondo Solidaridad Cajamarca (FSC)	Peru	7	3 (43%)	No
Asociación Ancash	Peru	8	4 (50%)	No
Fondo Minero Antamina	Peru	Antamina Board	0 (0%)	No
Anglo American Chairman's Fund	South Africa	9	Not Available	No
Impala Bafokeng Trust	South Africa	8	2 (25%)	No <sup>22</sup>
Greater Rustenburg Community Foundation	South Africa	6	6 (100%)	Yes
Palabora Foundation	South Africa	5	3 (60%)	No
Mozal Community Development Trust	Mozambique	11	0 (0%)	No
Rössing Foundation	Namibia	10	7 (70%)	Yes
Ok Tedi Fly River Development Programme	Papua New Guinea	4	Currently 2 (50%)	No
Papua New Guinea Sustainable Development Program	Papua New Guinea	7	3 (43%)	No <sup>23</sup>

### g) Governance and Influence

A more detailed breakdown of the governing body composition is seen in Table 4 where the relatively low level representation of government bodies is evident. This low level representation is interesting given the significant influence

<sup>22</sup> While the Chairperson is the Queen Mother of the Royal Bafokeng Nation (RBN), RBN are 50% owners of the Impala Bafokeng Trust. 2

<sup>23</sup> The chairmanship is held by one of the BHP Billiton appointed representatives.

attributed to the government in the establishment of these FTFs (four FTFs were established primarily through government requirement or insistence).

**Table 4 Governing Body Composition**

<b>FTF</b>	<b>Number of Governing Body Members</b>	<b>Number of Government Reps</b>	<b>Number of Civil Society / Community Reps</b>
Fondo Social La Granja	3	1	
Asociación Los Andes de Cajamarca (ALAC)	7		3
Fondo Solidaridad Cajamarca (FSC)	7	2	1
Asociación Ancash	8		4
Fondo Minero Antamina	Antamina Board		
Anglo American Chairman's Fund	9		
Impala Bafokeng Trust	8		2 <sup>24</sup>
Greater Rustenburg Community Foundation	6		6
Palabora Foundation	5		3
Mozal Community Development Trust	11		
Rössing Foundation	10		7
Ok Tedi Fly River Development Programme	4		2
Papua New Guinea Sustainable Development Program	7	2	2

<sup>24</sup> Another 3 members of the IBT Governance Structure are from the RBN, however as joint owners of the IBT they are not considered independent in this case.

## h) Programming

The programming choices seen in the case studies were largely in line with common practice in community development projects, however the most interesting aspect of these choices has been their evolution over time. The development industry has moved away from “bricks and mortar” to capacity building projects over the last decade or more. As such, it would have been expected to see a dominance of “basic infrastructure” programmes in the historical or current programmes undertaken by the older FTFs with a lower presence in the more recent FTFs. This trend was not supported by the case studies in Part II, as highlighted in Table 5, with basic infrastructure programmes making an appearance in even the most recent FTFs.

This trend can be explained in part by the different backgrounds of the FTFs, with some of those influenced by government being provided with clear directions on the types of projects which should be undertaken (eg choice of electrification projects for Fondo Social La Granja). Similarly, FTFs implementing compensation programmes may be directed towards infrastructure projects as part of the agreed compensation packages. In addition to these specific cases, the construction of basic infrastructure may form an essential stepping-stone for FTFs when starting to operate in remote and otherwise under-serviced areas. The Palabora Foundation suggest that it is only through having completed many infrastructure projects in their past and meeting basic needs that they are now able to focus on capacity building and more participative approaches to development.

**Table 5 Basic Infrastructure Programmes**

FTFs	Start Date	Basic Infrastructure Programmes/Support <sup>25</sup>
AACF	1974	No
Rössing Foundation	1978	No
Palabora Foundation	1986	Yes
GRCF	2000	No
MCDT	2000	Yes
PNGSDP	2002	Yes
Asociación Ancash	2002	No
ALAC	2004	No
Fondo Social La Granja	2005	Yes
FMA	2007	Yes
FSC	2007	Yes
IBT	2007	No
OTFRDP	2008	Yes
LSDPT	2009	Yes

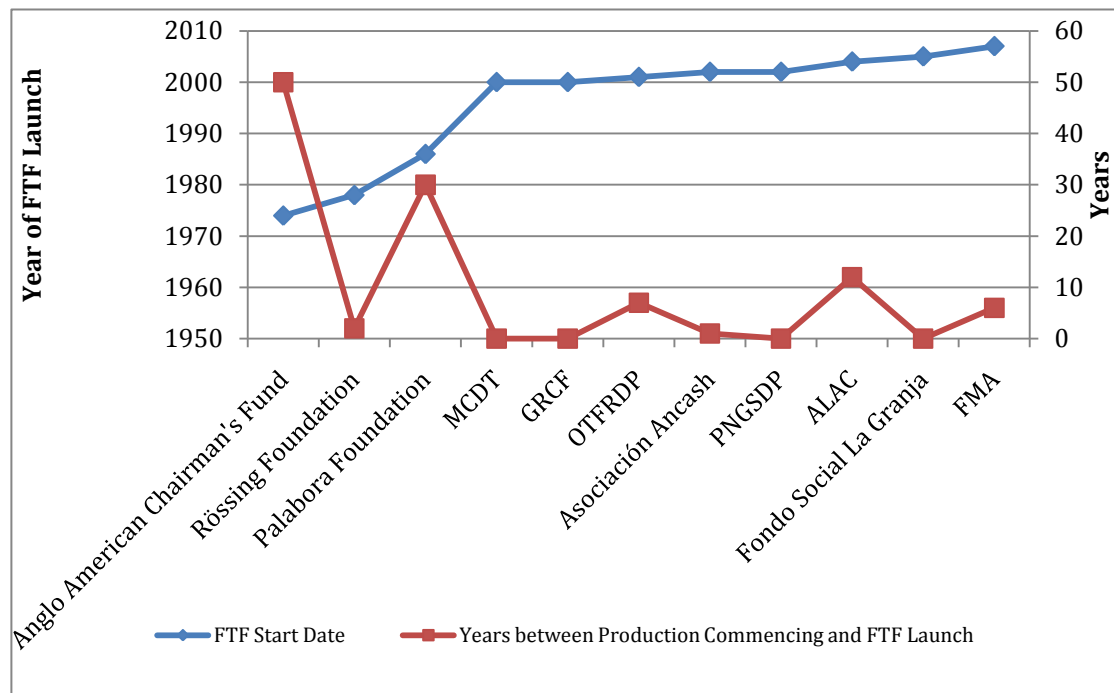
## i) Timing

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<sup>25</sup> A “yes” was recorded where FTFs have supported infrastructure projects during some period and does not necessarily indicate they continue to support infrastructure projects.

The vast majority of the FTFs reviewed in Part II were established within the last decade (eleven of the fourteen case studies). The time delay between commencement of mineral production and the launch of an associated FTF was also investigated. Interestingly, there is no real trend evident between the era of the FTF and the speed with which it was launched after mineral production commenced, as seen in Figure 8, although the biggest delays were seen in older FTFs. The increasing trend of launching FTFs in advance of mineral production was not captured in these case studies. It is also interesting to note that the three oldest FTFs included in this review are all located in Southern Africa. This is likely to be both a comment on the historical importance of the mining sector in this region and a reaction to government policies in place during that time.

Figure 8 Time Elapsed Between Mineral Production and FTF launch<sup>26</sup>



<sup>26</sup> Only 11 of the 14 case studies were included in this analysis as the starting dates for 3 were externally controlled. Those FTFs which were prompted by Government requirement or legislation have been included.



### 3) Identification of Leading Practice

This Sourcebook makes it apparent that there is no “one size fits all” approach to FTFs in the mining sector, and that the ideal structure for an FTF will vary depending upon the purpose of the FTF, its operational context and the specific interested and implementing stakeholder. However, drawing upon the experience presented in Part I and further detailed in Part II, ten attributes of leading practice for FTFs in the mining sector have been identified.

At a generic level, leading practice and experience indicates that FTFs should have:

- A clearly defined **strategic vision**, outlining its role as a development actor in the local environment;
- A **single purpose**, ie either community investment, compensation, or government transfers, but not a combination;
- A **representative multi-stakeholder governing body**;
- An **endowed fund** to enable sustainability;
- High levels of **co-financing and collaboration**;
- **Transparent practices** and associated accountability;
- **Efficient administrative structures** to maximise development delivery;
- **Flexibility** to adapt to changing development practices and operating conditions;
- **Incentive schemes** to retain high calibre staff; and
- **Impact based monitoring and evaluation**.

Before addressing each of these attributes from the perspectives of the three key stakeholder groups (companies, communities and government), the applicability and importance of these attributes is first considered within the context of the purpose of the FTF. As discussed earlier in Part I, FTFs are used for three main purposes in the mining sector: community investment, payment of compensation, and government payments. Table 6 portrays the relative importance of the aspects identified as leading practice to the specific purpose for which the FTF is intended, with a deeper shade of red indicating greater importance. While these lessons are derived primarily from the experience of company foundations, they are equally applicable to community foundations (as seen in the Greater Rustenburg Community Foundation case study in Part II).

#### a) Points to Consider - FTF Purposes

A number of the attributes of leading practice identified above can be considered to be “good management principles” for FTFs and should be applied to FTFs independent of purpose. Companies, communities and governments often select FTFs because of the transparency and efficiency of administration their structures can provide. Impact based monitoring and evaluation systems are

widely accepted as an integral part of development programming and ensure FTFs can measure their progress in delivering development impact.

**Table 6 Relationships between Purpose of FTF and Attributes of Leading Practice<sup>27</sup>**

	Community Investment FTF	Compensation FTF	Government Payment FTF
Good Management Practice	<i>Transparent Practices</i>		
	<i>Efficient Administration</i>		
	<i>Impact based M&amp;E</i>		
	<i>Strategic Vision</i>		
	<i>Single Purpose</i>		
	<i>Representative Governance</i>		
	<i>Endowed Funds</i>		
	<i>Co-financing</i>		
	<i>Flexibility</i>		
	<i>Incentive Schemes</i>		

### i) Using an FTF for Community Investment

As can be seen in Table 6, all of the aspects identified as leading practice are considered highly applicable to FTFs used to channel community investment from mining companies to communities. This is possibly unsurprising as the majority of FTF mining experience globally has been derived from community investment focussed FTFs.

**Asociación Ancash**, Peru (see case studies in Part II) undertook a strategic visioning exercise and defined three lines of specialisation: sustainable tourism, local culture, and conservation of natural resources of the Ancash region. Through clear communication of this strategic vision, Asociación Ancash has carved out a niche area of specialisation in which they have had considerable success. This vision has also assisted them to assert independence from the activities of the company and the Fondo Minero Antamina.

### ii) Using an FTF for Compensation

<sup>27</sup> The deeper the shade of red the greater the importance of the attribute of leading practice to the specific FTF purpose.

FTFs used for the management and delivery of compensation payments should draw on these areas of leading practice in a different manner. It would be unlikely for a compensation based FTF to have success in seeking financing from other sources. Likewise, FTFs used for compensation alone would be less likely to need to plan for sustainability and develop an endowment. Compensation based FTFs would, however, benefit greatly from having a governance structure incorporating representation from the compensation beneficiaries and from third party observers.

The experience captured in this sourcebook has highlighted the challenges associated with FTFs seeking to achieve mixed purposes, such as delivering community investment and compensation payments. No examples of a pure compensation based FTF were reviewed in Part II, however the benefits afforded by FTF structures (such as transparency, independent governance and the capacity to disburse funds over an extended period) may lead towards this use in the future.

### iii) Using an FTF for Government Transfers and Payments

The use of FTFs for government payments and transfers is closely connected to the political economy context within a host country. For this reason, the relevance of the attributes of leading practice identified above will depend upon the underlying goal for the government transfer and will vary significantly case by case. The “good management practices” of transparency and efficient administrative structures are often cited as the grounds for channelling government payments through FTF structures.

The use of FTF structures for government required contributions or payments can also encourage co-financing and has been seen to be a successful means of improving the implementation record of government funding.

The **Fondo Minero Antamina (FMA)** and **Fondo Solidaridad Cajamarca (FSC)** Peruvian case studies (see Part II) have significant development budgets, as laid out in the *Aporte Voluntario* legislation. The funding contributed by Antamina and Yanacocha (respectively) has enabled significant progress to be made in key development areas such as child malnutrition and other basic needs. This success has been amplified through the pairing of FMA and FSC funds with previously unspent *cannon minero* funding available at the provincial level. In this manner, these FTF structures have contributed significantly greater value to provincial development than the sum of their contributions.

## b) Points to Consider - Stakeholder Groups

Foundations, trusts and funds provide distinct opportunities for mining companies, governments and communities to better share the benefits accruing from mining projects. These three stakeholders approach this topic from very different perspectives and the opportunities afforded to one may represent challenges to another. The perspective of each of these stakeholders is played out with regard to the ten attributes of leading practice below:

### i) Communities

**Strategic Vision:** Clear enunciation of an FTF's strategic vision can ensure communities understand the role it will play in development in their region, and conversely the gaps which will remain. Communities are better able to generate projects, proposals or grant requests when this vision is expressed clearly. Where communities establish their own community foundations, the direction expressed in the strategic vision may be critical to seeking and accessing support from community members.

**Single Purpose:** Community investment, government transfer payments and compensation can all lead to development projects in a community. Recognizing which project is derived from which source and more critically which projects are entitlements (such as compensation) and which are voluntary (community investment) is made almost impossible if an FTF is providing both at the same time, leaving communities unsure of what they are "owed".

**Representative Multi-Stakeholder Governing Body:** This is one of the key means by which communities can participate and gain some level of control over the FTF. For communities to benefit from a multi-stakeholder governing body approach, capacity building programmes for community representatives may be needed. To ensure the position is truly "representative", either an existing communication system or one custom built for this purpose needs to be used to pass community considerations up to the representative and pass responses back to interested community members.

**Endowment Funds:** Where communities establish their own foundations, the establishment of an endowment can minimise the foundation resources required to secure new financing on a regular basis. Endowed company FTFs provide the potential for sustainability beyond the lifespan of the mining project within a community, paving a way for community adjustment post mining. Endowing of funds can however mean a reduced annual development budget to allow the fund to grow in the early years of an FTF.

**Co-Financing and Collaboration:** Improved collaboration between development actors is of significant benefit to beneficiary communities. Co-financing and co-contribution to projects are increasingly being expected from community

groups, and this can build the sense of ownership for the implemented project amongst community members. Excessive expectations in this regard however may have the opposite effect, turning communities against FTF projects.

**Transparent Practices:** The monetary value held within some government and company FTFs can be very significant and transparent practices are expected by communities to ensure these external actors are managing the money they are expecting to receive as development projects appropriately. This is particularly important when FTFs are managing compensation payments. Expectations of community foundations should be no different, highlighting the importance of accountability within community foundation structures for financial management.

**Efficient Administrative Structures:** Beneficiary communities often see high administrative costs as “wasted” money, with some believing they could achieve greater development impact if the resources were passed to them directly. Communities often see excessive administration costs as mismanagement.

**Flexibility:** As mining projects develop the development needs and expectations of communities change, as does their ability and desire to engage in discussions over FTF strategy. Community forums to re-assess the objectives of the FTF on a periodic basis will help to maintain community engagement.

The role played by the **Palabora Foundation** (see Part II) in the surrounding Ba-Phalaborwa communities has changed significantly since it commenced operation in 1986. Flexibility has been needed to reflect and accommodate changing population needs, changing political economy context in South Africa and economic conditions at the Palabora mine. Through working with community representatives and traditional leaders, the foundation has maintained its connection to communities throughout these changes.

**Incentive Schemes:** Personal relationships between FTF staff and community members often develop over time and in some cases are key to the success of development programmes. High staff turnover from FTFs minimises the opportunities for these relationships to occur, and can result in community members feeling disconnected from the FTF.

**Impact Based Monitoring and Evaluation:** M&E programmes addressing impacts rather than activities provide a superior picture of the success of a project. The better project success is understood by FTFs, the better the development impact for beneficiary communities.

## ii) Governments

**Strategic Vision:** Where governments are using FTF frameworks to manage revenues derived from the mining sector, a clear vision for the use of these funds can minimise the potential for criticism over benefit sharing from the mining industry. Clear communication of the intended purpose of the funding can also

deter reallocation of the funding within the government and may reduce the risk of corruption.

**Single Purpose:** Combining government mandated FTFs funded by company payments with government royalties and taxes to improve implementation levels can be a wise move by governments and can generate positive results for community beneficiaries. In contrast, combining benefits and compensation awarded to communities from land access agreements can lead to confusion within communities over the distribution of benefits from government to landowners.

**Representative Multi-Stakeholder Governing Body:** Opening up the governing structure of a government FTF to external parties may build community goodwill, but can also threaten the control exercised by the government, and may potentially expose under-spending or poor financial management if these problems exist. Governments may also be wary of taking a seat on company or community foundation governing bodies to minimise their accountability for another body's actions.

**Endowment Funds:** The endowing of revenues from periods of windfall gain can protect governments' capacity to implement public service needs independent of the mining cycle. Governments are also likely to support the endowing of company FTFs to the extent that this mitigates the risk of social collapse in a post mining community.

Mandated to minimise the impact of mine closure, the **Papua New Guinea Sustainable Development Programme (PNGSDP)** is the largest mining FTF in existence. Developed as part of the exit arrangements of BHP from the Ok Tedi mine, PNGSDP receives 52% of the dividends paid by the continued operation of the mine, with the vast majority of these dividends being invested for future use. The bulk of the funds will only be released post mine closure and are to be used to support development for the next forty years.

**Co-Financing and Collaboration:** Collaborative projects can be of great benefit to governments where they assist governments to implement their own programmes. Governments are also likely to be supportive of combined approaches amongst different development actors to streamline and increase the effectiveness of their projects.

**Transparent Practices:** Seen as both the champion and potentially the downfall of government FTFs, transparent practices are necessary for government managed mineral revenues. Tracking revenue flows between different levels of governments can also improve financial accountability and reduce opportunities for corruption.

**Efficient Administrative Structures:** Tolerances for high overheads may be greater within a public sector FTF if a considerable proportion of the overhead is linked to public sector salaries. By comparison, governments are likely to be critical of company FTFs with excessive administrative structures.

**Flexibility:** Political changes and other developments in the country will affect a government's priorities and how these are reflected in a government FTF or supported through a company FTF. Governments use FTFs, in part, because of the greater flexibility they provide compared to regulatory approaches to benefit sharing.

**Incentive Schemes:** To the extent that staff leave company FTFs to join the public service, this transition would likely be supported by governments, however, the transfer normally works in the reverse direction. Incentivising staff to remain at company FTFs can minimise job vacancies developing in company FTFs, thus reducing the opportunity and demand for government capacity to move to fill this gap.

**Impact Based Monitoring and Evaluation:** The scale of programmes implemented or facilitated through government FTFs can make comprehensive impact M&E programmes challenging. Simplified impact assessment processes applied to a subset of projects would yield equivalent information to inform government priorities.

### iii) Companies

**Strategic Vision:** Clear communication of a strategic vision can assist companies to establish that which they will and will not support, while also potentially earning early reputational benefit from commitments made to their host community. The vision should be reviewed on a regular basis as the operational context changes around the FTF.

**Single Purpose:** Combining community investment programmes with compensation obligations is likely to reduce the value attributed to the community investment programmes and potentially raise expectations for new additional programmes.

The Integrated Benefits Package approach in Papua New Guinea (described in Part II) groups together compensation, royalties and community investment benefits in a single package for host communities. While this approach provides a clearer picture of the total benefits for communities, it risks diluting community investment initiatives in the eyes of beneficiaries as the distinction between compensation and community investment is lost.

**Representative Multi-Stakeholder Governing Body:** The most efficient means of deciding on projects and implementing them is often through an owner's governance structure. Expanding the governance structure to include representatives from multiple stakeholders, including project beneficiaries, is likely to reduce the speed of decision making and implementation, but long term will yield more appropriate, more sustainable and replicable projects. Using a

multi-stakeholder governing body can also build goodwill amongst stakeholders and vastly improve the company's understanding of development considerations in their geographical focus area.

**Endowment Funds:** The biggest challenge facing companies when seeking to endow funds is timing. Ideally funds would be endowed as early as possible in the project lifecycle, however this is also when money is most expensive to a company. Endowed funds can protect company FTFs when revenues from mining projects decline in periods of economic downturn, with operation budgets potentially being sourced entirely from the interest accrued.

**Co-Financing and Collaboration:** Seen less as a source of funding and more as a means to facilitate community engagement, companies are often strong supporters of community co-financing/co-contribution in their company FTF programmes. Collaboration with and co-financing from other parties is often set as one of the goals of company FTFs, however success in this field can dilute the reputational benefit attributed to the specific company. Companies may need to consider the administrative costs of seeking co-financing from major development organisations compared to the development and financial benefit.

**Transparent Practices:** The financial size of company FTFs can be significant and as they are often effectively guardians of community funding, it is essential that they operate using transparent practices. Transparency is considered even more important when companies contribute to government supported or mandated FTFs to ensure that funds are being used for their intended purposes and to minimise any speculation of bribery or corrupt practices between the two parties.

**Efficient Administrative Structures:** Highly effective administrative structures are needed to manage community requests, monitor programmes and train and retain staff.

**Flexibility:** Too much flexibility can result in an unpredictable operating environment for company FTFs and can encourage requests for support from all quarters. As such a balance between flexibility and vision is often formed through periodic review of the vision, mission and objectives of the FTF.

**Incentive Schemes:** Mining companies typically have well developed career progression maps for engineers and accountants. The career progression for development specialists working in a company FTF is less straightforward and needs to be incentivised through exchange programmes with other FTFs, annual workshops bringing together FTF teams from around the world and opportunities for training in relevant fields.

**Impact Based Monitoring and Evaluation (M&E):** A company's social license to operate is often supported through demonstration of community development impact. Impact based M&E programmes can assist companies to explain and demonstrate this development impact.

**Asociación Los Andes de Cajamarca (ALAC)** has been at the forefront of impact based monitoring and evaluation for a number of years. ALAC use the M&E indicators to determine the relevance and impact of activities performed. Feedback is provided to implementing partners (ALAC is a grant making FTF) periodically so that necessary changes can be made to project design and implementation.

