Chapter 3

Key Attributes of Foundations, Trusts, and Funds

In order to consider the conditions for success of foundations, trusts, and funds (FTFs), it is necessary to first understand the diversity of models used. FTFs can be distinguished not only by their legal structure but also by their position on six important scales: programming approach; financing structure; geographic focus; community participation in governance; the influence of the mining company; and the influence of government. The variety of approaches is summarized in this section and re-examined in Chapter 4, drawing on brief examples from global experience. The choice of attributes for an FTF will depend on the local context in which the FTF is being established. Summary guidance on the applicability of different options is provided below.

Brief History

The use of FTFs to deliver benefits from mining has grown considerably since the 1980s. Between 1950 and 1980, just a handful of FTFs were in operation; by 2008, this figure had risen to 61 in developing countries alone. Furthermore, it appears that FTFs have grown faster in the mining industry than in other industries (BSR 2010).

As mining FTFs have grown in quantity, the quality of their structures and program execution tactics has evolved. The Alcoa Foundation and Phelps Dodge Foundation, both established in the 1950s and now closed, used a corporate foundation model to support philanthropic 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 institution in some areas. In the 1980s, locally managed funds with targeted objectives were created, such

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5Appendix 1 provides a nonexhaustive list of mining foundations, trusts, and funds.
as the Fundación Montelibano in Colombia, which focused on providing scholarships for the education of employees’ children.

The last two decades have seen the emergence of a sustainable-development philosophy within FTFs and the use of FTF models by a broader audience through the emergence of community foundations and government-mandated corporate foundations. The past two decades have also seen an increase in the use of FTF models to manage a greater range of social and economic contributions and payments, especially compensation and benefit-sharing arrangements with governments.

The Challenge of Comparing

To compare the experience of FTFs in the mining industry, it would seem logical to compare trusts with trusts and foundations with foundations around the world. This is made complex, however, by the country-specific and widely varying definitions of foundations, trusts and funds, which render comparison by name alone impossible.

Legal Distinctions

The choice of a foundation, trust, or fund depends in large part upon the legal context in the host country. In general, “trusts” are employed in countries that use common law, whereas “foundations” are preferred in countries adhering to civil law. The “fund” designation does not confer a separate legal status and is instead used as a general term to describe a trust, foundation, or company budget item. Other relevant distinctions 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” (Warhurst 2002).
- FTFs may be closely aligned with the founding actors or actors (such as a mining company) or, in the case of trusts and foundations, deliberately established as stand-alone entities with independent status.
- The terms are often used loosely in vernacular conversation and even in the names given to particular institutions. For example, the Anglo American Chairman’s “Fund” and the Rössing “Foundation” are both legally incorporated as “trusts.”

The legal frameworks under which FTFs are established typically control the following structural elements:

- Legal process 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 articles of incorporation or dissolution
• Tax status of donors
• Tax status of the foundation, trust, or fund.

Recognizing that the attributes of FTFs vary from country to country, the typical characteristics for each mechanism are defined in table 3.1.

Using the general descriptions provided above, foundations arguably provide greater flexibility than trusts. Funds require an implementation

<table>
<thead>
<tr>
<th>Table 3.1: Typical Characteristics of Foundations, Trusts, and Funds</th>
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<tbody>
<tr>
<td><strong>Foundation</strong></td>
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<tr>
<td>Relatively flexible in the activities they may conduct. Separate legal entities that own the assets under their control.</td>
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<tr>
<td>Typically have a management board or some other form of committee governing their activities.</td>
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<tr>
<td>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).</td>
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<tr>
<td>For a foundation to exist, its charter must be publicly registered, thereby establishing it as an entity with juridical personality.</td>
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<tr>
<td>Two main types: company/corporate foundations and community foundations.</td>
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vehicle of some sort to be activated. The inconsistency of definitions, however, illustrates the point that the specific type of instrument is less important than its practical attributes.

**Practical Criteria**

Given the difficulty of comparing FTFs on the basis of definitions alone, a set of experience-based criteria has been developed to allow fruitful comparisons. These criteria assess key attributes of FTFs and allow them to be compared on a sliding scale. The six criteria in no way imply a normative evaluation of any institution, since FTFs can be evaluated only against the goals they were set to meet, and these vary in each case and for each of their stakeholders.

The six scales that have been developed cover:

- *The programmatic approach taken by the entity:* Does the entity make grants, or does it operate field programs?
- *Its financing structure:* How is the entity financed? Annual operating budgets present options for investment that differ from those of endowed funds.
- *Its geographic focus:* Where does the entity operate? On this scale, mining FTFs may target specific communities, such as indigenous or vulnerable people within the mine’s area of influence, or they may operate across a broader area.
- *The degree of community participation in governance:* How involved are communities/beneficiaries in the governance structure of the entity?
- *The influence of the mining company:* How much influence does the company exert over the activities of the FTF?
- *The influence of the government:* How much influence does the government (at all levels) exert over the activities of the FTF? How much influence did it exert over the establishment of the FTF?

Figure 3.1 provides an intuitive and visual way of comparing the attributes. Each case study presented in Chapter 4 includes a sliding-scale graph that shows the position of the FTF on each of the six scales.

**Analysis of the Attributes of FTFs**

**Programming Approach**

There are two main programming options when developing an FTF:

- Grant-making
- Operational and implementation approaches.
Grant-making FTFs provide grants to other organizations, whereas operational FTFs use their funds to deliver development projects directly. Many FTFs use a hybrid approach with some grant-making activities and some projects delivered by an in-house team. Table 3.2 highlights some of the key strengths and weaknesses of each approach.

Often linked to the programming approach, the program choices taken by an FTF should be grounded in a deep understanding of beneficiaries’ needs, owner priorities, and gaps in existing development activities. FTFs can choose, or be directed, to support any number of programming directions, from literacy programs for targeted groups in a vulnerable community to support of national culture through sponsorship of the fine arts. Common programming areas for FTFs in the mining sector include local economic and business development; health and wellness; education and vocational training; basic infrastructure; employment- and income-generating projects; environment; and capacity building programs for local authorities and community-based organizations.

A common programming trend progresses from supporting basic infrastructure, health, and education at the FTF’s inception to supporting alternative livelihood projects and a focus on capacity building as the FTF matures. Monitoring and evaluation of the development impacts of projects supported by FTFs is one of the best means of recognizing the changing needs of communities and allowing modifications to strategies to be developed. For that reason, monitoring and evaluation are essential.

FTFs can be established at any time during the mining cycle (box 3.1), but most are established after operations have commenced, a decision linked primarily to the cost of capital in the early stages of a project. An increasing trend of early-development FTFs is emerging, however, often in response to government requirements, community expectations, or both. FTFs can also be used as a vehicle for managing social programs after a mine closes.
Financing

FTF’s can be compared on the basis of their financing structure, the sources of their financing, and their financial management scheme.

An FTF’s financing structure has significant implications for its long-term sustainability and its ability to commit to multi-year projects. The main approaches to structuring the funding of an FTF are by endowment, annual budget allocations, or a combination of both. Broadly speaking, endowment funding favors FTFs that are designed to exist beyond the period of a mining operation, while budget cycle allocations are better suited to FTFs established to deliver benefits solely while a mining project is operational. Table 3.3 summarizes the strengths and weaknesses of the two funding structures.
Box 3.1: The Starting Points of FTFs May Vary

The development of a social trust fund has been required as a condition of the privatization transactions surrounding several mineral projects in Peru. The Las Bambas Social Fund (FOSBAM) was created to manage the funds associated with the Xstrata Las Bambas project social trust fund and to deliver development projects to communities during the exploration and project development phases (that is, in advance of royalty and tax payments). The Ahafo Development Foundation was developed a number of years into the operation of the mine. This delayed start was made possible through the existence of other community development projects currently being run by the company through in-house expertise.

The Anum Lio Foundation at Kelian, Indonesia, was established to manage the social programs which have continued beyond mine closure.

Table 3.3: Comparing Funding Structures

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<thead>
<tr>
<th>Endowment Funding</th>
<th>Annual Budget Allocations</th>
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<tr>
<td><strong>Strengths</strong></td>
<td><strong>Weaknesses</strong></td>
</tr>
<tr>
<td>Greatly enhances sustainability of FTF.</td>
<td>Ideally requires early investment of development funding when money is most expensive.</td>
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<tr>
<td>Facilitates multi-year project commitments.</td>
<td>Large sums of money can attract corrupt practices and poor financial management practices.</td>
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<tr>
<td>Can protect FTFs from fluctuations in mineral prices.</td>
<td>Can drive the development of a strong monitoring and evaluation program.</td>
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<tr>
<td>Can provide a smooth transition to a post-mine closure operating environment.</td>
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</table>
There are four main sources of financing available to mining FTFs: companies, communities, governments, and mixed sources. The most common is mining companies themselves, and companies face a challenge in determining the appropriate amount to invest. A common method of addressing this dilemma is to set the payment as a percentage of revenue. From a government or community perspective, payments on a revenue or production basis are preferable because they guarantee a financial contribution independent of company profit. However, companies sometimes prefer to compute payments on a before- or after-tax basis rather than having them assessed directly on revenues. Companies may also choose to fund FTFs based on a percentage of capital or operating expenditure. Yet another approach used by companies requires an annual negotiation based on an internal company assessment of funding availability. This approach retains almost complete control within the company, but it can also appear opaque to external stakeholders, especially during tight financial times. Combining a number of these approaches can correct disadvantages associated with each (box 3.2).

**Box 3.2: Computing Company Contributions**

**Freeport Partnership Fund for Community Development (LPMAK), Indonesia**
Fund receives 1 percent of mine revenues, with total contributions of US$242 million. Ten percent of all future receipts are to be invested in a long-term fund.

**Minera Escondida Foundation, Chile**
Funded by allocation of 1 percent of before-tax annual profit based on a three-year rolling average, with total contributions exceeding US$9 million.

**Ahafo Community Foundation, Ghana**
Funded through a combination of 1 percent of net operational profit (before-tax) from Ahafo South mine plus US$1 per ounce of gold from Ahafo (estimated at US$0.5 million per year).

**Greater Rustenburg Community Foundation (GRCF), South Africa**
The GRCF is a community-developed foundation located in the platinum-rich area of Rustenburg in South Africa. Focused on developing a sustainable future for community members, there is no direct company involvement in the GRCF. The foundation relies on donations from individual and corporate donors, whose generosity supports the grantmaking program.
Communities or local nongovernmental organizations (NGOs) may provide funding to an FTF in order to establish a direct, vested interest in its outcomes. Alternatively, communities may choose to use their own funding to establish a community foundation that will advance social development within their local area thanks to the donations of community members. The model has particular application where there is a differential in wealth in the host community, such as the gap between those earning mining salaries and the rest of the community.

Governments contribute to development projects by drawing on payments from the mining sector related to: (a) concessions, licenses, and land access; and (b) royalties, taxes, and fees. Governments may also require contributions in the form of closure bonds and trusts (box 3.3).

A well-established FTF may enjoy financing from a variety of sources. Such diversity can minimize the boom-and-bust effects associated with funding derived from mining profits or revenues alone and can be a step toward a sustainable future. Potential funders include NGOs, donors, governments, communities, other FTFs, and, in some cases, other mining companies. Cofinancing is often proclaimed as an operational goal for

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**Box 3.3: Government Funding Mechanisms**

**Government-operated.** In Peru, the ‘canon minero’ is a royalty payment that provides a large percentage of the funds that the central government pays out to the regions that host mining operations. The regions use the payments to fund their development projects.

**Government-directed.** The Namibian government requires all mining companies to establish an environmental trust fund and to pay into the fund over the lifespan of the project to meet obligations associated with mine closure.

**Payment for concessions.** Half of the price of the Rio Tinto La Granja concessions paid to the government of Peru as part of the privatization process is to be invested in an FTF that will fund development programs in the region while the project develops.

**Government cofinancing.** In Peru, canon minero financing is being used to support Aporte Voluntario projects (an initiative of the mining companies nationwide to combat poverty in their areas of influence). This effectively increases the implementation record of canon minero monies while expanding the reach of the Aporte Voluntario scheme.
FTFs, but it can have unintended consequences if the reputational benefit associated with a project is diluted by being shared with multiple partners.

A final funding option available to FTFs is to generate income by investing in profit-making development projects.

FTFs can also be compared in terms of their approach to financial management. Establishing and running an FTF involves transaction and operating costs, the scale of which needs to be considered in proportion to the amount of money invested in development. Some FTFs impose limits on the administrative proportion of spending, often on the order of 15-20 percent of total expenditure.

**Geographic Focus**

The geographic reach of an FTF is defined largely by its purpose. In general, the geographic scale has five points:

- **Area of influence.** This is the area defined as being influenced by a specific mining operation. It is normally defined during assessment of the project’s environmental and social impact. This approach is typically adopted to support a company’s community investment or compensation program.

- **Special focus groups.** In some situations, FTFs are established to benefit a subset of the mine’s affected population or to benefit a specific group deemed to require special assistance but that may not otherwise receive benefits from the project.

- **Regional.** Expanding the focus of FTFs and mining sector benefit-sharing mechanisms to the regional level traditionally fell within the purview of governments. Over and above royalty payments to regions, governments have also established FTFs to better coordinate social and environmental issues in regions. Some companies have also developed FTFs at a regional level to support several mines operating within a region. Community foundations may also operate at a regional level.

- **National.** Mineral wealth is often considered to belong to the nation rather than to any particular region. As such it is not surprising that a number of national FTF organizations 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 outside of the immediate area of its operations.

- **International.** Utilized by companies with a large global footprint, international FTFs can provide mining companies with a means to
support charitable organizations in the countries that host their headquarters, even if no mining operations are found there.

**Community Participation in Governance**

FTFs require a governing body in order to be considered separate legal entities. The composition of these bodies varies from representation of mine owners only, through to multistakeholder 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. Multistakeholder governance can also demonstrate corporate responsibility, engagement with stakeholders, and the potential for leveraging additional resources in the community from other donors (box 3.4 and table 3.4).

At the opposite end of the spectrum are governing bodies comprising representation from owners alone. Such a structure can be simpler to manage and, in the case of company FTFs, can fall within company oversight almost as an additional company department. While high levels of control can be beneficial in meeting a company's needs, this approach can add significant challenges to eventual transfer during and after mine closure.

The composition of the governance structure is often believed to convey the relative influence of different stakeholders over the FTF's activities, but it may not present a complete picture. The best examples of the distinction between governing power and influence are seen where an FTF's structure, mandate, vision, and existence have been controlled through regulatory processes, even though the government is not represented on the FTF's governing body.

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**Box 3.4: Participation and Capacity: Mali**

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 such participation may be compromised, however, by the capacity of community representatives to contribute to the governance process. 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 programs to achieve considerable grounding in local communities but has proved challenging when developing strategic plans and planning for mine closure.
Table 3.4: Highly Participative Governance Structures

<table>
<thead>
<tr>
<th>Strengths</th>
<th>Weaknesses</th>
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</thead>
<tbody>
<tr>
<td>Creates beneficiary ownership, enhancing relevance, effectiveness, and sustainability of foundation</td>
<td>Can result in conflicting agendas and priorities on governing body</td>
</tr>
<tr>
<td>Provides a means of holding beneficiaries accountable, particularly if they participate in decision making</td>
<td>Often requires more time to build capacity and ensure that community participation is effective</td>
</tr>
<tr>
<td>Provides local stakeholders with a voice</td>
<td>Link to company or government objectives can be diluted</td>
</tr>
<tr>
<td>May provide enhanced opportunities for seeking external financing</td>
<td>Can be more expensive in the short term</td>
</tr>
</tbody>
</table>

Influence of the Mining Company

Mining companies have established the majority of the FTFs in existence in the mining industry (BSR 2010). The decision to establish an FTF often rests with the company, as does the level of influence that the company will exert over the day-to-day operation and direction of the FTF. That level of involvement can vary significantly and is moderated through the following broadly defined avenues for participation in the FTF's structure:

- **FTF design.** Deciding on the structure and design of an FTF through a collaborative process that engages a wide range of stakeholders can provide a solid basis for an FTF. Depending on the size of the stakeholder group and the group's experience with FTF structures in the past, participation of this form can be time-intensive, thus limiting the application of this approach in situations where a company or government needs to deliver development benefits speedily.

- **Governance.** FTF governance, at its simplest, can be described by the membership of the board of directors or trustees. The level of participation in the governance structure can be adjusted through the inclusion of stakeholder representatives from groups other than the owning entity. It should be noted that there is a difference between participation and representation. Expanding the representativeness of a governing body is also likely to have an impact on the level of control exerted over the FTF by the owner.

- **Project generation.** Regardless of whether the FTF employs a grant-making or operational approach, projects can be generated internally,
externally, or by a combined approach. Beneficiary participation in the identification and development of projects can improve the community ownership of the outcomes of the project. Beneficiaries can also participate in the evaluation and review process for proposed projects.

- **Cofinancing.** The trend toward cofinancing projects with beneficiaries is evident across the development sector and typically occurs at a project level. Beneficiary contributions tend to be in the form of in-kind support rather than purely financial contributions.

- **Public reporting.** Community development projects are increasingly being evaluated through the assessments expressed by interested stakeholders in public reports.

- **Monitoring and Evaluation.** Beneficiary participation in monitoring and evaluation programs is fast becoming standard operating practice and can help to ensure community perceptions are being addressed effectively as company or government requirements.

### Influence of Government

Around the world, the number of countries with legislation that mandates mining FTFs remains relatively low. However, where FTFs exist, governments exert influence on them in a variety of ways (box 3.5):

- **Legal requirement.** In a small number of cases, governments have prescribed the creation of an FTF as part of the permitting, development, or closure process for a mining operation.

- **Legal definition.** As discussed at the beginning of this section, the definitions of foundations, trusts, and funds vary across countries. Governments control the legal structure in which these vehicles can be established.

- **Tax incentives.** In many jurisdictions, governments have incentivized the selection of FTFs by applying tax-efficiency measures to these organizations.

- **Local and regional development plans.** Governments can exert influence over programming decisions by requiring that the development activities of an FTF be integrated with local or regional development plans.

- **Benefit-sharing agreements.** Where FTFs are used as the implementing instrument for benefit-sharing agreements, the location and scale of the development activity supported by the FTF is often dictated by government requirement.
Box 3.5: Government Actions Supporting the Use of Foundations, Trusts, and Funds

**Ghana.** Ghana has created a Mineral Development Fund (MDF) to return a portion of royalty income to communities directly affected by mineral development. Twenty percent of the collected royalties are paid into the MDF, with the proceeds then being shared among local government authorities, landowners, and communities adversely affected by mining.

**Namibia.** Namibia has also created a Namibian Mineral Development Fund. However, its focus is on broadening the contribution of the mining industry to the national economy through diversification and by stimulating economic linkages.

**Peru.** The Aporte Voluntario is an agreement the Peruvian government signed with 40 companies in 2007 to make a voluntary contribution to local and regional funds for the poorest provinces and regions of Peru. The payment addressed perceived inequities between project revenues and anticipated royalty and tax payments as commodity prices rose. The agreement also included company commitments to good management of these funds to help circumvent bureaucratic difficulties in management and disbursement 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.

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

**Philippines.** 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 socioeconomic well-being of the indigenous cultural community.”

**Laos.** The new Laotian Minerals Law will make community-development funds a standard requirement for investors.