CHAPTER 4
AGREEMENTS

PART ONE
GOOD PRACTICE GUIDANCE

INDIGENOUS PEOPLES AND MINING
GOOD PRACTICE GUIDE

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4.1
The business case for agreements

In the last two decades, negotiated agreements have become commonplace in jurisdictions such as Canada and Australia, where formal recognition of customary use and ownership has led to the creation of strong statutory frameworks. In Australia, the law promotes agreement making by giving a "right to negotiate" to traditional users and owners, establishing procedures for registering and giving legal effect to agreements, and providing an alternative legal avenue (adjudication) if agreement cannot be reached. Negotiation is generally preferred over adjudication in such systems, as the latter course of action typically involves lengthy delays, is considerably more expensive, diminishes the capacity of parties to influence outcomes and almost invariably hinders the building of long-term relationships. Negotiated agreements are also becoming increasingly common in the developing world.

The focus of this chapter is on the use of negotiated agreements to define and regulate relations between mining companies and indigenous communities.[28] The topics covered are:

- the factors that make for a successful agreement
- managing impacts and sharing the benefits of mining through agreements
- components of agreements
- implementation of agreements.

This chapter is intended to be read in conjunction with **TOOL 9**.

> **RELEVANT CASE STUDY**
> **Fostering local culture and language – Shoshone Youth Language Apprenticeship Program (Barrick), see page 111.**

4.2
The factors that make for a successful agreement

In the broadest terms, successful agreements are those which build and sustain positive, mutually beneficial relationships and partnerships between indigenous groups and companies. What this entails will vary considerably according to the particular circumstances and the aspirations and resources of the parties. However, there are some key defining features which are discussed below.

A prerequisite for a successful agreement is to ensure that both parties (the company and the indigenous parties) view the process that led to the agreement as fair and equitable. Companies must be aware that indigenous communities may have different views of importance, and measures of equity and success. For example, companies may judge an agreement a success based on the outcomes it achieves. Whereas, Indigenous Peoples may place greater importance on the process and relationships built during it. If people feel that an agreement has been imposed on them, or they were not properly informed of their rights and obligations under the agreement before signing it, they are much less likely to commit to making it work. Leading practice agreements also go beyond a narrow, short-term focus on compensation to address long-term development goals and the issue of post-project sustainability. One hallmark of a good agreement is that it aims to provide intergenerational benefits for indigenous groups that extend long after a mine has closed.

The most effective agreements are treated not as static legal documents, but as flexible instruments that provide a framework for governing the ongoing and long-term relationship between a mining project and affected indigenous communities. Such relationships are characterized by the willingness of all parties to change and improve the agreement as circumstances require. Accordingly, these kinds of agreements usually contain commitments from parties to work together to ensure mutual benefit, and change and improve the agreement as needed.

The success of an agreement also depends on a company's ability to properly implement and monitor the agreement. To assist this process, companies may develop a committee to oversee the agreement's implementation, and undertake regular meetings and reporting (see Section 4.5 for further guidance).

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28 G Gibson and C O'Faircheallaigh, *The IBA Community Toolkit: negotiation and implementation of impact and benefit agreements*, Toronto, Walter & Duncan Gordon Foundation, 2010, provides a detailed guide to negotiating, developing and implementing agreements from the perspective of indigenous communities (www.ibacommunitytoolkit.ca).