

4.4 Components of agreements

There are no hard and fast rules about what should, and should not, be in an agreement. This will depend on the context, the goals and aspirations of the parties to the agreement, and what they see as fair and reasonable. It is possible, however, to give some examples on what the options are and the risks and potential benefits associated with different approaches.

The types of issues that can potentially be addressed in agreements include:

- company support (not necessarily financial) in the development and implementation of community projects and initiatives
- financial payments and disbursement arrangements
- employment and contracting (supplying goods and/or services) opportunities
- environmental, social, health and cultural (heritage/language) impact management
- governance arrangements
- any provisions that might be agreed in relation to the local community's use of certain land.

Agreements should also include provisions outlining the role and responsibilities of both the company and the indigenous community going forward, any mechanisms for implementing and monitoring the agreement, required project budgets and mechanisms for resolving community concerns or grievances relating to the agreement's implementation. Consideration should also be given to "locking in" commitments and objectives of agreements with Indigenous Peoples for the life of a mine so that all parties are protected in the event of a change in ownership. For Indigenous Peoples, this provides greater certainty that what they have agreed to with one company will be honoured by a future owner. For governments who may be party to the agreement, locking in an agreement can potentially reduce the chance of misunderstandings and conflict in the event that the future mine owner does not continue with prior commitments. For companies, locking in an agreement can protect against future reputation damage in the event of conflict between Indigenous Peoples and the new mine owner.

Regardless of how an agreement is structured or what it contains, it should not restrict or exempt companies from undertaking other engagement, impact management and benefit-sharing activities outside the scope of the agreement.

Good practice guidance on negotiating and designing the components of agreements is provided in **TOOL 9**.

4.5 Implementation of agreements

A focus on implementation is the key to a successful agreement. Planning for implementation is fundamentally important as it will ultimately determine the success or failure of an agreement. Companies can also place themselves at risk of legal or political action (such as blockades and demonstrations) and possibly also at the risk of breaching the terms of any permits that they have been issued if they fail to follow through on commitments made in agreements.

The issue of implementation can be partly addressed at the agreement-making stage by setting up appropriate governance processes and building in monitoring and review requirements. Companies, for their part, can facilitate implementation by ensuring that:

- agreement obligations are fully documented in an accessible form
- responsibility for implementing different components of the agreement is allocated at an early stage and people know what is expected of them
- someone within the organization has overall responsibility for the ongoing management of the agreement
- implementation is collaborative, involving Indigenous Peoples and companies working towards stated goals, for example through a liaison committee (see **TOOL 9**)
- an up-to-date register is maintained indicating what action has been taken, is in train or is proposed to address specific agreement obligations
- action plans are aligned with the agreement
- there is ongoing internal and independent monitoring of compliance
- capacity building of Indigenous Peoples remains a focus throughout the life of the agreement, recognizing that both company and community personnel involved in monitoring and implementation will change over time.

Implementation is not simply about ensuring that there is formal compliance with the terms of the agreement. While this aspect is obviously important, the most effective agreement management processes are those that are outcome focused rather than just process focused. This requires keeping the ultimate aims of the agreement clearly in sight, undertaking internal and independent external performance monitoring against these aims and being prepared to change practice, and even the agreement itself, where it is apparent that the desired outcomes are not being realized. This can only be achieved if there is commitment by both parties to making the agreement work and if there is good leadership at both the company and community level.

