TSHIKULULU
SOCIAL INVESTMENTS

Community Trust
Benchmarking Report

South Africa's leading social investment fund manager and advisor

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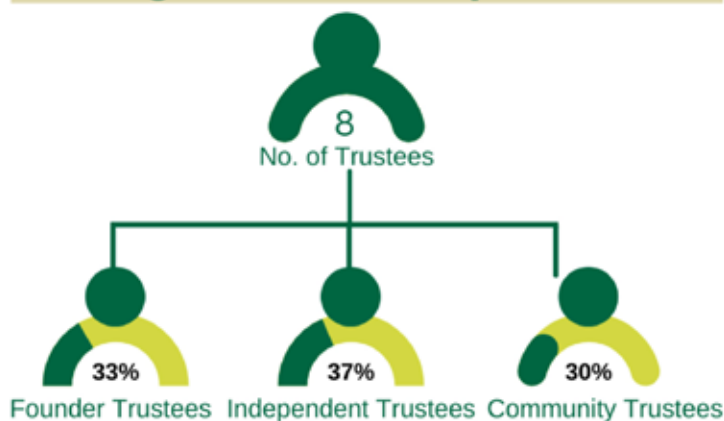## Contact: Tshikululu Social Investments

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TABLE OF CONTENTS

Average Trustee Composition

8
No. of Trustees

33%	37%	30%
Founder Trustees	Independent Trustees	Community Trustees

Legal Entity

90%
- 90% of the benchmarked entities are registered as trusts.

33%
- 33% are either registered as an NPC or have an associated NPC.

% Trusts with direct benefit to traditional leaders
- **3** of the benchmarked trusts make provision for a direct benefit to traditional leaders.

33%

67%

% Community input
- **67%** of the benchmarked trusts obtain input from the community on their plans.

% Proposals
- **44%** of the benchmarked trusts accept proposals and the remaining makes what could be considered top-down decisions.

44%

Geographical Spread

The following map indicates how many of the 11 benchmarked trusts implement projects in provinces around South Africa

Limpopo 5

Gauteng 4

Mpumalanga 3

North West 3

Free State 1

KwaZulu-Natal 3

Northern Cape 4

Eastern Cape 0

Western Cape 0

Glossary

AGM	Annual General Meeting
Amplats	Anglo American Platinum
B-BBEE	Broad-Based Black Economic Empowerment
B-BBEE Act	Broad-Based Black Economic Empowerment Act 53 (as amended)
B-BOS	Broad-based Ownership Scheme
BEE	Black Economic Empowerment
CDTs	Community Development Trusts
CEO	Chief Executive Officer
Companies Act	The Companies Act No 71 of 2008 (as amended)
DBCM	De Beers Consolidated Mines
DBsa	De Beers Societe Anonyme
DMRE	Department of Mineral Resources and Energy
DTI	Department of Trade and Industry
DTs	Development Trusts
ESG	Environmental, Social and Governance
EY	Ernst & Young
FICA	Financial Intelligence Centre Act
HDSA	Historically Disadvantaged South Africans
HMMET	Hotazel Manganese Mine Education Trust
IDC	Industrial Development Corporation
IEFSA	Independent Election Facilitators of South Africa
InvestCo	SIOC-CDT Investment Holdings
JSE	Johannesburg Stock Exchange
JTG	John Taolo Gaetsewe
M&E	Monitoring and Evaluation
MACUA	Mining Communities United in Action
Master's office	Office of the Master of the High Court
MOI	Memorandum of Incorporation
MPRDA	The Minerals and Petroleum Resources Development Act
NPC	Non-profit Company
NVF	Notional Vendor Financing
PBAs	Public Benefit Activities
PBO	Public Benefit Organisation
PBT	Public Benefit Trust
POPIA	Protection of Personal Information Act
RBH	Royal Bafokeng Holdings
RBM	Richard's Bay Minerals
RBNDT	Royal Bafokeng Nation Development Trust
REIPPPP	Renewable Energy Independent Power Producer Procurement Programme
REMCO	Remuneration Committee
SAPVIA	South African Photovoltaic Industry Association
SARS	South African Revenue Services
SAWEA	South African Wind Energy Association
SIOC-CDT	Sishen Iron Ore Company Community Development Trust
SLP	Social and Labour Plan
SPV	Special Purpose Vehicle
Trust Property Control Act	Trust Property Control Act 57 of 1988 (as amended)
Tshikululu	Tshikululu Social Investments

1. Executive summary

Context

The mining industry remains an important sector of South Africa's economy from the perspectives of its financial contribution and its role as a significant employer. However, there are on-going challenges with the transformation of the sector and the delivery of tangible benefits to the mining communities. Some of these issues have led to tension in the communities as well as community unrest, affecting the mining companies' social license to operate.

Community trusts are often used as a preferred vehicle by the mining companies for their B-BBEE transactions. This trend was further cemented by the introduction of the revised Mining Charter in 2018, which explicitly spells out requirements for a 5% equity equivalent benefit for communities.

Unfortunately, achieving meaningful benefit to mine workers and surrounding communities through the use of community trusts has not been successful in many instances. Despite the challenges, there does not seem to be better alternative governance structures, and there is no consensus on what the optimal vehicles for achieving intended empowerment might be.

Purpose

This benchmarking study was produced by Tshikululu Social Investments, South Africa's leading social investment fund manager and advisor, for Richards Bay Minerals ("RBM"). The aim of the study is to present examples of best practice in areas which can be used to strengthen the governance and the social development intent of the current RBM trusts.

Methodology

This report sets out the key findings from research and interviews conducted between August 2021 and February 2022. Tshikululu employed both primary and secondary data collection methods, namely desktop research, literature and policy review, and key informant interviews. 13 key informant interviews were conducted, with either trustees or management of 11 community trusts or groups of trusts.

Best practices

The key findings are distilled into best practices that provide insights into the key characteristics shared by well-managed trusts from the perspectives of governance, operation, and strategy to achieve long-term sustainable impact for the communities they serve. It is important to recognise the wide range of community trusts in the research and beyond that differ in their structure, context, culture, and circumstances. What works for one community trust may not work for another community trust.

1. Purpose-driven approach

- The purpose of the trust is clear (beyond appeasing the community or maintaining a B-BBEE status). Design of an appropriate structure and strategy flow from a well thought-through purpose.
- Project design and implementation approach is based on a clear long-term strategy with an organised framework.
- One of the most effective ways of defining and mapping out a purpose-driven approach is through a theory of change.
- Financial sustainability has emerged as a theme across many trusts.

2. Strong governance and oversight

- Trustees have a combination of complementary skills and a profile that is appropriate for a specific trust and its objectives, which enables them to contribute tangibly to the trust.
- In terms of specific expertise, the board should have trustees with financial and legal skills to

be able to engage meaningfully with financial statements and to understand the legal implications of the trust's activities.

- Different trusts have different relationships with their founding companies, but oversight by the founding company is an essential part of good governance.
- There is a good balance between independent and founder trustees (as well as community trustees, where appropriate). The minimum and maximum number of trustees as well as the composition of the board is specified in the trust deed.
- The trustees are supported in carrying out their responsibilities by skilled staff/ management in order to promote good governance and accountability through separation of powers.
- A formal induction and training of all trustees is considered a good governance practice.
- The issuing of audited annual financial statements is a critical compliance requirement. It promotes transparency, compliance, accountability and builds the trust of key stakeholders. Furthermore, it provides critical information that enables the trustees to formulate appropriate policies and strategy for the future.

3. Independence

- The role of independent trustees is recognised as good governance practice in line with local and international guidelines. The chair of the trust should also be independent.
- While maintaining a healthy relationship with the founding company through regular reporting and board representation is seen as positive, there is also a clear understanding and appreciation for the trust's independence.

4. Sufficient capacity

- There is internal capacity both in the management of projects and at the board level to ensure effective running of the trust. Additional capacity may be acquired through third-party suppliers, though some fundamental capabilities need to reside within the trust.
- The importance of having financial and legal

skills on the board was emphasised by multiple interviewees.

5. Intentional community engagement and involvement

- Community engagement is consistent, transparent, and deliberately planned. There are strong mechanisms for feedback to the community. Not all trusts deliberately solicit input from the community on how funds are used, but some of the more effective ones supplement research into community needs with feedback on proposed projects.
- Community involvement in the trust is clear and well-defined, whether this is through direct engagements or via community trustees. Formal engagement structures ensure that a wide range of beneficiaries are meaningfully involved in the trust's activities.
- There is no direct or preferential benefit for any special interest group, including traditional leaders.

6. Robust monitoring and evaluation (M&E) practice

- There is a well-defined M&E process in place to monitor progress and impact, to conduct evaluations, and/or to conduct data verification. This can be managed internally but using an expert external service provider is a widely used option.
- M&E is embedded into the project planning process rather than after the fact. Trusts that do not consider M&E in their planning and approval process experience difficulties when trying to measure the outcomes and impact of approved projects.

Recommendations

The recommendations included in the report are made following careful examination of the key findings. The recommendations are made with an appreciation that simply copying one successful approach and applying it to another without context would be difficult and not advisable. These recommendations are intended to serve as potential input for all stakeholders looking to improve the performance of their respective community trusts and for policy makers in general.

1. Purpose

- The purpose and public benefit nature of the trust must be contained in the objectives of the trust.
- In addition to the stated purpose in the trust deed, it is important to define the role a trust intends to play in the community and who its most important stakeholders are.
- The strategy should encapsulate the purpose of the trust, including what it wants to achieve and for whose benefit. It takes into account factors such as the size of the trust, the geographic context, critical stakeholders, and the needs and priorities of the beneficiary communities and the founder company.
- A well-defined theory of change illustrates clearly how desired change is expected to happen, and provides a framework for a community trust to achieve success. At its core, it guides the trust towards achieving its purpose by linking long-term goals to shorter-term outcomes, outputs, and activities. It takes into account the assumptions, risks and constraints affecting the strategy, so it is also tailored to the context in which the trust is operating.
- The development work of the trusts can complement the development work of the founding company to enhance the social impact of the work.

2. Trustee issues

- There are a number of areas where we make recommendations regarding trustees ranging from composition, appointment practice, term, induction and training, and evaluation.
  - **Trustee composition:** A good balance between founder and independent trustees is essential, whether or not community trustees are specifically included. In the case of many trusts , it will be advisable that community trustees are included given the expectations associated with the trusts. It is also recommended that independent trustees are appointed to the trust to augment skills in finance, legal and governance. The recommended composition is 6-9 trustees per trust. A smaller board of trustees would also be suitable for the purposes of these trusts, but if founder, independent and community trustees are to be included in reasonable ratios, a slightly bigger board is required. The recommended composition is as follows: Independent trustees: 3-4 (at least 50%, and including the chairperson); Founder trustees: 1-2; and Community trustees: 2-3.
  - **Trustee appointment:** Founder trustees can be appointed by the company directly (should be based on the skills they bring to the board and their link to the structure the trust reports into). Recruitment of independent trustees can be supported by the founder company's internal resources, the trust administrator/ manager or an independent recruitment agency. For community trustees, it is critical to follow a transparent process. This could be the appointment of someone via a representative community engagement forum, or ideally an independently managed election process, where the community has the opportunity to engage prospective trustees and vote for a representative.
  - **Trustee term:** A fixed term is ideal and following the King IV guidelines of 3 x 3 terms is recommended. Tenure should be reflected in the trust deed. Continuity is important and transition should be carefully managed and supported. Key considerations here are accountability and continuity. Overall, having fixed terms is best practice as it promotes accountability and good governance.
  - **Induction and training:** It is recommended to establish a formal trustee induction process. At minimum, trustees need to fully understand their fiduciary responsibilities as per the trust deed, and be familiar with the concept of good governance. It is also important to include an understanding of the founding company and its relationship to the trusts. The trustees and the trust administrator/manager should also identify additional training areas and allocate appropriate budgets on an annual basis to ensure that the trustees are trained on issues that are relevant for the trust (especially for community trustees). Additional support may be offered to community trustees to train them in skills required as trustees.

- ○ **Board evaluation:** It is recommended that a review of the effectiveness of the board be conducted. An agreed process needs to be approved by the board. It is important that the evaluation is standardised year on year to identify gaps and that action plans are put in place to address these. Once the board is "settled", evaluations can be done on a biennial basis. The board evaluation should form part of the annual work plan.

3. Oversight

- Appropriate governance structures and oversight mechanisms must be developed by the founding company and the trust to support the trust's purpose and strategy.
- Regular and transparent reporting structures and monitoring processes need to be agreed to by all stakeholders.
- To support this function the founding company may wish to consider the establishment of committees of the board that provide assurance. In the first instance it is important that audit, risk and governance oversight is provided by an Audit, Risk and Compliance Committee with clearly defined terms of reference.

4. Operating model and capacity

- There is no one right model but internal capacity or at least a clear model of outsourcing is necessary. The trusts may share services with the founding company where appropriate, especially in areas where the company has strong expertise or capabilities. This approach can be revisited once the trusts have sufficient internal capacity.
- The importance of having financial and legal skills on the board was emphasised by multiple interviewees. This is key to the effective operation and monitoring of the trusts; these skills can also be outsourced, but it is important that there are at least some trustees that are able to engage meaningfully with financial statements and understand the legal implications of what the trust does.

- Centralising more functions can be beneficial. However, it is important to have clear pathways for community representation, communication, input and feedback to avoid the common pitfall of losing touch with the communities.
- Some of the key skills needed (generally, and some for the trustees specifically):
  - ○ Legal support
  - ○ Accounting/Finance
  - ○ Administration
  - ○ Company secretariat - mechanisms to ensure compliance and sound governance in terms of adhering to the trust deed
  - ○ Knowledge management
  - ○ Specialist expertise in developing project strategies, implementation plans and monitoring, evaluation and reporting.

5. Beneficiaries

- The research suggests that the current best practice is to have no direct or preferential benefit for any special interest group, including government and traditional leaders. This needs to be carefully considered in relevant contexts in terms the relationship to the Amakhosi. Mechanisms can be explored where the Amakhosi (and their families) could still get a share of the dividend, but there is a separation between the interests of the Amakhosi and that of the community trust itself. This will require further engagements and legal advice.

6. Monitoring & evaluation

- Clear development targets/indicators need to be attached to all money which is disbursed for community development. All funding disbursed needs to be supported by a grant agreement or contract which has performance clauses in it.
- Embed M&E into project planning. M&E support can be provided by a third-party service provider, or by an internal resource.
- The capturing and tracking of M&E data is a specific expertise and the trusts and or founding company may want to employ or contract this

expertise to track the social impact of all funding disbursed on a continuous basis.

7. Role of the founding company

- It is important to have oversight by and connection to the founding company. At the same time, trusts must remain independent, and the governance and decision-making must reside with the trustees. Having founder trustees with the right technical competencies, character, and fit with the culture is essential in creating the link to the company, ensuring effective governance, and building trust. Founder trustees can also be responsible for reporting back to the founder company in an agreed manner and frequency. We also note that there are valid security concerns that need to be carefully assessed when appointing founder trustees to a trust in a volatile community setting.
- Some trusts have included step-in rights where the company can take remedial action in its sole discretion in adverse circumstances. In such cases remedial action may include (but not be limited to) the suspension of the board, the suspension of the voting rights of a trustee, the amendment of the voting procedure, and/or the removal and replacement of some or all of the trustees.

8. Community and stakeholder engagement

- Develop an intentional and clear community and key stakeholder engagement strategy. Gaining a deep understanding and appreciation for the concerns, pain points and motivations that each stakeholder category has is an important first step in designing an effective strategy.
- Wherever possible, make use of existing engagement platforms established by the founder company's operations to avoid duplication and make use of local knowledge and relationships. Similarly, use existing community structures and platforms where possible as a means of engaging with different segments of the community.
- Consider community involvement coupled with capacity development. It is critical for the community and also advantageous for the founder

company for the community members to be capacitated with transferable skills that are relevant after the life of mine.
- In anticipation for future conflicts, another potential solution in addition to active engagement is to consider having a conflict resolution mechanism spelt out in a trust deed is paramount.

Policy considerations

While our research focus was not on policy issues, we have also prepared a list of policy related issues that are worthy of citing:

- The Trust Property Control Act, in conjunction with the South African common law in respect of trusts, governs the administration of all trusts in South Africa. An inherent challenge with using trusts as vehicles for broad-based empowerment is that the Trust Property Control Act is "not designed for trusts with hundreds of thousands of beneficiaries". Reliance would normally be placed on a trust's deed of trust to provide for such mechanisms, and in the absence of adequately drafted provisions to this effect (or where such provisions are ignored or not enforced), the results can be problematic.
- Establishing an ombudsman is a possible consideration so that there is a degree of external oversight to provide support and protection, and to monitor compliance with the MPRDA. An amendment of the Act to establish a mechanism to "independently investigate and advise on community grievances in an efficient, democratic, and transparent fashion," is recommended in a submission to the High Level Panel on behalf of Land and Accountability Research Centre. However, an establishment of an ombudsman may not be possible given the discretionary nature of trusts. At the same time, there is a risk of duplicating structures that could already exist in some capacity. Further exploration would be required here.
- The DTI Codes of Good Practice require broad-based ownership schemes to make statutory documents available on request to any participant in the language with which they are familiar, as

well as for the financial reports to be presented at the AGM. There are no such requirements for community trusts that are not structured as B-BOS.

- Despite challenges, many organisations including the IDC, assert that community trusts are an appropriate model for furthering development. Development of standardised best practice guidelines for community trust as well as opportunities for knowledge-sharing across sectors are recommended.

2. Introduction and research scope

Introduction

In South Africa, the mining industry remains an important component of the country's economy, accounting for 8.2% of gross domestic product in 2020, and employing 451,000 people. In South Africa, community trusts are used as part of a nation building project which consciously subscribes to the idea that "development must be the responsibility of all sectors of society." Starting from 2001, community trusts began to form part of Black Economic Empowerment ("BEE") transactions, and became ubiquitous in the larger BEE transactions, increasing in popularity across all deals. The Minerals and Petroleum Resources Development Act ("MPRDA") and the Mining Charter, which first came into effect into in 2004, required mining companies operating in South Africa to transfer 26% of the value of equity ownership and ensure that historically disadvantaged persons (HDSAs) attain 40% control of mine assets. This led to community schemes being set up by the mining companies, and community trusts became increasingly a feature of BEE transactions. This was further cemented by the introduction of the revised Mining Charter in 2018, which explicitly spells out requirements for a 5% equity equivalent benefit for communities.

The relationship between mining companies and their host communities is a complex one, in many cases characterised by mistrust. The single biggest risk identified by the latest Top 10 Business Risks and Opportunities - 2021 survey by EY is the trust deficit with local communities for the third year in a row. With increasing focus on security, environmental, social and governance ("ESG") from investors and shareholders, ESG represents one of the mining industry's "most significant opportunities for long-term value creation, building trust and sustainable growth."

However, achieving meaningful benefit to mine workers and surrounding communities through the use of community trusts has not been successful in many instances. Some of the challenges with the use of community trusts include inadequate representation by community members; poor communication with stakeholders; challenges with defining beneficiaries; fragility of community institutions; intrusion of local politics; low levels of skills and capacity; and inadequate monitoring and evaluation. Despite these challenges, many agree that there is no clear better alternative, and there is no consensus on what the optimal vehicles for achieving intended empowerment might be.

Research background

Rio Tinto and BHP concluded the Richards Bay Minerals ("RBM") broad-based black economic empowerment ("B-BBEE") transaction in 2009, wherein Community Development Trusts ("CDTs") and Public Benefit Trusts ("PBTs") were established for the four host communities for the purpose of enabling community members to participate in the B-BBEE transaction and forming part of the company's contribution to community development. RBM and other stakeholders recognise that it is timely to review the last ten years or so of the CDTs performance to see what improvements could be made to trust governance and management. The purpose of such a review being how to help the CDTs strengthen their capacity to deliver on RBM's mandate of securing broad-based benefit to the communities they serve, specifically in the areas of trust governance, trust management and trust structure.

Tshikululu Social Investments ("Tshikululu") was appointed to conduct a benchmarking assessment that will help RBM to help the community trusts improve their governance and management, and develop a sustainable structure for delivering benefit to the intended communities going forward.

Objectives

The aim of the benchmarking study is to present examples of best practice in areas which can be used to strengthen the governance and the social development

intent of the current RBM trusts. Such examples of best practice are expected to help RBM engage with the relevant stakeholders around proposed changes by outlining examples that operate effectively. This benchmarking exercise is expected to provide input to help modernise the trusts and deliver a sustainable structure that operates effectively to deliver benefit to the intended communities.

Additionally, RBM has asked Tshikululu to share the findings of this report with other stakeholders and ideally to make a contribution to the development of future policy in this important field.

Scope

RBM provided a list of four potential trusts to be included in the benchmarking study. Tshikululu recommended expanding the scope of the benchmarking to include other industries beyond mining (as indicated with asterisk below). We agreed on eight trusts to be included in the study (please refer to Interviews for the final list of benchmarked trusts, as the list was subsequently modified due to unavailability of key informants, as well as to include interviews relevant to regional/cultural context). The ownership structures initially approved for inclusion in the study are as follows:

1. Anglo American Platinum - Project Alchemy
2. Royal Bafokeng Nation Development Trust
3. Exxaro Resources - Matla Setshabeng NPC
4. Kumba - SIOC-CDT
5. AECI Community Education and Development Trust*
6. Sasol - Inzalo Foundation*
7. Assore - Fricker Road Trust and Boleng Trust*
8. Enel Green Power Community Trusts*

Broad-based ownership schemes established to benefit communities are mostly structured as registered trusts, but the research recognises that equivalent structures in the form of non-profit companies ("NPC") (such as Matla Setshabeng NPC) are set up to achieve the same objectives despite not being registered as trusts. The term "community trust" is used generically throughout

this report to refer to broad-based ownership schemes established to benefit communities.

Similarities between an NPC and a trust:

- An NPC and a trust are similar in that both require an entity or natural person to establish them (i.e., an NPC requires an incorporator, while a trust would require a founder or donor).
- Both an NPC and a trust have perpetual existence beyond the lives of the incorporators and founders.

Differences between an NPC and a trust:

- An NPC and a trust differ greatly when it comes to legal personality. Being a company, an NPC is a juristic entity which can sue and be sued in its own name, while a trust is not a legal entity but can have legal capacity through its trustees in their capacity as such.
- The two entities are also established in terms of different statutes, namely the Companies Act of 2008 in respect of an NPC, and the Trust Property Control Act of 1988 in respect of a trust.
- An NPC must have at least three directors. The Master of the High Court does not specify a minimum number of trustees, but the trust deed can specify a minimum and maximum number.
- An NPC is governed by its Memorandum of Incorporation (MOI), while a trust deed serves as the founding and governing document for a trust.
- Companies and trusts are taxed very differently.

Save for Matla Setshabeng NPC and Zenzele Itereleng NPC, which form part of the Alchemy Project, all the other entities forming part of this benchmarking study are incorporated as trusts.

Research areas and questions

The key areas and questions the study focused on are as follows:

1. Regulatory and legal environment

- Understanding compliance requirements with the operating country's laws and regulations, legislative prescripts of B-BBEE, SARS and other relevant policy regulations

2. Governance and structure of trusts

- Legal registration of the trusts
- Governance structures, policies and procedures followed by the trusts
- Restrictions on the scope of the trusts
- The role of the founder company of the trusts

3. Trust management

- Who controls and manages the trusts?
- What are the operating models of the trusts?
- What are the management structures of the trusts?
- What are the risk profiles of the trusts in terms of investing in development projects?

4. Beneficiaries

- How does the trust define its beneficiaries, for example previously disadvantaged individuals with either a geographic demarcation (sponsor company's operating area), or beneficiary class such as employees or students interested in the company's industry?

5. Trustee considerations

- How are trustees recruited and selected (what is the selection criteria for appointment)?
- What is the composition of trustee boards (proportion independent trustees), and what is their mandate?

6. Project management and implementation

- What are the operating models of the trusts and what is the project management capability of the trusts?

3. Methodology

General approach

Tshikululu has undertaken the benchmarking assessment employing both primary and secondary data collection methods. The process was conducted in the following phases:

1. Project inception and design – Held a kick-off meeting with the project sponsor to determine the scope of work, collected and conducted an initial document review and a mapping exercise of the organisations to be included in the study.

2. Data collection – An in-depth desktop and literature review, the development of research tools, and primary data collection through in-depth key informant interviews, including our client, were conducted.

3. Analysis and reporting – Following the data collection, the research team analysed and interpreted the data collected to provide a holistic examination of the findings. Following this, we drafted a benchmarking report, drawing on the critical insights and lessons

learned to inform recommendations for implementation and sustainability for the community Trusts, as well as best practice case studies.

Desktop research

We conducted a desktop study based on publicly available information on each of the selected trusts such as annual reports, trust deeds, relevant published documents of the parent companies and the trusts (including information available on the company's websites).

Literature and policy review

The literature and policy review focused on examining the mining sector's regulatory environment for community trusts. Through the literature review, the regulatory and theoretical frameworks for understanding community trusts within the developmental and policy context of South Africa and the mining sector was also examined. The literature reviewed included publications on trust vehicles' historical and current role
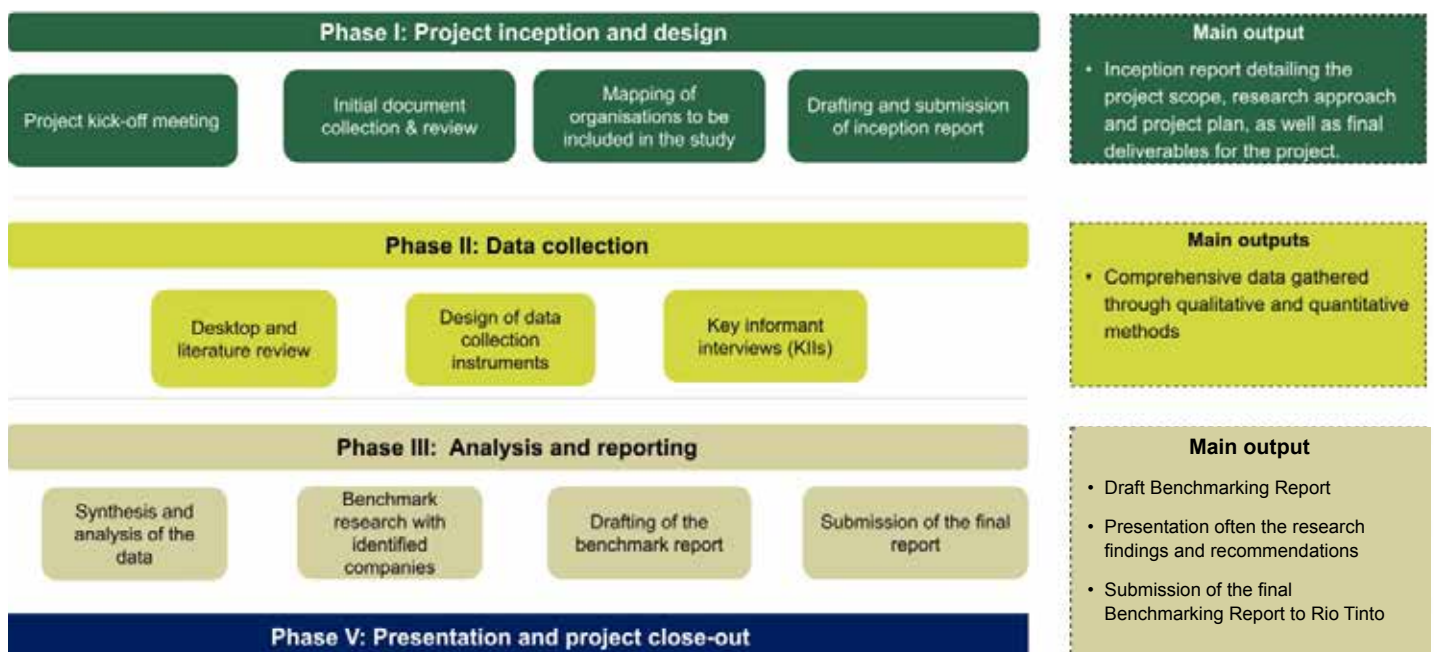

Figure 1: Project methodology overview

in furthering social development, theories concerning the management of trusts, and general research focused on BEE and B-BBEE.

Interviews

14 key informant interviews were conducted, with either trustees or management of 11 community trusts or groups of trusts as shown below in a semi-structured format. Interviews with key RBM stakeholders were conducted, which provided valuable context for the project. All interviews were conducted virtually except for one in-person interview with Mzimela Nkonjane Community Development Trust, which took place in KwaZulu-Natal.

Due to unavailability of representatives from Inzalo Foundation (Sasol), we added two alternative mining community trusts: the Hotazel Manganese Mine Education Trust ("HMMET") and the Ponahalo/De Beers Trusts. Recognising the importance of the KwaZulu-Natal context, we also added Mzimela Nkonjane Community Development Trust. Furthermore, community trusts associated with Sibanye-Stillwater were added at the request of RBM.

The purpose of key informant interviews was to collect information in order to assess the trusts' operational, governance and regulatory structures and determine their effectiveness. Additionally, the interviews were designed to provide added detail regarding project management and implementation, issues and considerations regarding the selection and training of trustees, the operational and governance structures of the trusts and the mandate and role of the founder company.

The interview participants from the benchmarked trust were willing to share their experiences and views. The interviews provided rich information and insight on the governance and operating models of community trusts in South Africa.

	Community trust	Founding company
1	Lefa la Rona Trust / Project Alchemy	Anglo American Platinum
2	Exxaro Matla Setshabeng Development NPC	Exxaro Resources
3	SIOC-CDT	Kumba
4	AECI Community Education and Development Trust	AECI
5	Fricker Road Trust and Boleng Trust	Assore
6	Enel Green Power Community Trusts	Enel
7	Hotazel Manganese Mine Education Trust (HMMET)	South32
8	Ponahalo/De Beers Trusts	De Beers
9	Mzimela Nkonjane Community Development Trust	N/A
10	Rustenburg Mine Community Development Trust, Lonplats Marikana Community Development Trust, Bapo Ba Mogale Community Development Trust	Sibanye- Stillwater
11	Royal Bafokeng Nation Development Trust (RBNDT)	N/A

Figure 2: Benchmarked Trusts

Limitations

As with any research project, there are some possible limitations in this study. The primary limitations are listed below:

● **Limited sample size:** A total of 14 key informants from 11 trusts or groups of trusts were interviewed over the course of 13 interviews. While findings from each interview are rich and contributed to deeper understanding of the governance and operational issues for community trusts, we recognise that a wider coverage of trusts may have given a more comprehensive overview of the community trust landscape. Part of the knowledge gap is covered by the extensive desktop research and literature review.

● **Geographic and cultural representation:** The original list of selected trusts did not include any trusts based in KwaZulu-Natal where RBM operates. Recognising the importance of geographical and cultural context, we subsequently recommended that the scope include trusts based in KwaZulu-Natal.

Based on the recommendations from RBM, we managed to interview one trust (i.e., Mzimela Nkonjane Community Development Trust) during our research.

● **Limited literature:** Community trusts feature minimally (if at all) in academic literature, limiting the range of research sources available. However, this limitation does not prevent the literature review from being robust, as it draws on other relevant sources from government and from experts in the field. Specifically, where the literature engages with traditional leadership, it focuses mainly on the platinum belt. No literature has been found relating specifically to community trusts and traditional leadership in the context of KwaZulu-Natal.

Consent form

The interview participants were given a consent form stating that they agreed to participate in this study. It stressed that their participation was voluntary, and they were free to withdraw. All participants freely gave consent to participate. The consent form is attached at the end of this report.

Community Trust Benchmarking Report 2022

4. Literature review

Historically, much of South Africa's wealth has been built on mining. In the apartheid era, "the wealth created by artificially cheap Black labour on the mines was used by the political and business elites to embed an oligarchic capitalism, the foundations of which have yet to be eroded." Community trusts (and the Mining Charter more broadly) exist as part of the broader national agenda to address the racialised inequality that continues to characterise the mining sector and the country as a whole.

The use of community trusts as broad-based ownership structures has developed over the past 15 years with the introduction of B-BBEE ownership requirements. In 2017, the 100 largest Johannesburg Stock Exchange ("JSE") companies' empowerment deals (including community trusts) had created R51.6-billion in value for recipients, and there was R32.6-billion in endowments held by foundations set up through BEE deals. It is clear that community trusts and similar empowerment structures have a significant role to play in South Africa. At the same time, it is generally acknowledged that they are not achieving their full potential, and there is no consensus on what the optimal vehicles for achieving such empowerment might be.

Community trusts in theory and in practice

In the mining sector, community trusts exist within the legislative framework of the:

- Trust Property Control Act 57 of 1988 (as amended) ("Trust Property Control Act"),
- Companies Act No 71 of 2008 (as amended) ("Companies Act"),
- Broad-Based Black Economic Empowerment Act 53 (as amended) ("B-BBEE Act"), and
- Mining Charter (most recently Mining Charter III, published in 2018).

The Trust Property Control Act, in conjunction with the South African common law in respect of trusts, governs the administration of all trusts in South Africa. An inherent challenge with using trusts as vehicles for broad-based empowerment is that the Trust Property Control Act is "not designed for trusts with hundreds of thousands of beneficiaries". Reliance would normally be placed on a trust's deed of trust to provide for such mechanisms, and in the absence of adequately drafted provisions to this effect (or where such provisions are ignored or not enforced), the results can be problematic.

The interpretation of the B-BBEE Act in relation to trusts as broad-based ownership schemes has been a contentious issue, but the Minister of Trade, Industry and Competition confirmed in a May 2021 Practice Note that a defined class of beneficiaries (rather than individually named beneficiaries) satisfies the ownership provisions under the Codes. Interest in the social impact and governance of these trusts has increased lately.

A report by Corruption Watch notes that the community trust structure has regularly been undermined by corruption, mismanagement, and lack of accountability. The intended beneficiaries, the communities, are often not benefitting from mining operations, especially when trusts are run in favour of mines or special interest groups. However, as shown in the research, there are examples and case studies where these trusts are playing an important development role in their communities.

There have been a number of investigations and commissions over the years that reveal the corruption and mismanagement in mechanisms that are intended to ensure that communities benefit from mining. One example is the 2017 Baloyi Commission, which found that the Chief and members of the Makgatla ba Kgafela Traditional Council directed funds intended to benefit the community to offshore companies, the chief, and a small number of local people. The community lost billions of Rand in mining revenue. Another example is the loss of R600-million from the "tribal account" of the Bapo ba Mogale in North West Province, which was held by the North West Premier's office, under the supervision of

the Department of Traditional Affairs. The account had not been audited since 1994. While only one of these incidents involved a community trust, both are relevant as examples of how benefits intended for communities can be hijacked when they are under the control of unrepresentative structures with poor governance and limited oversight.

In terms of the Trust Property Control Act, Master's offices are tasked with the supervision of trusts, and do not have the duty, nor the capacity required to monitor community trusts outside of the ambit of the provisions of the Trust Property Control Act. In some cases, offices have also been implicated in corruption. The DMRE is also not in a position to oversee community trusts. In a 2021 article in the Daily Maverick, Emdon & Van Garderen recommend an external oversight body, like an ombudsman, to provide support and protection. They recognise community trusts as vulnerable structures with a design that is not well suited to their purpose, and which exist in poor communities where they can easily be captured by an elite minority.

Community ownership

A core question in relation to community trusts is the degree to which they can meaningfully enable community members to be the owners of the shares they hold. The flow through principle instituted in the B-BBEE Codes means that true ownership (including voting rights and direct control of benefits) should rest in natural persons. Then Minister of Trade and Industry, Rob Davies, stated that Black people must have "powers of economic ownership", which entails not only the holding of shares but also the power to be involved in the decision making and management of a company and the ability to acquire the requisite skills. The current Minister of Trade, Industry and Competition has since confirmed that a defined class of beneficiaries (rather than individually named beneficiaries) does indeed satisfy the ownership provisions under the Codes, which renders community trusts valid as broad-based ownership vehicles.

It is critical to ensure that the intended beneficiaries of the empowerment deal have control over the economic benefits that are due to them. At minimum, this requires

that decisions from the community are communicated to the trustees, whether through a community engagement structure, community trustees, or representative trusts within individual communities. Corruption Watch argues that any broad-based ownership scheme ("B-BOS") must provide for community control over equity owned by the trust, with decisions driven by community mandate, regular access to information, and complete transparency and dissemination of information to the community. It further states that the objects of the trust should be determined by the community, and specifically the directly affected households near the mine, through community consultation. As the Mining Charter dictates, the community trust must publish and share a community development plan with the community each year, and implementation of this plan must be monitored. This plan is distinct from the mine's SLP, as it belongs to and must be implemented by the trust itself.

Community and stakeholder engagement

The literature highlights the importance of consistent, quality stakeholder engagement. It is important to note that the trust represents potential resources for an impoverished community – a community which may also understand the trust's assets to belong directly to them. This situation disrupts existing social arrangements and introduces opportunities for conflict. The possibility of accessing resources will inevitably raise expectations at community level, and as such "there is an ethical obligation on the part of those establishing the trust to anticipate, prepare for, mitigate and manage these unintended negative consequences." With this in mind, formal stakeholder engagement plans and communication mechanisms must be in place and used proactively.

Transparency is an essential part of accountability. The Codes require that the trust deed must be available upon request to any beneficiary in their preferred language, and that financial reports must be presented annually to the community. Ensuring that communication and reporting mechanisms are part of the deed and monitoring the trust to make sure they are followed make it easier to identify irregularities before they escalate. Corruption Watch also argues that communities need

to be capacitated to enable them to understand and participate in the activities of the trust. Planning should be undertaken with community buy-in and involvement, and, where necessary, the sponsor company should fund formal capacity development for local people or community-based organisations.

The role of traditional leadership

The Land & Accountability Research Centre argues that rural, mining-affected communities are harmed by mining more than they benefit from it. Specifically, it highlights that structures holding shares for communities do not benefit in the same way that other shareholders do as they are a "minority shareholder with limited capacity". A significant barrier to empowerment is that equity is often held by entities that traditional councils have established, where traditional leadership (rather than households and other community groups) are responsible for decision-making. As a result, benefits do not reach communities that are directly affected by mining.

A study of three tribal community benefit structures on the platinum belt (including the Bapo ba Mogale case described above) found that "sharing the benefits of mining with local communities through their traditional authorities, through royalties, shares or employment" created challenges in some cases. The Mining Charter requires representation of traditional authorities, but the literature agrees that companies must engage with different sectors and interest groups that exist in communities, and not focus on traditional leaders exclusively. Focusing exclusively on traditional leaders as representatives of the community can spark conflict within the community and exacerbate existing inequalities. Mining Affected Communities United in Action ("MACUA") recommends that, where a representative is drawn from the traditional authority, that it should not be the chief, as the chief's presence could be a barrier to equitable decision-making.

Independence and autonomy of the trust

Trusts are legally independent structures, which raises questions about how these structures can reasonably maintain a link to the sponsor company.

As of 2017, 35 of the 100 largest companies on the JSE had conducted empowerment deals that included PBOs as beneficiaries. 27 of these involved forming new trusts. Founder companies typically kept some degree of control over how trusts operated and disbursed funding, but most new trusts also had independent boards of trustees. Several trusts were guided in their investment priorities by the wishes of the founder company, but many independently identified development priorities, for example based on the National Development Plan, or by partnering with local government to identify critical needs.

In a 2016 presentation at a roundtable of the South African Wind Energy Association ("SAWEA") and the South African Photovoltaic Industry Association ("SAPVIA") the Industrial Development Corporation ("IDC") recommended recognising the independence of the trust, while ensuring that the composition of the board reflects the interests of the founder company alongside those of the community, with external perspective by independent trustees. This is in line with the South African trust law principle of the founder handing over control of the trust assets to the trustees, who must be able to exercise their independent discretion in administering the trust. The IDC also advises separating the community trusts from politics (municipalities or any other political structure) and communicating regularly and consistently with community beneficiaries. Despite challenges, it concludes that community trust is an appropriate model for furthering development, and that there should be standardised best practice guidelines for community trust as well as opportunities for knowledge-sharing across sectors.

Governance and leadership

Questions of governance are central to the effective implementation of community trusts, as evidenced by the challenges outlined above. The structure of the board of trustees is critical, as is oversight by the founding company.

The composition of the board for a B-BOS is dictated in part by the Codes of Good Practice, which dictate that the board should comprise:

- At least 50% Independent trustees
- At least 50% Black people
- At least 25% Black women

In the 2016 presentation at the SAWEA/SAPVIA roundtable, the IDC defines the ideal board as including three independent trustees, one representative of the funder and one of the project company (if relevant), and at least one community trustee. It notes that some communities may push for additional community trustees, which could increase the size of the board to as many as 10 trustees. Corruption Watch suggests that seven trustees are usually considered enough (with a balance between the independent, founder and community trustees), and that there should be no more than 13. The minimum and maximum number of trustees and the required composition should be stated in the trust deed. It also argues that the community's interests should have the greatest say in decision-making and recommends a model like that outlined in the deeds of the trusts that form part of Anglo Platinum's Alchemy Project: in this model, the number of founder trustees reduces over time so that the balance shifts to the community as the community is capacitated.

Including community trustees on the board is generally encouraged (and the Mining Charter requires some form of community representation and consultation), but it involves careful consideration. It may be risky to assume that someone from the community automatically understands the community's development needs and it is important to note the importance of ensuring that all trustees – including community trustees – are trained in trust governance, have access to critical information and expert advice to guide decision-making. Understanding the preferences of a whole community is not straightforward, and a community trustee may not be a "legitimate" or universally recognised representative of the community. In a context of community challenges such as disputed boundaries or contested leadership, this problem is exacerbated. There must be mechanisms to ensure that representatives are considered legitimate by the beneficiaries and avoid unduly influencing decisions in favour of special interests. Some strategies to achieve this include engaging with existing community entities and structures, establishing formal consultative mechanisms, and engaging with different segments of

the community to understand a broad range of views and needs, rather than assuming that certain individuals or groups represent the community as a whole.

To promote accountability, Corruption Watch emphasises the importance of including people close to the community but does not limit this to community trustees. It recommends the presence of people either closely connected to the community (whether resident there or with family or historical connections to the area), and/or representatives that have a commitment to broader developmental goals, such as civil society organisations that understand the local context.

Managing community expectations is another key area of focus for the trust and its sponsor company, understanding the role that the trust plays as a perceived source of resources in a disadvantaged community. Beneficiary representatives such as community trustees have a critical role to play here in terms of how they communicate with the community. Transparency and accountability are not the sole responsibility of the community representative(s), but the manner in which they engage with the community has the potential to calm or exacerbate the tensions associated with high expectations.

The presence of community representatives does not replace the need for community engagement structures. The trust must ensure that there are formal mechanisms to gather community input and provide feedback on the activities of the trust. This mechanism (e.g., a community forum) must be consistent, adequately resourced, and documented. It must be structured so as to promote meaningful participation in the trust by its beneficiaries, including those most vulnerable that may have less access to public forums. Good communication among stakeholders – including the beneficiary community as a whole – is a core element of a successful community trust.

Operations

Tshikululu's 2010 research found a common challenge for empowerment trusts, which was that careful attention was paid to the legal structure of the trust, but not to its operating model. There must be well-designed processes

and procedures to manage how the trust delivers benefit to the community. This includes governance, administration, implementation, monitoring and evaluation, stakeholder management, and beneficiary relationship management, among other aspects. The trustees ultimately have the fiduciary duty and responsibility to manage and administer the trust, but having skilled staff and/or advisors contributes towards effective operations and promotes good governance.

Not all trusts have internal capacity, but Intellidex found that many of the trusts interviewed intended to develop this capacity over time. However, several interviewees in the Intellidex study noted that they expected to still work closely with the sponsor company to draw on skills and services such as accounting, IT services, and office space.

Conclusion

The literature reveals that the issue of community trusts as a vehicle for community empowerment is a contentious one. However, the Mining Charter is clear that trusts or similar vehicles are a requirement to achieve broad-based ownership, and there are steps that can be taken by sponsor companies to maximise benefit to communities. Community ownership, engagement and representation are all aspects that must be considered, and the literature generally agrees that good communication and formal engagement mechanisms

are key here. There are gaps in the literature around the role of traditional leadership (particularly in contexts like KwaZulu-Natal, where it is especially important), but there is overall agreement that traditional leaders – or any other segment of the community – cannot be assumed to represent the community by default, and that special interest of any kind has the potential to disrupt the activities of the trust.

The requirement of a creator/founder of a trust handing over the control of property to the trustees to be administered or disposed of for the benefit of another, is crucial for the existence of a trust. Together with the trustees' fiduciary duties to act in good faith, with impartiality and with accountability, it is important to ensure that the trust operates separately from the founding company and in such a way that it is not unduly swayed by the wishes of the founding company. As part of this, governance and oversight are essential in making sure that the trust operates as intended (with input from the company, independent parties, and the community), in accordance with applicable law. It is ultimately the trustees' legal duty and responsibility to administer the trust, in their capacity as such.

Ultimately, community trusts may be a problematic structure, but they remain a viable model for broad-based community ownership as long as they have good governance and the ability to operate effectively in a community context.

Community Trust Benchmarking Report 2022

5. Key findings

In this section, key insights drawn from the desktop research, literature and policy review, and the key informant interviews will be discussed.

5.1. Regulatory and legal environment

Relevant law and regulations

In South Africa, trusts are governed by South African trust law, which is entrenched in 200 years of the historical development of South African common law and the more recent Trust Property Control Act, No 57 of 1988 (as amended), and is a mixture of English, Roman-Dutch and distinctively South African rules.

In addition to the aforesaid, it is also critical for community trusts to understand, monitor and comply with a broad range of regulatory requirements. Some of the key requirements relate to the Financial Intelligence Centre Act ("FICA"), the Trust Property Control Act (in conjunction with the South African common law principles in respect of trusts), the Income Tax Act (which also stipulates the requirements for Public Benefit Organisations), B-BBEE, The South African Revenue Services ("SARS") (including the tax implications of funding different types of activities), and, very recently, the Protection of Personal Information Act ("POPIA").

The Trust Property Control Act 57 of 1988 (as amended) has the purpose to "regulate further the control of trust property, and to provide for matters connected therewith". While somewhat reinforcing the Master of the High Court's powers, the Trust Property Control Act makes no attempt to dictate how trusts should be administered beyond setting a standard of skill and competence which trustees may not be dispensed from observing. The majority of rules governing South African trusts are rooted in the South African common law.

The principles of trust administration in South Africa require that (i) trustees must give effect to the trust instrument, property interpreted, as far as it is lawful and effective; (ii) trustees must in in the performance of duties and the exercise of powers act with the care, diligence and skill which can reasonably be expected of a person who manages the affairs of another, and (iii) except as regards questions of law the trustee is bound to exercise an independent discretion.

Trustees cannot be exempt from breach of trust if they fail to show the care, diligence and skill required. In administering a trust, trustees have a fiduciary duty (i) to act in good faith; (ii) of impartiality (avoiding conflict of interest and acting fairly), and (iii) of accountability. The High Court has inherent jurisdiction to ensure the continued proper administration of trusts by trustees.

Following the commencement of the **Broad-Based Black Economic Empowerment Act 53 (B-BBEE Act) (as amended)** in 2003, community trusts were frequently set up as the legal instruments to channel benefits to communities. Owing to the perceived problem of fronting and other forms of corruption, in 2013 the DTI published the Codes of Good Practice in regard to broad-based empowerment schemes and trusts. The Codes of Good Practice set out requirements that schemes and trusts schemes would need to meet in order to qualify and be recognised as broad-based ownership schemes. The policy is broad-based in that it aims to benefit a wide range of historically disadvantaged South Africans ("HDSA"), not only a few representatives.

The B-BBEE Commission issued guidelines on how to interpret the **Codes of Good Practice**. These were not uniformly accepted and there was controversy surrounding certain guidelines that rendered some B-BBEE legal vehicles apparently non-compliant, despite them furthering the aims of the B-BBEE Act. In 2019, the B-BBEE Commissioner stated that most community trusts were not compliant with the law.

However, and Theunissen argue that community trusts meet all the criteria laid down in the B-BBEE Codes, and further note that the Commissioner's opinion is non-binding. Most recently, the Minister of Trade, Industry and Competition published a practice note in May 2021 to guide implementation of the B-BBEE Act. This practice note intends to "respond to existing interpretative misalignment" around structures including broad-based schemes and trusts. It clarifies that broad-based schemes which provide benefit for certain designated groups, for example Black students as recipients of bursaries, are compliant under the Codes, and that specific beneficiaries do not need to be individually identified. Ultimately, the note confirmed that with regards to trusts, trustees have a right to select individuals to benefit from the distributions of the ownership scheme, as long as they form part of a clearly defined class of beneficiaries. This aligns with the South African trust law principles relating to discretionary inter vivos trust.

Despite widespread debate around the implementation of the Codes over the past several years, it appears that qualifying community trusts remain recognised as legitimate vehicles to deliver broad-based benefit to communities in terms of the Codes.

The mineral resources sector is regulated primarily under **the Mineral and Petroleum Resources Development Act 28 of 2002 (as amended)**, with BEE requirements guided by the **Broad-Based Socio-Economic Empowerment Charter for the Mining and Minerals Industry 2018 (Mining Charter 2018)**. The Charter contains a number of provisions on trusts and other legal vehicles that are the recipients of equity for communities in mining transactions, and these were supplemented

Excerpt from the equity equivalent benefit for host communities

The equity equivalent benefit referred to in paragraph 2.1.3.2 (ii) of the Mining Charter shall be administered as follows:

1. 5% equivalent of the issued share capital of the mining right holder, at no cost to a trust or similar vehicle set up for the benefit of host communities;
2. The Trust or similar vehicle shall be established and administered in terms of applicable legislation for the duration of the mining right;
3. The Trust or similar vehicle shall comprise of representation from host communities (including Community Based Organisations, Traditional Authorities, etc.) and mining companies;
4. A mining right holder must, in consultation with relevant municipalities, host communities, traditional authorities and affected stakeholders; identify host community development needs;
5. The Trust or similar vehicle shall be responsible for, amongst others, host community development programme, fund distribution and governance of the equity equivalent benefit;
6. All administration costs, project management and consultation fees of the Trust or similar vehicle may not exceed 8% of the total budget;
7. An approved host community development programme must be published in at least two languages commonly used within the host community; and
8. A host community development programme approved under this element shall not replace Social and Labour Plan commitments as contemplated in Section 23 of the MPRDA

Source: Mining Charter

Figure 3: Equity equivalent benefit for host community

by provisions contained in the Mining Charter Implementation Guidelines published in December 2018. The 2018 Mining Charter requires the mining industry to implement, among other requirements, BEE Ownership with a view to promoting the employment and advancement of the social and economic welfare of all South Africans.

Existing mining rights holders are required to report annually on the BEE percentage share, maximum BEE target reached, and meaningful economic participation and full shareholder rights. Existing mining rights holders that have achieved at least 26% BEE shareholding are recognised as compliant. The renewal of mining rights is subject to the requirements of the new charter. New rights must have a minimum of 30% BEE shareholding.

The 2018 Mining Charter noted that the achievement of meaningful participation by Historically Disadvantaged Persons remained limited because the trickle flow of benefits to service debt and provide cashflow to BEE partners was inadequate, and trusts holding the interests of mine employees and communities constrained the flow of benefits to their intended beneficiaries through inefficient administration. The requirements for equity-equivalent benefit for host communities are laid out in the Charter and mandate the establishment of trusts or similar vehicles to benefit host communities (Figure 3).

It is important to note that the 2018 Mining Charter applies only to new rights holders or to cases where the asset has been sold since the introduction of the revised charter in 2018. It has a "once empowered, always empowered" clause which means that existing rights holders that had already achieved a minimum of 26% BEE shareholding would be considered compliant for the duration of the mining right. This means that not all community trusts exist as a result of the latest Mining Charter, and several companies that are not bound by its provisions have nevertheless chosen to set up or continue operating trusts as part of their benefit to communities.

The **Income Tax Act No 58 of 1962** (as amended) governs the tax requirements for trusts, including the receipt of dividends. Dividends tax is currently at 20%. It is a withholding tax, to be paid by a resident company paying taxable dividends. A Public Benefit Organisation ("PBO") that is the beneficial owner of a dividend is exempt from this tax under Section 64F of the Act, as long as the PBO submits a declaration to the company to confirm that it is exempt from tax. The Act provides for registration as a PBO only if an organisation's sole or principal object is to carry out one or more public benefit activities ("PBAs") as detailed in the Act and if it complies with all the requirements laid out in Section 30 of the Income Tax Act.

5.2. Trust structure & governance

Legal definition & trust types

The term "community trust" is not a defined legal entity but is often used to describe an entity through which donations are made for a defined group of beneficiaries. It refers to a number of different entities with varying purposes. In the South African legal context, "community trusts" which are incorporated as trusts are registered as such with the Master of the High Court in terms of the Trust Property Control Act.

Juristic nature of a trust in South Africa

A trust is defined as a legal arrangement whereby control over property is transferred to a person or organisation (the trustee) for the benefit of someone else or for some impersonal object (the beneficiary) and is then administered by trustees on behalf of the beneficiary in accordance with a trust deed.

A trust does not possess juristic personality, except when a particular statute so provides e.g., Income Tax Act. In terms of South African law, a trust is considered to be a separate aggregate of assets and liabilities, but not a juristic person. A trust can therefore not litigate, contract or generally act in its own name, and can only act through its trustees, in their capacity as such. Actions by trustees, prior to their authorisation by the Master of the High Court, are null and void.

There exist two types of trusts in our law, namely: (1) the inter vivos trust, which is created between living persons; and (2) the testamentary trust, which derives from the valid will of a deceased. Inter vivos trusts in South Africa are created by way of a contract (the Trust Deed) subject to the rules of contract law. However, trusts are not contracts and are governed by South African trust law as aforesaid. Trusts must be registered with the Master of the High Court in the relevant jurisdiction where the trust's assets are located.

In a research study that Tshikululu conducted in 2010 on community trusts, we identified four different operating types, or what we alternatively describe as "PDI Beneficiary Trusts." The community trusts that are being benchmarked fall into the category of Type 4.

- **Type 1:** The Corporate Social Investment function of a private enterprise, whether constituted as an independent Foundation or simply a department or function within the business, often includes the term 'Community Trust' or the word 'Trust' in its name, and manages a Trust vehicle through which funds are channelled.

- **Type 2:** Entities that are founded by members of communities as a vehicle for raising and channelling resources from donors for development interventions, or for managing commonly owned existing resources. In both cases these are often labelled 'Community Trusts'.

- **Type 3:** Not-for-profit entities describing themselves as 'Community Trusts' that are involved in development work, but that have their roots in general civil society rather than in the private sector or a specific localised community.

- **Type 4:** Entities specifically constituted for the purposes of broadening the empowerment base of a particular BEE transaction. These would include Trust vehicles benefitting a community or Workers Trusts designed to benefit employees.

Legal form & registration

Community trusts can be structured in various ways, all of which have pros and cons depending on the objectives of the specific trust. The majority of the community trusts we interviewed are structured as trusts. Some of the benefits of a trust include independence and protection of its assets. An NPC would usually be set up as a shareholder in the founder company, as in the case of Matla Setshabeng NPC, Exxaro's community benefit vehicle. Alchemy has one NPC under the umbrella trust, and Assore has an NPC under the trusts for project implementation.

Trusts	• Lefa La Rona Trust • SIOC-CDT • AECI • Fricker Road/Boleng (Assore) • Enel community trusts • HMMET (South32) • Ponahalo (De Beers Trusts) • Sibanye-Stillwater Trusts • RBNDT
NPC	• Matla Setshabeng NPC - a shareholder of Exxaro • Zenzele Itereleng NPC - one of the beneficiaries of Lefa La Rona Trust (Project Alchemy)

Figure 4: Legal form

According to the Trust Rules set in the Codes of Good Practice, trusts must meet the following rules for recognition of ownership:

- The Trust Deed must define the beneficiaries and the proportion of their entitlement to receive distributions.
- A written record of the names of the beneficiaries or the use of a defined class of natural person satisfies the requirement for identification.
- A written record of fixed percentages of entitlement or the use of a formula for calculating entitlement satisfies the need for defining proportion of benefit; the Trustees must have no discretion on the above-mentioned terms; and
- On winding-up or termination of the trust, all accumulated Economic Interest must be transferred to the beneficiaries or to an entity representing the interest of the participants or class of beneficiaries.

A trust may separately choose to apply to SARS for tax exemption as a PBO, if it meets the requirements of the Income Tax Act and is primarily focused on implementing PBAs. Section 18A registration can be limiting as only very specific PBAs can be supported, but the main benefit is that the donations made are tax deductible. Section 30 has a broader list of PBAs, but the tax exemption is only for the trust, and not for the donors.

The main reason for registering as a PBO is to be entitled for tax benefits. Broadly speaking, a PBO is exempt from dividends withholding tax, may qualify for certain value added tax benefits, and qualifies for partial exemption from capital gains tax. Registering as a PBO is not essential for trusts receiving dividends via an intermediary, but would be relevant for any other contributions from donors. This can be critical – for example, one of the benchmarked trusts accepted donations before registering as a PBO, and ultimately ended up in four years of negotiations with SARS to resolve an unexpected tax liability.

The decision to register depends on the objective of the trust and the funding source. AECI indicated that one trust (i.e., Tiso AEL Development Trust) is registered as a PBO while the other one is not. They decided not to register it as a PBO because it would be required to benefit the general public, while AECI was trying to benefit communities where its staff lived.

S18A PBO	• Ponahalo/De Beers Trusts (De Beers) • HMMET (South32) • Tiso AEL Development Trust (AECI) • Matla Setshabeng NPC (Exxaro) • Sibanye-Stillwater Trusts (Sibanye-Stillwater)
S30 PBO	• Zenzele Itereleng NPC - one of the beneficiaries of Lefa La Rona Trust (Project Alchemy) • SIOC-CDT • Lefa La Rona Trust (Project Alchemy)
Not Assigned	• Mzimela Nkonjane Community Development Trust • Fricker Road Trust and Boleng Trust (Assore) • AECI Community Education and Development Trust • RBNDT

Notes: Enel's trusts' PBO status will be determined independently by the trustees of each trust.

Figure 5: PBO registration status

Trust structure

Different community trusts use different structures depending on their unique circumstances and needs. The two broad structures we see in the benchmarked trusts are single trust and multiple trusts. The rationales for using multiple trusts include:

- Trusts having different strategic focus areas;
- Trusts having different communities / beneficiaries; and
- Legal requirement (e.g. Enel needs to have one community trust for each project as required by the renewable energy independent power producer procurement programme ("REIPPPP").)

Based on our interviews and analysis, there is no definitive answer about what structure works best. There is significant debate about the pros and cons of centralised versus decentralised models, which was shared by our interviewees.

SIOC-CDT used to have a super trust with representative trusts in targeted communities, but moved away from that model to improve coordination, increase impact, and strengthen governance (see case study). According to a trustee, having multiple trusts created mission drift and brought out "factionalism

and own interests" in the structure. It also caused governance issues, resulting in reputational risk. Centralisation enabled the organisation to be much more focused. Consolidation achieved a leaner structure, improved overhead cost structure, and ability to drive projects to successful conclusion by accepting accountability right at the top.

Assore is streamlining its overall structure, but still maintains the historical structure of having multiple trusts. Three trusts (two community trusts and one employee trust) were set up between 2005 and 2012 through three different BEE transactions to meet mining regulation and empowerment requirements. The company recently began reorganising its corporate structure to optimise its ownership structure in order to ensure proper empowerment. It previously included a complex cross-holding issue (e.g. Assore used to own one of its own special purpose vehicles ("SPVs"). The company was delisted from the JSE last year. The two community trusts now share a common SPV, which in turn owns 18.2% of Assore.

On the other hand, Lefa La Rona argues in favour of decentralised decision-making and retains its multiple trust structure. Each entity under the Lefa La Rona umbrella operates independently but as a "family of development structures linked to a shared vision." One

SIngle trusts	
HMMET	It only has one trust that is focued on Joe Morolong Municipality
SIOC-CDT	SIOC used to have a "super trust" with representative trusts in targeted communities, but moved away from that model to improve coordination, increase impact, and strengthen governance (see case study for more details).
Exxaro	It only has one community NPC, although other structures are part of the B-BBEE deal.
Mzimela	Established specifically to access funding from the Ingonyama Trust, which has multiple beneficiary community trusts.
RBNDT	The trust itself is a single entity which is part of a larger structure in the Royal Bafokeng Nation. It was established to house and oversee all commercial entities.
Multiple trusts	
Lefa La Rona (Alchemy)	Lefa La Rona Trust is the "super trust" with four trusts and one NPC in communities (See case study for more details).
AECI	Two trusts with different focus areas - • **The AECI Community Education and Development Trust** focuses on sustainable socio-economic empowerment of vulnerable communities in South Africa • **Tiso AEL Development Trust** focuses on the development of Orphans and Vulnerable Children in terms of Education, Food Security, Water and Health
Assore	Two trusts - Boleng Trust and Fricker Road Trust - which have common objectives effectively function as a single trust.
Enel	Each project requires one community trust. Each project has different arrangements.
Ponahalo	Three trusts with different types of beneficiaries - Ponahalo/De Beers Women's Trust, Ponahalo/De Beers Disabled Persons Trust and Ponahalo/De Beers Community Trust.
Sibanye-Stillwater	Sibanye-Stillwater inherited two trusts in its takeover of Lonmin (Lonplats Marikana Community Development Trust and Bapo Ba Mogale Community Development Trust) and is setting up the Rustenburg Mine Community Development Trust. Each trust owns part of a different mining right and serves a different community.

Figure 6: Trust structure comparison

Community Trust Benchmarking Report 2022

interviewee was critical of centralised decision making, which creates "greater efficiency, but is problematic in terms of community decision-making" (see Lefa La Rona's case study).

BEE ownership structure & financing

All community trusts benchmarked, except for Mzimela Nkonjane Community Development Trust and RBNDT, which do not have founder companies, were set up as part of their founding companies' BEE transactions. Exxaro Matla Setshabeng Development NPC is a group company of Exxaro and it receives dividends. Community trusts hold shares either directly in the founding company or indirectly through an SPV or a BEE partner.

All community trusts benchmarked are resourced primarily through dividends as part of the ownership scheme, except Mzimela Nkonjane Community Development Trust. Mzimela Nkonjane Community Development was set up specifically to receive funds from the Ingonyama Trust, which was established in 1994 in terms of the KwaZulu Ingonyama Trust Act (Act No 3KZ of 1994) to hold all the land that was owned or belonged to the KwaZulu Government. Companies such as Lafarge, Vodacom, MTN, Cell C, etc. pay lease to Ingonyama Trust, which then gets disbursed to beneficiary communities, including the trust. RBNDT, while it does not have a founder company, is the sole shareholder of Royal Bafokeng Holdings ("RBH"), which releases dividends to the trust.

Direct shareholding	● **HMMET** - 5% of HMM ● **Lefa La Rona Trust (Project Alchemy)** - 2.33% (the notional vendor financing was settled in August 2021) ● **Lonplats Marikana CDT and Bapo ba Mogale CDT (Sibanye-Stillwater)** - each trust was established to own 0.9% of Lonplats (now Western Platinum Ltd and Eastern Platinum Ltd together) ● **RBNDT** - sole shareholder of RBH
Indirect shareholding	● **AECI Community Education and Development Trust** - 3.5% ● **Assore** - Boleng Trust and Fricker Road Trust own 100% of an SPV which in combination owns 18.2% of Assore South Africa ● **Enel** - Project company and SPV for each operation - Each trust owns between 10 and 40% of equity ownership for a specific project, depending on the structure of each deal and the BEE partner involved ● **Ponahalo/De Beers** - Ponahalo/De Beers Women's Trust, Ponahalo/De Beers Disabled Persons Trust and Ponahalo/De Beers Community Trust collectively own 52.5% of Pohonalo Investment Holdings, which owns 50% of Ponahalo (a 26% BEE shareholder of De Beers Consolidated Mines Ltd) ● **Rustenburg Mine CDT (Sibanye-Stillwater)** - 24.8% of a B-BBEE SPV which has a 26% stake in the Rustenburg operation ● **SIOC** - 3% through SIOC Community Development SPV

Figure 7: BEE ownership

Typically, given that the communities themselves do not have funds to purchase shares, BEE transactions are often vendor financed - i.e., money is lent by the founding company to a target community trust in order to enable the acquisition of shares. Following the transaction, the community trusts repay their debt through dividends generated by their investments. For the debt repayments to be possible, the founding company and the underlying assets must generate enough dividends to cover interest and capital costs. Furthermore, when the repayment period reaches its maturity, the value of the BEE stakes needs to be substantially higher than the outstanding debt. Owing to the economic condition in South Africa coupled with the Covid-19 pandemic, a significant number of BEE transactions are at risk of being underwater.

Some of the key informants raised concerns about the risks associated with a debt funded structure and the challenges associated with explaining the structure to the beneficiary communities. An obvious challenge is that the ownership and benefits are dependent on the success of the BEE deal, i.e., the performance of the underlying asset. It also creates expectations in the community at the time of announcement even if the debt is far from being settled. In the case of the Ponahalo/De Beers Trusts, a BEE transaction was completed in 2006 when De Beers Consolidated Mines ("DBCM") sold a 26% stake in the company to Ponahalo Holdings for R3.7-billion. The loan was restructured in 2020 when De Beers agreed to guarantee 57% of the preferential shares that Ponahalo holds in DBCM. The new deal in 2014 saw Ponahalo acquiring 26% of De Beers Sightholder Sales SA, the sales arm of De Beers, in addition to the existing stake in DBCM, to boost its cash flow.

Governance

Trusts, including community trusts, are governed by a board of trustees. Trustees hold the trust assets not in their personal capacities, but for the benefit of the trust beneficiaries as fiduciaries. The trustees are required to administer the trust solely for the benefit of the trust's beneficiaries. A person who is ineligible or disqualified in terms of the Trust Property Control Act cannot be a trustee. A trust's constitutional document is a trust deed which sets out the framework in which the trust must operate, including its powers and limitations.

Trustee accountability is fairly standard across trusts – generally, although not always, there are term limits, suspension clauses, and reporting requirements to the founder.

Most of the benchmarked trusts just have a board of trustees. However, SIOC-CDT has six sub-committees of the board that have delegated authority for making decisions on various areas. Such committees consist of: Audit and Risk Committee; Project Review Committee; Remunerations, HR and Performance Management Committee; Nominations Committee; Social, Ethics, and Transformation Committee; and Investment Committee. This structure makes sense for a large organisation like SIOC-CDT that employs 41 full-time staff, manages R126-million worth of projects annually, and has assets in excess of R1-billion. It is not necessarily practical for trusts operating on a much smaller scale.

RBNDT has a hybrid system of governance representing "co-existence between traditional and corporate structures". The board of trustees includes representatives from the Council of Dikgosana (hereditary leaders) and a representative of the Traditional Council (elected leaders) alongside the Kgosi (king), Kgosi-appointed independent trustees, and trustees elected by the community every five years. The trust works closely with the Supreme Council, which is mandated to report back to communities. The purpose of this hybrid approach is to "allow deep community participation and wide accountability in how we administer our plans and funds… Bafokeng do not lose their identity while the trust delivers on its corporate mandate."

Governance challenges

Several of the trusts have dealt with governance challenges in the past. Two of the Sibanye-Stillwater trusts (Lonplats Marikana CDT and Bapo ba Mogale CDT) have had issues in recent years related to issues of community representation, spending, and

accountability. One of the issues has gone to court, and Sibanye-Stillwater hopes that the process of "resetting" the trusts can begin in earnest once this is resolved. Sibanye-Stillwater is working with the trusts to strengthen accountability and community consultation to avoid similar events happening in future. Sibanye-Stillwater relies largely on the presence of one or more founder trustees on each trust to uphold transparency and accountability and act as whistleblowers where needed. The founder trustee can request an investigation into the trust if mismanagement is suspected or complaints are received from stakeholders.

One of the former sub-trusts under SIOC-CDT was investigated for fraud following complaints by community members. SIOC-CDT referred the complaints to the Kimberley Commercial Crime Investigation Unit for investigation. SIOC-CDT's restructuring and development in subsequent years was largely in response to this and similar governance challenges experienced in the subtrusts. It centralised its operations (collapsing the beneficiary trusts and operating as a single trust) and developed its operating model to promote accountability and transparency. There is a management team which operates separately from the trustees, there are policies in place to ensure accountability, and the board has dedicated subcommittees to enhance oversight.

5.3. Trustee composition and appointment

Trustee composition

The benchmarked trusts do not always specify the exact trustee composition and not all trust deeds were available. As far as possible, the analysis reflects the actual number of current trustees for each trust. Where there were contradictions between the information included in the trust deeds obtained and the information provided by the key informants, the issue has been noted.

All of the trusts associated with a founder company have at least one founder trustee (i.e., trustee appointed by a founding company) and at least one independent trustee. Over half the trusts in the study do not currently

have community trustees (i.e., trustees appointed by the community), although HMMET has indicated that it intends to change this as part of its on-going trust deed amendment process, and Rustenburg Mine CDT is actively recruiting community trustees.

Through the interviews, there were differing views about the inclusion of community trustees. Some of the interviewees were opposed to including community trustees as they could be politically motivated and cause conflict. There was also concern about whether they can truly represent the communities rather than their individual interests. Another concern was related to responsibilities as trustees in structures where it still involves a significant amount of outstanding debt, and the risk this could present for community members. Lefa La Rona Trust's trust deed explicitly excludes a traditional leader or an appointed member of a traditional council from being eligible for appointment as a trustee.

On the other hand, there was consensus on the inclusion of independent trustees. Globally there is significant focus on the independence of directors/trustees to achieve good governance. However, defining independence is not always straightforward. In South Africa, King IV takes a practical approach and focuses on the perception of independence, rather than a tick-box approach. In addition, many of the recognised international corporate governance codes make it clear that independence is a matter of perception, and not a matter of fact, and proceed to provide a list of criteria which the board should consider when considering independence. The border between independent and community trustees is especially porous. In many cases they do not overlap, but Rustenburg Mine CDT is an example where, while independent trustees will be chosen based on their skills, they are still effectively community trustees in the sense that they must also come from the beneficiary area (by birth or by association). RBNDT's independent trustees are appointed by the Kgosi in consultation with the board and are not excluded from being drawn from within the Royal Bafokeng Nation ("RBN"), but they are considered a separate category from those appointed from within the community, and their independence helps to bring a "different perspective".

Trust	# Founder trustees	# Independent trustees	# Community trustees	Total
AECI	2	3	0	5
Assore	2	4	0	6
Exxaro	3	2	0	5
Lefa La Rona/Alchemy*	2	1	Up to 5	Up to 8
SIOC	2	6	4	12 (max of 12 as per the Trust deed)
Enel	1 Enel 1 BEE partner	4	1	7
HMMET*	1	5	0 (to change)	6
Ponahalo/De Beers Trusts	2 De Beers 2 Ponahalo	1	0	5
RBNDT	N/A	4	1 Kgosi 1 Dikgosana representative 1 Traditional Council representative 5 community members CEO	13
Rustenburg Mine CDT (Sibanye-Stillwater)	4	0 (2 per deed)	0 (2 per deed)	4 (8 per deed)

Figure 8: Trustee composition

While all relevant trusts had a founder trustee, many interviewees noted the importance of community trusts' independence, particularly in light of trust regulations. While reporting to the founding company is appreciated, many interviewees cautioned against founding companies' having direct influence in the trusts' activities and functioning. One interviewee stressed that having undue influence from donors would be "double dipping" and that the trust must "find its own expression in line with what it should be doing" based on its trust deed. There is also the potential risk of conflict of interest for a trustee representing both the founding company and the trust.

Exxaro is the exception, where the founding company explicitly retains control of Exxaro Matla Setshabeng Development NPC by appointing its directors. It should be emphasised that the new BEE structure that Exxaro Matla Setshabeng Development NPC was a part of is exempt from compliance with the requirements of Mining Charter III as the prior structure already had more than 50% BEE shareholding. Exxaro's stated intention was proactive economic empowerment of employees and communities through benefits obtained from its growth strategy. For this reason, the NPC does not require the independence that other community trusts expect.

It is also worth noting that the notion that community trusts are actually shareholders of founding companies is not fully appreciated. There was one trustee interviewed who mentioned that the trust began to recognise its role as a shareholder only after some time, and that the trust's independent chairperson sits on the board of the founding company.

Trustee skills and requirements

King IV's Principle Seven reads that the governing body should comprise the appropriate balance of knowledge, skills, experience, diversity and independence for it to discharge its governance role and responsibilities objectively and effectively.

Suitable candidates with the right profile and skills are not easy to find, and the fact that many organisations are competing for talent has been raised. Skills highlighted by interviewees as necessary include finance and legal, governance, experience in foundations, governance, trust management, and strategic/subject expertise.

One interviewee noted specific requirements for an independent trustee and a founding trustee to complement the broad skill set in the board. An independent director must have financial background, formal education, appropriate experience/skills, and not be connected (as defined in the trust deed). A founder trustee should similarly bring some financial background, formal education, and appropriate experience/skills.

Trustee appointment

Different appointment processes are followed depending on the type of trustee. Typically, the founder trustee is appointed unilaterally by the company based on the person's role or skills. Independent trustees are often appointed through a recruitment process run by the trust administrator/manager or the founding company. AECI, Assore, Exxaro and SIOC-CDT all follow formal recruitment processes for these trustees, drawing on the services of the founder company to varying degrees. Other community trusts, like HMMET, run their own recruitment processes and select independent trustees independently of the founder company. The Kgosi, who is also the chairman of RBNDT, has the right to appoint independent trustees unilaterally. In practice, he discusses candidates with the board to inform his decision.

The process for the appointment of community trustees can be complex. In the case of Lefa La Rona Trust and SIOC-CDT, community trustees are elected through very extensive, formal processes (see case study for more details). For Mzimela Nkonjane Community Development, community trustees are voted in by the communities that form part of the Mzimela area. Sibanye-Stillwater's Rustenburg CDT is recruiting independent and community trustees at the time of writing, a process which includes public advertising and engagement via community forums. Once a CV is submitted, the decision is in the hands of the trustees rather than open to further community participation. Enel intends to establish community engagement forums who will select a community representative to be appointed to each trust but has not yet done so in practice. For RBNDT, each region elects a trustee every five years.

Trustee terms

Key considerations for trustee terms include accountability and continuity. Overall, having fixed terms is best practice as it promotes accountability and good governance. For many of the benchmarked trusts, their original trust deed did not specify term limit, or mechanism to remove trustees, causing the term of trustees to be "evergreen." Some of the trusts are currently working on modifying the terms to align with King IV best practice of 3 x 3 tenure. Of the available trust deeds, only two specified term limits.
SIOC-CDT has a good balance where there is a longer term limit for the chairperson compared to that of other trustees to ensure continuity. Ordinary trustees have a three-year term, compared to the chairperson who has a nine-year term. RBNDT has a five-year term for elected trustees, with a maximum of two consecutive terms followed by a three-year cooling off period.

Induction and training

Seven out of 11 benchmarked trusts currently have a formal induction process for their trustees. For SIOC-CDT, programme the organisation has a bespoke

induction programme with the Institute of Directors in South Africa. Enel is using a legal firm for its induction programme. Lefa La Rona Trust requires that all trustees appointed to undergo the induction and training programme related to its founding company Anglo American Platinum's Business Integrity Policy and Performance Standards. Trustees appointed by its Development Trusts (subtrusts) are specifically required to undergo an induction and training program on their duties as trustees. This is to ensure capacity building of community-appointed trustees. Sibanye-Stillwater had previously developed an induction programme, and is redesigning it as part of the process of "resetting" the trusts. The RBNDT CEO has onboarding sessions with new trustees, and the chairperson also has a session on expectations; last year an external facilitator was brought in to offer induction on governance, liability, and responsibilities of trustees.

Ongoing training tends to be rare and is mostly ad-hoc for most of the interviewed trusts. It is either driven by legislation changes (in the case of AECI) or in response to specific needs by the trustees (in the case of Enel). Some of the key areas of training for trustees included: finance, project evaluation, corporate governance, and POPIA.

5.4. Founder company role and special provisions

The role of the Founder is defined in most of the trust deeds is to distribute dividends (and in some to define beneficiary areas). Many founding companies, as seen above in the trustee section, have the right to appoint trustees.

While we did not have access to all of the trust deeds, instances where a founding company made special provisions include the following:

- Assore's trust deed references the founder providing services and facilities to the trust.
- Enel made provision in its trust deeds for the founder trustees in the composition of the board through the following: "Each Founder Trustee has one vote, provided that the minimum number of votes held by Founder Trustees jointly amount to three, in the event

of there being less than three Founder Trustees at a meeting"
- Lefa La Rona Trust has the most extensive reference to the founder, which we believe was done because of the incremental establishment of the trust under which the founder had various roles during each defined phase. It includes rights to appoint trustees (with changes depending on the phases of Project Alchemy), a casting vote, information rights, and step-in-rights to take remedial action in its sole discretion under certain circumstances (see Case Study).

While having special provisions may be helpful, it should be assessed in light of trust's independence. Furthermore, having special provisions needs proper company oversight and the ability of the founder to enforce such rights without antagonising the trust or its beneficiaries.

5.5. Beneficiaries

A recent report by Corruption Watch emphasises the importance of identifying and establishing the beneficiaries for community trusts, noting that "identifying the communities who are most impacted by mining operations and who deserve to be the recipients of benefits, is critical. Doing so is complex and contentious, as there are layers of people affected."

Based on our key informant interviews, community trusts' trust deeds typically specify that the beneficiaries must be Historically Disadvantaged South Africans and/or South African communities. Across the trusts we benchmarked, they generally define their beneficiaries in their trusts as:

- Historically Disadvantaged South Africans; and/or
- Individuals or groups of individuals living, working, or operating in any one or more communities related to the founder company, such as operational areas or labour sending areas (defined by municipality, kilometre radius from operations, etc.)

In the case of Lefa La Rona Trust (Project Alchemy), its trust deed specifically does not define individual beneficiaries but defines benefit communities (guided by the Social and Labour Plan). In addition, Lefa La Rona

Trust specifically does not work on a kilometre radius basis in defining these communities because it believes it would limit work that the trust could do in relation to service delivery and livelihoods. The logic is that working with a kilometre radius definition would mainly mean that the trust is working in isolation.

RBNDT's beneficiaries are members of the RBN, an easily verifiable closed set of people.

SIOC-CDT relies on the municipality to certify/confirm who is a community member and identifies its beneficiaries as members of specific communities. Proof of residence is the primary piece of certification used.

Notably, the trust deeds of the sampled trusts did not make provision for preferential benefits to any group of beneficiaries, with the exception of Mzimela Nkonjane Community Development Trust in which the Chief is entitled to 10% of the lease payment made to the trust. However, this is a special case as the trust was set up by the current chief's father. We did not find any specific reason for not providing preferential benefits to a particular group of beneficiaries. However, we assume it is due to the purpose of the trusts being a broad-based ownership scheme (specifically intended to benefit the community at large) and that narrowing the focus too much could risk the founding companies' BEE status, in addition to creating potential conflicts among beneficiaries.

5.6. Management and implementation – operating model

Operating model

The project management and implementation of the benchmarked trusts fall into either one of the following categories:

- Strategic investment: Trust/trustees identify and implement projects that are in line with the trust's objectives, or a development need identified by the trust. These trusts manage the implementation of these projects (through service providers or partnerships with community stakeholders e.g., municipalities, schools, and/or community groups).
- Grantmaking: These are trusts that advertise the availability of funding (open or closed calls) and invite organisations, or community members/groups to apply for funding and the trustees approve funding towards the project. The grantmaking category of project identification and management also includes trusts that approach organisations or request applications from organisations to implement projects aligned with the trust objectives/strategy/purpose.

A management team that is responsible for the day-to-day running of the trust may be employed by the trust or work within the founding company.

Project Identification

The benchmarked trusts typically identify the focus areas of their projects as per the following categories:

- Alignment with national, district, or local government development objectives. These trusts employ a more consultative approach with community stakeholders. These trusts also (through the trust administrators or project manager/s) coordinate the project planning and management, identify and manage service providers and the project/overall community development strategy.
- Trust funds a specific focus area and identifies projects they'd like to fund in relation to the focus area (e.g., education).
- Identified on a project or organisation basis. Trustees receive requests to implement specific projects either from the community or organisations.

Top-down / Independent	- SIOC-CDT: The trust tries to engage broadly with community needs, but it does not accept unsolicited applications. However, if the Trust is excited about a potential project, then they co-develop the project with the organisation. - Lefa La Rona: The trust uses a "Development Facilitation" approach where it uses global benchmarking and interactive community profiles to decide on the most viable interventions (viable in terms of interventions that are likely to have outcomes that are beneficial for the communities and ability of the Trust to influence those outcomes). The trust then engages with relevant structures based on the interventions identified. - Ponahalo: The trust has a narrow focus on education and identifies schools from around the community. It leverages off of De Beers and Anglo American education programme schools to achieve economies of scale. The Trust engages with specific stakeholders in the community (engaging directly with schools for acceptance and ownership). - AECI: AECI finds partner organisations who operate in the communities defined by the Trust Deed and are related to the strategy of the relevant trust. The trust follows its internal guidelines for identifying organisations, selection processes, and expectations. - RBNDT: Its approach includes top-down and bottom-up elements. The Supreme Council will identify a community need and engage with professional implementing entities to find a solution. The trust will review the proposed intervention and approve if appropriate. Local requests like bursaries are raised to a Kgosana (headman) at ward meetings and directed to the appropriate entity rather than the trust.
Bottom-up/ Community led	- Mzimela: Projects are identified by various stakeholders in the community. Education related projects usually originate from a forum of principals (known as Mzimela schools which are schools situated in the Chiefancy's area). Other projects are identified by the Chief himself when he sees a need in a community he has visited (e.g. food gardens for local women or assisting families living in poverty). The trustees and Izinduna (headmen) are also able to bring projects for consideration. - Exxaro: It applies a bottom-up approach. Project focus areas are guided by government development priorities and invite proposals related to these focus areas. The NPC then invites proposals for consideration. - Enel: The project committee looks for projects and has discussions and engagements with the communities. The community representative also proposes projects to the board of trustees. The Trust also advertises the availability of funding and engages with existing youth groups, women's groups. - Assore: Community or community group or the Assore Operations Representatives makes a request, which gets tabled at the board trustees. The strategy and selection criteria are currently being updated and refined, and the projects are approved at the trustees' discretion. - Sibanye-Stillwater: Community needs assessments by the company are shared with the trusts to help guide decision-making, but the trustees ultimately make decisions at their discretion in line with the trust deeds. The intent is to use a social asset-based framework which focuses on catalysing programmes that already exist in communities.

Figure 9: Project identification methodology

Community Trust Benchmarking Report 2022

While the trustees are ultimately responsible for selecting projects, an interviewee from Sibanye-Stillwater argued that "the company shouldn't parachute solutions. We enable [the trusts] to deliver programmes within their communities. There are expectations for the trusts to deliver out of context – that may look good, but… everything that hasn't worked was because we imposed ourselves and decided what communities needed." She also recognises the importance of balancing projects with long-term sustainability in mind and meeting local needs, such as cleaning graves and cultural rites. Understanding local context is fundamental to informing project selection.

Project implementation

Implementation of projects is typically managed internally by the trusts themselves, outsourced to service providers (e.g., administrators), managed by the founding company, or a combination. The implementation of projects includes the administration of project funding, employment of service providers, management of reporting from partner organisations/communities. The cost of managing a trust would depend on the operating model, whether resources are seconded by the founding company, and the complexity of the trust, as well as financial and governance requirements.

Many funders expect management/administration costs not to exceed 10% of annual grant making. This is straightforward but overly simplistic given the increased regulatory requirements as well as the increased need for sophistication in social investment which necessitates specialised resources in financial, legal, governance, and client and stakeholder management. According to a study conducted by Tshikululu in 2012, the percentage of administration costs relative to grantmaking ranged from 8.4% to 35% for the seven foundations researched. Many trusts use outsourced providers/partner organisations to supplement the skills that lack in their organisations. In the case of SIOC-CDT, the trust uses a hybrid implementation strategy. The trust manages some

In house	• **Lefa La Rona:** Project manager is responsible for the implementation of projects • **Enel:** Trust manager is responsible for the implementation of projects.
Outsourced/ Partner	• **AECI:** The trust finds partner organisations who operate in the communities defined by the trust deed and are related to the focus area/strategy of the relevant trust. The projects are implemented by the partner organisations. • **Mzimela:** Once projects are approved, the trust submits three quotes from suppliers, which are then submitted to Ingonyama Trust, together with a letter requesting their rental allocation and explaining what the money will be used for. • **Ponahalo:** The trust contracts administrators who employ service providers for the work to be implemented. • **Sibanye-Stillwater:** Each trust appoints an external service provider as administrator. Implementation takes place through partnerships that may be identified via RFP.
Hybrid	• **SIOC-CDT:** Hybrid implementation strategy. The trust project manages some projects and outsources others to specialists (especially in education). Internal programme managers for education, health and welfare, enterprise development and investment management. • **Assore:** The Trust and the NPC have few project staff and capability. It outsources, through contracting, gaps in capability. • **Exxaro:** The NPC intends to have a full-time individual to oversee implementation; there will be an SLA with Exxaro for other services • **RBNDT:** the trust has extensive internal capacity, including implementing entities, but will outsource to external service providers as needed

Figure 10: Project implementation modes

Note: Many trusts (even those with internal capacity) use external consultants on a selected basis.

Community Trust Benchmarking Report 2022

projects and outsources others to specialists (especially in education). The Head of Projects coordinates activities, business plans and community development strategies, and identifies and manages service providers. SIOC-CDT has programme managers for the following focus areas: education, health and welfare, enterprise development and investment management. The core responsibilities of the programme managers include origination, submission for approval, implementation, M&E, reporting and close out. Under the programme managers there are coordinators and officers to manage and do reporting.

AECI Community Education and Development Trust has a unique implementation model where the trust identifies partner organisations who operate in the communities defined by its trust deed and are related to the focus area/ strategy. AECI Community Education and Development Trust has generally found this mode of implementation to be effective because it is able to partner with organisations already in communities and are able to leverage off of the work being done by these organisations rather than starting from scratch. The trust has clear guidelines for identifying organisations, selection and expectations. Assore also differs from other trusts as it has an NPC under trusts that executes projects on behalf of the trusts. The NPC has a few project staff and limited capability, and contracts out to outside service providers.

Our interviewees indicated that support and infrastructure are needed to successfully implement projects in line with expectations. Good governance and oversight structures are also noted as critical elements in order to be effective and to support the successful implementation of projects. The following areas were specifically identified as being important support infrastructure needed in trusts to ensure successful implementation of projects:

● Legal support
● Accounting support
● Administration support
● Mechanisms to ensure compliance and sound governance (in terms of adhering to the trust deed)
● Knowledge management
● Specialist expertise in developing project strategies, implementation plans and monitoring, evaluation and reporting.

Monitoring & evaluation

The supervision of projects is typically defined by organisations' monitoring & evaluation ("M&E") processes. The majority of the trusts sampled use an external M&E provider as seen in the table below.

One of the key lessons learnt is to embed the M&E of projects into the project planning process rather than after the fact. Trusts that do not consider M&E in their planning and approval experience challenges being able to measure the outcomes and impact of approved projects. This is particularly critical for trusts that are keen to adopt a more purpose-driven approach to its operation (see 5.8 Strategy and Purpose).

One example of a trust monitoring and reporting on its impact is SIOC-CDT, which publishes an annual social impact report. In 2019, for instance, the report covers the trust's strategy, programmes and expenditure. Impact is reported on through project-specific outcomes, highlights, testimonials and quantitative data. It also gives a summary of the findings of a retrospective evaluation report, noting that the full report is available upon request. This reflects clearly how the trust gathers data on an ongoing basis to measure progress, while also commissioning formal external evaluations where relevant to review the trust's impact.

Sibanye-Stillwater's experience highlights the delicate balance between the founder company's needs and the independence of the trust. In relation to M&E, one Sibanye-Stillwater interviewee stated that the company was beginning to guide the trusts, but acknowledged that the trustees will have to determine this for themselves. Supporting these trusts to do effective M&E is part of the "reset" process, while the Rustenburg trust is newer and its M&E structures are still being set up, so there are more opportunities for the company to give guidance.

As it has been in the non-profit sector, data analytics is critical in measuring socioeconomic impact. To properly assess the impact of community programs, companies need the analytical capacity to capture, store, and validate a wide range of performance data.

M&E - Internal	• **Lefa La Rona:** Conducts pre- and post-implementation M&E assessments internally. • **RBNDT:** Internal capacity to monitor programmes supplemented by external assessment every five years.
M&E - External	• **SIOC-CDT:** Decipher Data (but looking to develop internal capacity) • **Enel:** Tshikululu Social Investments • **HMMET:** Tshikululu Social Investments • **Ponahalo:** Knowledge Pele • **Assore:** Third party field evaluations to inform future decisions • **AECI:** Formal audit and annual review by external M&E partner • **Exxaro:** Third party assessment and assurance post-delivery
No M&E/ M&E under development	• Mzimela Nkonjane: The trust does not conduct any M&E • Sibanye-Stillwater: The approach to M&E is being developed so that the company can get feedback from the trusts without "overreaching" as the founder.

Figure 11: M&E practice

Involvement of founding companies

Trusts have varying degrees of relationships with their founding companies through their operations.

Some trusts have inputs from the founding companies in terms of project identification. However, the trusts' ability to reject company proposals is also noted to maintain independence and to ensure that the trust approves the best possible projects. SIOC-CDT has always operated independently but seeks to create alignment with Kumba to avoid duplication and increase impact. The two organisations strive to plan together rather than separately. Other trusts collaborate with founding companies in the implementation of projects. For example, AECI Community Education and Development Trust works closely with AECI to share resources and support projects the company's interested in. In this case, it is actually AECI, the founding company, which depends on AECI Community Education and Development Trust for expertise in the community development space.

Enel prefers a more hands-off approach. While Enel and B-BBEE partners are represented on the trust, a Country Manager sits as sole director on the SPV. A project company is appointed to assist with resourcing.

In relation to the alignment with founding companies' Social and Labour Plans ("SLP"), all of the trusts interviewed said that trusts' mandate and activities are not part of those plans and the trust is entirely distinct. As mentioned earlier, some trusts would consider projects proposed by their founding company, but the trust was not intended to fulfil founding companies' SLP requirements. Community trusts tend to take a complementary approach to what they focus on to avoid overlap with their founding companies activities under their SLP.

5.7. Supervision and monitoring

The following are the key findings related to controls, policies, and processes related to monitoring of trusts:

- Independence is a consistent factor - for a larger trust like SIOC-CDT, this includes a separation of powers between operations and management to ensure that the board can provide independent oversight;
- Trustees are accountable to defined governance structures and they have a clearly articulate fiduciary duty;
- Reporting to committees (e.g., Social and Ethics or Audit Committees) of the founding companies is one form of monitoring;
- Trusts are expected to hold annual general meetings ("AGMs") as per the BEE Codes to present the trust's financial statements and vote on issues at hand. This structure is part of promoting transparency and accountability to the community and can aid in the consultative process (see 5.9 Community & Stakeholder Engagement).

- Trusts are supposed to submit a development plan to the DMRE each year having consulted with the community. This forms part of ensuring that the trusts are responding to communities' needs.

reporting to founding company

There are different opinions and approaches to reporting to the founding company. Some trusts have a regular formal reporting ranging from monthly reporting to quarterly reporting that may include feedback on the projects, financial review, etc. Others have not yet established a formalised reporting process.

AECI Community Education and Development Trust is unique in a sense that it has a very close relationship between the chairperson and the founding company. This leads to the trust providing "constant feedback" as the chairperson and the trust manager are "in close contact with each other almost every day."

The Ponahalo/De Beers Trusts provide reports to Ponahalo, the BEE partner that owns 26% of De Beers Consolidated Mines and De Beers Sightholder Sales South Africa. However, the chairperson emphasises that it has no legal requirement to do so. This illustrates the tension between oversight by the founder and the legal independence of trusts.

Sibanye-Stillwater is very conscious of the trusts' independence and avoids intervening directly in trust affairs. It relies on the founder trustees to give feedback to Sibanye-Stillwater's Social Sustainability team, which provides oversight, but the trusts operate entirely independently of the company. The interviewees highlighted the fact that the trusts are shareholders - the company cannot determine how they should act. The trusts should see themselves as vehicles for development during and after mining, with the company supporting them to develop until they reach that point.

5.8. Community & stakeholder engagement

According to EY's latest "Top 10 Business Risks and Opportunities - 2021" report, which surveyed over 130 executives from the global and mining and metals sector, "licence to operate" remained the number-one risk for the third year in a row. 63% of the respondents flagged this risk as a top three risk, despite the fact that the Covid-19 pandemic has reshuffled some of the other risk rankings. Investors are also increasingly concerned about ESG (Environmental, Social and Governance) considerations around the world. The same report cites "local community impact" as the top area of scrutiny from investors relating to ESG issues for the mining and metals sector.

Deloitte recommends the use of stakeholder engagement strategies on three levels to proactively manage mining companies' social risk: strategic level, tactical level, and operational level. On a strategic level, mining companies are recommended to gain in-depth analytical intelligence about the needs, motivations, and influencing factors relevant to each stakeholder group. At the tactical level, stakeholder interaction should address nuances across the stakeholder landscape and communicate company performance relative to stakeholder needs. At the operational level, cross-collaboration between business functions is important to appropriately address stakeholder requirements.

For community trusts, community and stakeholder engagement is critical on a number of levels, including, but not limited to, getting input from the community, giving feedback to the community, and selecting community trustees or representatives. In speaking with the interviewees, their recommendations on community engagement include:

- Community involvement in the trusts must be clear and well-defined, whether this is through direct engagements or via community trustees; and
- Community engagement must be consistent, transparent, and deliberately planned. There must be a strong mechanism for feedback to the community.

The trusts take different approaches to achieving this, some of which are discussed here. Types of engagement commonly used by benchmarked trusts consist of:
- Community AGMs, used for feedback to the community, presenting financial reports, and potentially gathering input on plans for the year;

- Roadshows to engage with members of different communities for input and feedback; and
- Community meeting forums to engage different segments of the community - this could include formal groupings of stakeholders like politicians, traditional leaders, business forums, and school principals, but should also deliberately seek out the voices of those most affected by and most likely to benefit from the activities of the trust (e.g., women, people with disabilities)

Not all trusts interviewed deliberately solicit input from the community on how funds are used, but some supplement research into community needs with community feedback on proposed projects. The approach to project selection is covered in more detail in Section 5.6.

As previously mentioned, community trusts are expected to have an AGM every year by the BEE Codes, where financial reports are presented to the community. It is not an AGM in its true sense as the individual community members are not shareholders. Some trusts face challenges navigating the AGMs with community members because community members are stakeholders but only board members have voting power. There are also challenges in navigating what information and feedback is useful for AGMs and the best manner to give and receive feedback from communities through AGMs.

Some of the trusts, such as SIOC-CDT and Lefa La Rona Trust, are very strict about having an annual engagement, while others are at arm's length from the communities and trust the operations to manage community engagement (e.g., AECI). Others are beginning to establish annual engagements for the first time.

One benchmarked trust that uses AGMs as a mechanism for stakeholder engagement invites partner organisations and beneficiaries to receive an overview of the trust's activities and meet representatives from the founder, the trustees, and the trust administrators. The event is also used as an opportunity for engagement with beneficiaries and a forum to raise questions on the implementations

and success of the trust's activities. The trust finds it difficult to structure the AGM in a manner that allows the trust to give feedback and receive adequate engagement from the invited stakeholders. The trust has identified that it needs to develop a more comprehensive stakeholder engagement strategy to ensure that the right community stakeholders are identified and are engaged appropriately.

Several of the benchmarked trusts identified engagement with traditional leaders to be a challenge. This is mainly because of differing interests, i.e., some traditional leaders (and other stakeholders) acting out of self-interest rather than representing their communities at large. However, most trusts do not engage with traditional leaders as a special stakeholder group, rather including them in stakeholder engagement more broadly, alongside, for example, municipalities, schools, and community forums. In terms of community forums, most of the trusts that engage with communities or specific community stakeholders through community forums do so by engaging with existing community forums. For example, the Mzimela Trust engages with schools through an existing forum of school principals in the area.

RBNDT makes excellent use of traditional structures and communication channels for community reporting and feedback. These engagements include:

- Regional meetings once a year where traditional councillors account directly to their constituencies
- Kgotha-Kgothe (AGM) called by the Kgosi twice a year where programmes and audited financial statements are presented to the community
- Kgotla (ward) meetings once a month, led by the Kgosana, where pressing needs, bursary applications and requests for conflict resolution, among other things, can be raised.

Several companies rely on the community engagement efforts of the parent company's operations in the area. Sibanye-Stillwater is one of the companies that has developed its understanding of the context through extensive, structured stakeholder engagement. This includes clustering stakeholders by thematic area but

also in terms of whose needs interventions would most serve (for instance vulnerable or marginalised groups such as women and people with disabilities). Ponahalo leverages off of De Beers and Anglo American's education programmes by working with the same schools to implement their projects. The trust engages directly with the school to develop the projects and have noted that engaging directly with the schools gives them a sense of ownership over the project and working with schools that are already receiving support helps the trust achieve economies of scale in their impact by leveraging existing support.

5.9. Strategy & purpose

The strategy and purpose of each trust as mentioned in many of the key informant interviews is not necessarily defined as such in their respective trust deeds. The purpose outlined in the trust deeds typically relate to the shareholding responsibilities of the trust and its contribution to the development of its defined beneficiaries, in a broad sense. This is largely driven by the BEE transaction requirements. Trust deeds may outline permitted activities but these also do not necessarily clearly indicate a specific strategy or purpose.

Trusts that could be considered more "purpose-driven" tend to have a broad strategy that articulates an intention to create long-term sustainability in the defined communities beyond life of mine. Other trusts articulate a purpose/strategy that is aligned with specific focus areas such as education, health, local economic development, welfare, and care for vulnerable populations such as orphaned and vulnerable children and women.

Sustainability has emerged as a theme across many trusts. Several trusts have diversified their investments to ensure that they are able to thrive even after life of mine, speaking to the broader development goals of the trusts

in the community, extending their original function as ownership vehicles with a view to long-term, sustainable development. RBNDT, for example, aims to spend only one third of dividends it receives, investing the rest to ensure that future generations will benefit from the nation's wealth. With this in mind, it has also significantly diversified its investments, which were historically focused almost entirely on platinum – as of 2018, mining assets made up only 15% of its portfolio. This view of a trust's role and purpose requires thinking differently about resourcing, planning and strategy, compared to a trust whose purpose is to deliver to the community in the shorter term.

Based on the interviews we conducted, we define a "purpose-driven" approach to mean that trusts are guided by the intention of creating long-term sustainability and partner with the necessary community stakeholders to realise the achievement of this objective. These trusts tend to specifically articulate that they are not project/donation-driven.

According to Deloitte's Andrew Lane, Energy, Resources & Industrials leader, Deloitte Africa, suggests that "given the fundamental role mining companies play in countless communities around the world, it's time for them to make evidence-based decisions about which investments and programs are capable of imparting true social impact."

This would require a fundamental shift from traditional stakeholder engagement to "stakeholder collaboration." To move beyond mere compliance, companies are recommended to work with all stakeholders to define the concept of "value." The concept of "value" is often described in financial, tax, or royalty terms. However, these metrics do not always resonate with all stakeholders. Deloitte suggests an approach that involves the modelling of three sources of return: return to shareholders, return to country, and return to citizens.

6. Case Studies

6.1. Project Alchemy - Lefa La Rona Trust - A development facilitator model

Project Alchemy and Lefa La Rona Trust represents a community-centric and multi-stakeholder approach to increase the chances of success.

Background

In 2011, Anglo American Platinum ("Amplats") launched project Alchemy, a R3.5-billion community development and empowerment transaction to provide equity ownership to mine host communities around four operations and labour sending areas, through the development Trusts and NPC. The beneficiary communities include qualifying communities around Tumela/Dishaba, Rustenburg, Mogalakwena and Twickenham operations, and in labour sending areas such as Maseru District in Lesotho, Gaza District in Mozambique and OR Tambo District in the Eastern Cape. This includes approximately 5,2 million community members.

> *"The collective vision of the Alchemy project is the notion of sustainable and thriving communities through and beyond mining."*

Amplats put subscription shares (6.2-million) into the Lefa La Rona Trust, which acts as a conduit for the four other Development Trusts in each of the four benefit areas and to the Zenzele Itereleng NPC through a notional vendor financing ("NVF") scheme.

Historically, 60% of the dividend received was used to service the NVF and the balance of 40% was retained by the Lefa La Rona Trust and distributed to the development trusts ("DTs") and the NPC for development and transformative interventions. This structure allowed for sufficient community project development to commence immediately without having to wait for the debt to be settled. In August 2020, Amplats announced the successful settlement of the notional vendor finance by its community share scheme, resulting in the Lefa La Rona Trust holding unencumbered shares in Anglo American Platinum with a value of c.R2-billion at vesting. The settlement of the vendor financing and transfer of value to communities came one year prior to the maturity of the Alchemy Scheme period (December 2011 to December 2021), due to Amplats' strong share price performance. Post the Alchemy Scheme period in December 2021, 40% of the shares can be distributed

Founding entity	Anglo American Platinum	Year Established	2011
Legal form	Trust with (Section 30 PBO registration)	Geography	Northwest, Lesotho, Limpopo, Mozambique, Eastern Cape
Size	R2-billion (value of shares at vesting)	Project focus	Community life course, empowerment and sustainable development
Trust structure / Operating model	Decentralised structure; community-centric "development facilitator" model	Trustee composition	Founding: Up to 2 Independent: 1 Community: Up to 5
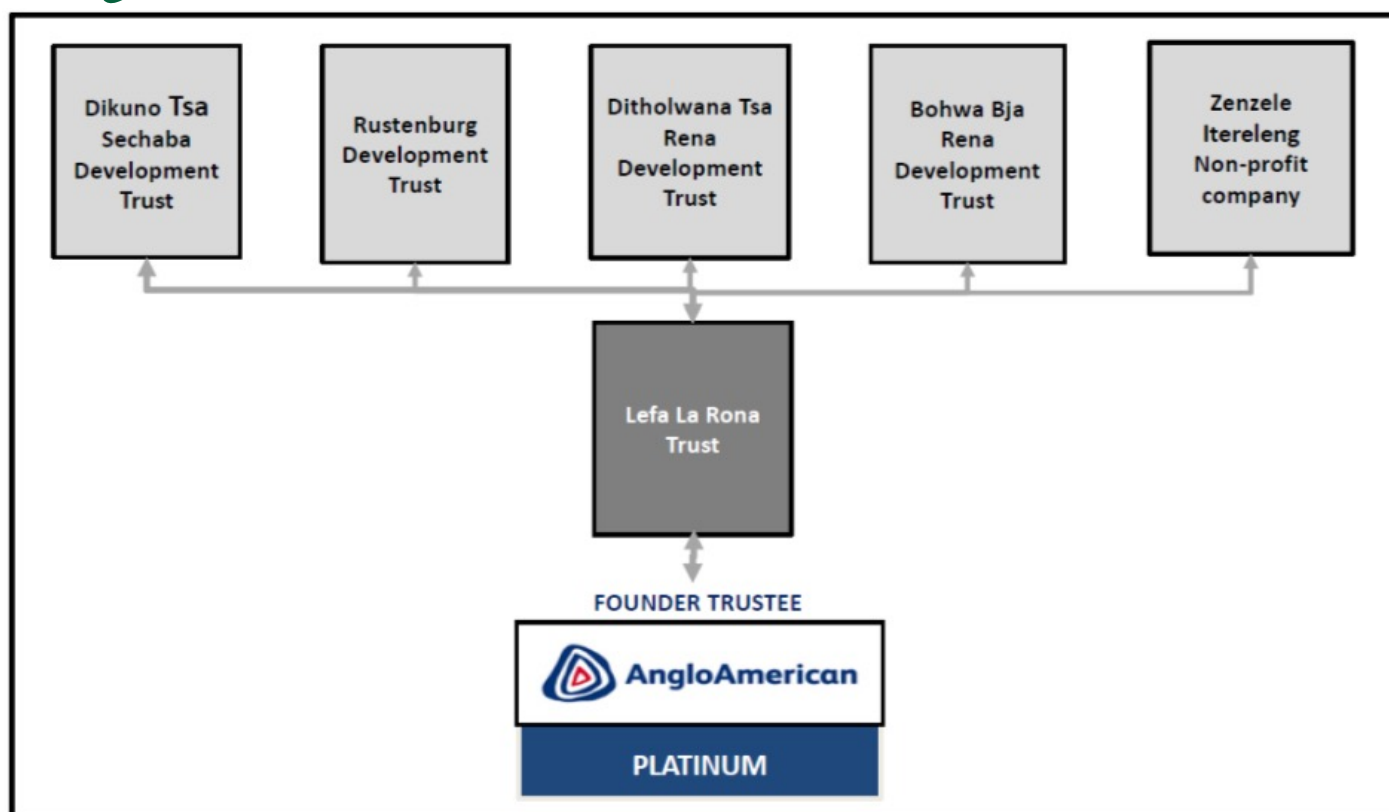
Source: Lefa La Rona Trust website

Figure 12: Project Alchemy Structure

to the DTs based on their proportional interest held. The remaining 60% of shares held by Lefa La Rona Trust are subject to a twenty year lock-in period, to the end of December 2041, while dividends continue to be attributed to the DTs and the NPC.

Trust structure

Project Alchemy represents a successful decentralised structure where Lefa La Rona Trust, the "super trust", is the umbrella trust through which the regional development trusts hold their interest in Amplats.

Operating model

Lefa La Rona Trust and the 5 development structures have adopted a "development facilitation" approach and a community-centric 'Impact by Design' operating model. The trust uses global benchmarking and extensive community general profiling, which entails aggregation of all available existing data around the community to identify challenges and potential solutions or means

planning. Affected stakeholders in communities are interviewed directly and assumptions tested. Based on this analysis, the trusts and the NPC extracts the most viable interventions based on transformative principles for maximum transformative impact across a community's life course. 'Impact by Design is currently being operationalised across the full value chain, Many community trusts operate as grant maker/managers, which Lefa La Rona Trust believes is not a sufficient approach to realise the long term vision of 'Sustainable and Thriving Communities, Through and Beyond Mining', for approximately 5,2M community members.

Zenzele Itereleng NPC, one of the independent Alchemy structures, for example, explicitly mentions that it has moved away from "just distributing its dividends as grants and redefined and enlarged its mandate to that of a development facilitator" which is defined as a "multi-stakeholder strategy" which has "longevity in creating sustainable impact in the life course of communities." It also emphasises the need for resource mobilisation and strategic partnerships with

like-minded organisations in order to increase capacity, impact and reach.

Trustee composition and appointment

Lefa La Rona Trust, and the 5 other Alchemy structures, has a unique approach to trustee composition that promotes change over time. The initial board of trustees started with three trustees who were appointed by the founder. During the consolidation phase, the trustee composition changed to a minimum of one independent trustee, one founder-appointed trustee (up to two), and one appointed by Development Trusts (up to five, with each development trust/NPC being able to appoint one). The operational phase has the same composition requirement as the consolidation phase, though new trustees must be appointed. The inclusion of a majority community trustee composition of the Board has been invaluable and it contributes toward transformative, lived impact in the communities which are supported by the Alchemy family of Trusts/NPC.

All trustees appointed are required to undergo the induction and training programme related to the company's Business Integrity Policy and Performance Standards. Trustees appointed by DTs are specifically required to undergo an induction and training programme on their duties as trustee.

According to the trust deed, a traditional leader or an appointed member of a traditional council is explicitly excluded from being eligible for appointment as a trustee.

The trust deed specifically defines independence as not being:

● An elected trustee;
● A related or inter-related person of the trust, any group company, and development; or trust, a traditional leader within the benefits area, or a member of the traditional council within the benefits areas.

In addition, the trust deed adds that a person will not be regarded as independent if: (i) a significant supplier to, or customer of the group company, the trust, or any

development trust; (ii) has a significant contractual relationship with such entities; or (iii) is a shareholder, member, employee, officer or director of any of the entities previously listed or connected with; and is not free from any relationship, business or other, which could be seen to materially interfere with the individual's capacity to act independently.

Community engagement / involvement

It is evident in the structure and the composition of the board that the trust actively tries to obtain community involvement. Development Trust trustees are selected by an independent election process as set out in the relevant Development Trust Deed. For community trustees, a board goes through a request for proposals for an external service provider to facilitate the process. The community trustees selection process includes extensive, broad consultation with communities and calls for nominations, followed by screening, assessment, and public interviews with shortlisted candidates, as well as the opportunity for the public to lodge objections. It is however noted that appointment of community trustees often faces accusations of mistrust because of the perception that the "programmes are slow." This extensive and transparent consultative process can take up to two years to ensure that the most appropriate community trustees are vetted and selected, to serve the entire benefit community and not only the area where they live.

Monitoring & evaluation

The Trusts/NPC conducts pre- and post-implementation M&E assessments internally. From a reporting point of view, there is monthly reporting between the five development trusts, Lefa La Rona Trust and the Founder. Lefa La Rona Trust currently developing independent human impact case studies, leveraging the 'Impact by Design' methodology, across all five development trusts and the NPC.

Relationship with the founding entity & special provisions

Amplats maintains connection with the trust through its ability to appoint trustees as well as having information

rights. Although Lefa La Rona Trust is independent from the founder in terms of governance and decision making, it continues to leverage the capacity and resources of the founder over its 30+ year journey.

As a founder of the trust, Amplats has step-in-rights to take remedial action in its sole discretion in instances of: (i) any irregularities (financial or otherwise); (ii) a failure on the part of trustees to adhere to the objectives of the trust or any material duties; (iii) a failure on the part of the trustees to comply with the requirements in terms of the Income Tax Act to maintain the trust as a PBO, or (iv) in breach of the Business Integrity Policy and Performance Standards, which sets out the performance standards and principles for Amplats group companies. The remedial action may include but not limited to the suspension of the Board, the suspension of the voting rights of a trustee, the amendment of the voting procedure, and/or the removal and replacement of some or all of the trustees.

Furthermore, the founder appointed trustees jointly have a casting vote in the event of a deadlock on the appointment of an independent trustee.

Challenges & opportunities

In 2019, the trust facilitated a review - this year they turned 10 years old - and engaged in a strategy

review. Lefa La Rona Trust has a strong focus on the sustainability of its communities beyond Life of Mine. The 'Impact by Design' operating model is novel and promises to enhance the transformative potential and impact in the communities served across the Alchemy family of DTs/NPC. Intergovernmental, multinational, corporations, local development organisations and universities have expressed interest in the 20 new knowledge products produced from the Alchemy structures' impact by design journey.

6.2. SIOC-CDT - An evolution to a centralised model

SIOC-CDT's case illustrates how a trust can continue to iterate based on changing circumstances and experiences.

Background

The Sishen Iron Ore Company-Community Development Trust ("SIOC-CDT") was established in 2006 by Kumba Iron Ore Limited to invest in the development of the communities in which the company operates. The trust focuses on beneficiary communities adjacent to the Sishen Iron Ore Company's mining activities in the Northern Cape and Limpopo and invests in community development projects aimed at ensuring sustainability beyond mining operations.

Founding entity	Kumba Iron Ore	Year established	2006
Legal entity	Trust (with Section 30 PBO registration)	Geography	Northern Cape & Limpopo
Size	R7.4 billion Annual program: R126m	Project focus	Education & skills development, enterprise development & social welfare
Trust structure / Operating model	Centralised structure; Hybrid operation	**Education & skills development, enterprise development & social welfare**	Founding: 5 Independent: 4 Community: 4

Current Board Committees

Audit and Risk Committee

Projects Review Committee

Remunerations Committee

Nominations Committee

Social, Ethics and Transformation Committee

Investments Review Committee

Trust Structure

SIOC-CDT originally had a "super trust" and five representative trusts which were located in targeted communities. However, it was subsequently restructured to improve coordination, increase impact, and strengthen governance (see Operating Model below).

Operating model

SIOC-CDT's operational model initially consisted of a "super trust" and five representative trusts which were located in beneficiary communities and were responsible for the identification, proposal, and implementation of projects. In 2016, this model was reviewed and resulted in a consolidated structure. The rationale behind this

model is to increase accountability, improve governance and have better coordination. The new strategy focuses on a consolidated operation model, cost control, project management, governance and diversification of revenue.

Reflecting on the previous structure, the CEO notes that the existence of regional trustees had " resulted in cost inefficiency of a duplicated overhead structure with no discernible impact benefit. This was before theories of change, monitoring, etc. The downside of multiple platforms includes lack of alignment, reporting, and governance standards… Centralising financial transactions has worked well; if financial controls are weak with decentralised procurement, it's problematic. Finance procedures are critical. The trust must have systems in place with oversight."

The model further evolved when the board of trustees approved the trust's organisational strategy, which promoted the trust's mandate to include commercialisation of certain activities to ensure growth and sustainability of the trust's mandate even without the dividend and beyond the life of mine. This involves collaborating with like-minded institutions in the development space but also marketing its capabilities for the same purpose to the corporate sector.

"The trust needs to be run like a very good business without losing its PBA objectives."

The trust also focuses on internal capacity to contribute to effectiveness and accountability. In 2019, SIOC-CDT identified maintaining the organisation as a capable organisation to be able to fulfil its mandate as one of the three strategic imperatives. It currently employs 41 full-time staff and also relies on consultants. SIOC-CDT is committed to only appointing employees following a rigorous recruitment and appraisal process, while strictly assessing potential partners for the right fit with its ethics and objectives.

Founded in 2011 as a subsidiary of the trust, SIOC-CDT Investment Holdings ("InvestCo") plays the treasury and investment function of the trust, with the aim of securing long-term investments to sustain the public benefit activities of the trust. As per the trust deed, SIOC-CDT is allowed to invest 30% of the funding for long-term capital growth, while 70% of its funding must be spent on community development initiatives. The return on the investment is used as income to fund future community projects. Such investments are intended to create a sustainable future for the trust and its beneficiary communities beyond the lifespan of the founding company's mining activities. In 2019, SIOC-CDT received R612 444 806 in dividends and generated just over R100-million through investments. InvestCo's portfolio includes the following:

- **Kathu Solar Park** - A 100MW greenfield Concentrated Solar Power (CSP) project located outside of Katsu. (12.5% ownership)
- **Aha Kathu Hotel** – A hotel targeting business clientele. (100% ownership)

- **Kathu Office Park** - It was originally built to house SIOC-CDT but it is now leasing out its unused space. (100% ownership)
- **Airlink** - A local airline that offers daily flights to Kathu. (circa 33% ownership)

The investments are managed internally by a team that is headed by a seasoned investment professional. Investments are reviewed by SIOC-CDT's Investment Review Committee, which is one of the subcommittees of the board.

It is worth noting that SIOC-CDT is not very representative of community trusts since it basically runs as a fairly large business.

Governance

SIOC-CDT has a robust governance structure with six sub-committees of the board that have delegated authority for making decisions on various areas. This model is akin to corporate boards. The board subcommittees consist of: Audit and Risk Committee; Project Review Committee; Remunerations, HR and Performance Management Committee; Nominations Committee; Social, Ethics,

and Transformation Committee; and Investment Review Committee. This is the most comprehensive structure we have seen in the benchmark study. It makes sense for a large organisation for SIOC-CDT that employs 41 full time staff and manages R126-million worth of projects annually. SIOC-CDT did not always have formal subcommittees in place, but rather developed them as part of its response to challenges with governance and mismanagement in the past.

Trustee composition and appointment

The SIOC-CDT board consists of a total of 13 trustees, of whom five are appointed by the founding company, four are independent, and additional four that are appointed by the community. SIOC-CDT is almost entirely independent of Kumba but still has founder trustees as a link. The community election process is comprehensive and is administered by the Independent Election Facilitators of South Africa ("IEFSA"). The

nomination of candidates can be done by others or through self-nomination. Eligible voters can register either online or in person through a form which requires a proof address and a copy of identification document. Then the voting will take place either online or in person. Nominated persons must have matric or higher, reside within the jurisdiction, and at least be able to read and write. In addition, the trust deed specifies that a person above the age of 70 years old and/or working for the government or parliament in any capacity is disqualified.

Community engagement / involvement

SIOC-CDT tries to engage broadly with community needs. The Trust does not want to exclusively focus on municipal infrastructure projects (e.g., water, street lights), however, the reality is that the local authorities do not have the capacity or capability to deliver on basic needs for the community. The trust recognises that if they do not attend to dire needs, that will negatively affect the trust's work on its focus areas. The trust navigates this in project selection and wants to meaningfully engage with community needs and not just implement objectives from the founder company. While SIOC-CDT does not accept unsolicited applications, the trust may incorporate feedback about a potential project, and may decide to co-develop the project with the organisation/party.

Prior to the Covid-19 pandemic, the practice was that SIOC-CDT conducts a series of community engagements by visiting villages prior to taking an annual business plan to the board for consideration. Through the engagements, SIOC-CDT collects feedback on studies conducted, present choices, and validate what the senior management planned to take to the board.

The four key categories of stakeholders identified by the trust are: (1) local government; (2) provisional government; (3) strategic alliances (e.g., Anglo American, Kumba, Kathu Solar Plant, John Taolo Gaetsewe ("JTG") Development Trust); and (4) business forums and working groups.

SIOC-CDT uses are number of tools for community and stakeholder engagement:

- Social impact report
- Community roadshows
- Annual stakeholder day (AGM equivalent)
- Local municipality council meetings/Engagement with traditional leaders
- Quarterly business forums and quarterly youth forums
- Monthly working groups with business sector leaders

In terms of mode of communication, it has also used community radio in the past.

Monitoring & evaluation

For SIOC-CDT, the results of impact analysis and the M&E framework, in addition to the research and the development of priorities, assist in determining where to focus its projects. The trust uses an external service provider for M&E but is looking to develop internal capacity.

SIOC-CDT publishes an annual social impact report. In 2019, for instance, the report covers the trust's strategy, programmes and expenditure. Impact is reported on through project-specific outcomes, highlights, testimonials and quantitative data. It also gives a summary of the findings of a retrospective evaluation report, noting that the full report is available upon request. This reflects clearly how the trust gathers data on an ongoing basis to measure progress, while also commissioning formal external evaluations where relevant to review the trust's impact.

In 2019, SIOC-CDT commenced planning a Retrospective Evaluation Report to gain assurance regarding 16 Social Investment projects implemented across its beneficiary communities over the 2015 - 2018 period. This retrospective evaluation, conducted by Decipher Data Consortium, sought to evaluate how SIOC-CDT implemented projects and the impact these interventions have achieved. The evaluation also administered a stakeholder engagement process, where those who benefitted from the 16 interventions were given an opportunity to reflect on their experiences.

According to SIOC-CDT, the retrospective evaluation found that the projects were responding to communities'

needs and were deemed as relevant. For the most part, projects were implemented, and beneficiaries had either benefitted from them already or would begin to benefit in the near future. However, this impact was only moderate.

The report made a number of recommendations related to project management and implementation that must be addressed for more efficient delivery of services and to increase impact. In particular, it was suggested that respective theories of change could be strengthened to better report on project outputs, outcomes, and impact. Strengthening the monitoring and evaluation systems of the project management teams was identified as a crucial step in improved project performance.

Relationship with the founding entity & special provisions

Kumba has the right to appoint four out of the 10 trustees. The company supports SIOC-CDT in the induction of trustees in the area of corporate governance.

Challenges & opportunities

One of the former subtrusts under SIOC-CDT (the John Taolo Gaetsewe Development Trust) was investigated for fraud following complaints by community members in 2011 for "fraudulent behaviour with regard to mobile libraries, the procurement system in the trust (e.g., tenders), shareholding in mines and the funding of projects, among other things." At the time of the investigation, the community had appeared to be in the dark about the trust's financial performance, and the first annual general meeting of the trust was only held in 2010 only after the community complained to the internal fraud units of both Sishen and Kumba. SIOC-CDT referred the complaints to the Kimberley Commercial Crime Investigation Unit for investigation. SIOC-CDT's restructuring and development in subsequent years was largely in response to governance challenges experienced in the subtrusts.

Community Trust Benchmarking Report 2022

6.3. Ponahalo/De Beers Broad Based Trusts - A truly broad-based design with a geared structure

Ponahalo/De Beers Trusts were designed as a truly broad-based solution with separate trusts targeting different beneficiaries.

Background

De Beers Societe Anonyme ("DBsa") and Ponahalo Capital (Pty) Limited ("Ponahalo Capital") today announced that definitive transaction agreements to implement the De Beers' Black Economic Empowerment (BEE) transaction have been signed.

In 2006, DBsa concluded a BEE transaction where an indirect 26% stake in De Beers Consolidated Mines ("DBCM") was sold to Ponahalo Investment Holdings for R3.7-billion. Ponahalo Investment Holdings ownership includes business individuals, and trusts representing disadvantaged women, people with disabilities and mining area communities. The transaction was financed as follows:

- Seven-year funding of R2.9-billion provided by Standard Bank with no recourse to DBsa
- Seven-year year funding of R800-million provided Standard Bank, "guaranteed" by DBsa; and
- Ponahalo Investment Holdings equity provided by the business partners in Ponahalo Capital (R10-million).

The broad-based nature of Ponahalo Capital is encompassed in the Ponahalo/De Beers Disadvantaged Women's' Trust, the Ponahalo/De Beers Disabled Persons' Trust and the Ponahalo/De Beers Community Trust, which collectively own a 45% interest in Investment Holdings.

The three Trusts have the following shareholding in Ponahalo Investment Holdings:

- 17.5% by the Ponahalo/De Beers Disadvantaged Women's' Trust. The beneficiaries of this trust are groups, associations and organisations for the benefit of disadvantaged women;
- 10.0% by the Ponahalo/De Beers Disabled Persons' Trust. The beneficiaries of this trust will be people with disabilities; and
- 17.5% by the Ponahalo/De Beers Community Trust. The beneficiaries of this trust are mining communities around DBCM's mines as well as communities from where a significant number of De Beers' employees have been recruited. The majority of beneficiaries of all three broad based Ponahalo/De Beers Trusts are HDSAs.

Founding entity	De Beers Consolidated Mines (DBCM)	**Year established**	2005
Legal entity	Trust (with Section 18A PBO registration)	**Geography**	DBCM operational areas
Size	R3.8 billion (transaction value) R5 million annual budget	**Project focus**	Women, people with disabilities, community development
Trust structure / Operating model	Multiple trusts; shared board of trustees	**Trustee composition**	Founder: 2 BEE partner: 2 Independent: 1
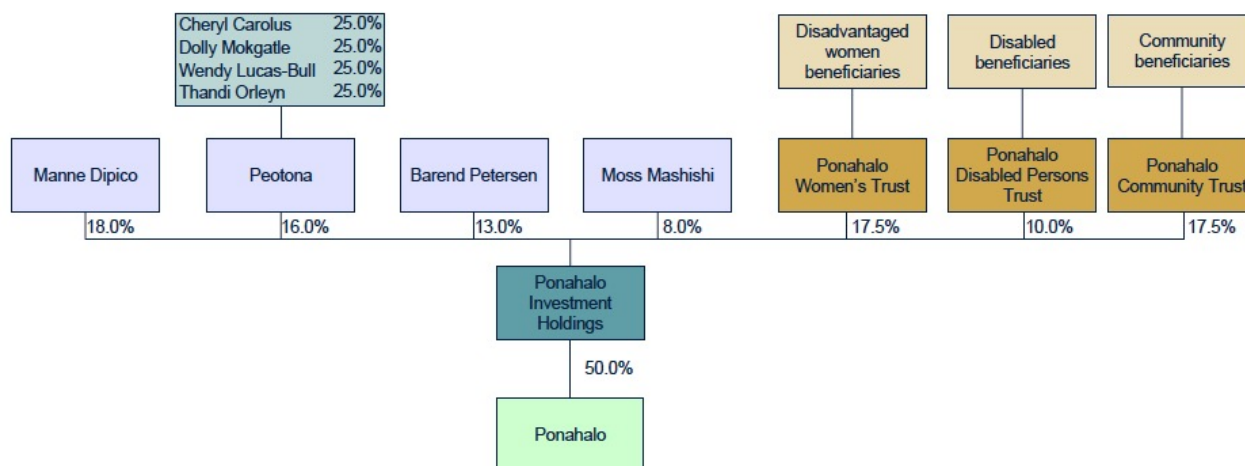
Source: DBCM Deal Presentation

Figure 14: Ponahalo ownership structure

The three Trusts will be the beneficiaries of R5-million each year, or R50-million in aggregate over the first 10 years, with the first R5-million being received in year one.

Trust structure

Ponahalo is a BEE entity that owns 26% of DBCM. Of that 26%, 50% is owned by Ponahalo Investment Holdings and the remainder by trusts benefitting De Beers current and future employees. Three broad-based trusts collectively own 45% of Ponahalo Investment Holdings: the Ponahalo Women's Trust (17.5%), the Ponahalo Disabled Persons' Trust (10%), and the Ponahalo Community Trust (17.5%). As of 2014, Ponahalo also owns 26% of De Beers Sightholder Sales South Africa (DBSSSA).

Operating model

Education is the main focus for the trust. According to the interview conducted, it is "easy" for the trust to identify schools from around the community. Instead, the focus is on implementing strategic projects (e.g., holistically promoting the inclusion of children with disabilities in sports, culture, etc.) The most recent project is solar panels in schools.

The trust engages with specific stakeholders in the community by engaging directly with schools for acceptance and ownership. The rationale behind the narrow focus is to be able to focus on specific projects where the trust is able to have an impact due to the limited availability of funding.

One example of its project identification approach is the establishment of an inclusive school in Kleinsee in the Namaqua District of Northern Cape. The need for an inclusive school to provide quality educational opportunities not only for the local Kleinsee children but also for learners in the Namaqua District requiring higher level support needs was identified and the Ponahalo/ De Beers Trust engaged a service provider, Inclusive Education, to consult with various role players and facilitate the development of a model for the school, as well as a three-year implementation plan.

For implementation, the trust contracts administrators who employ service providers for the work to be implemented (e.g., administrators employ service providers to install solar panels). Where feasible, the Trust employs people to do some of the work.

Governance

The three trusts are governed by separate boards of trustees. However, they have the same board members across all of the three trusts.

Trustee composition and appointment

Currently Ponahalo/De Beers Trusts have five trustees: two appointed by De Beers, two appointed by the BEE

partners, and one independent trustee. The trusts have the same board members across the three trusts. They have deliberately not opened them up to new trustees, including community trustees. The rationale behind this decision is to keep within Ponahalo shareholders to have a tightly controlled environment while there's a huge outstanding debt.

In the future they anticipate amending the trust deed to have a term for the trustees. For the immidiate future, they have decided not to proceed because of the concern that the moment you open it up to outside trustees, you encumber people with responsibilities e.g., having issues of whether the entities may not be able to pass the insolvency test. It has been decided that the most prudent approach is to deal with it and negotiate internally.

Currently there is no formal induction and training. The trusts will consider as they bring in new trustees including younger people who need to be trained.

Community engagement / involvement

The trust has a narrow focus on education and identifies schools from around the community. It leverages off of De Beers and Anglo American education programme schools to achieve economies of scale. The Trust engages with specific stakeholders in the community (engaging directly with schools for acceptance and ownership).

Monitoring & evaluation

The Ponahalo/De Beers Trusts outsourced its M&E function to a service provider, Knowledge Pele. It was important for the trust to have an administrator with strong M&E capabilities who can provide reporting and understand impact. The trust is now focusing on impact on a project-by-project basis, specifically when defining the scope of the project.

Relationship with the founding entity & special provisions

The Ponahalo/De Beers Trusts provide reports to Ponahalo, the BEE partner that owns 26% of De Beers

Consolidated Mines and De Beers Sightholder Sales South Africa. However, the chairperson emphasises that it has no legal requirement to do so. The trust prioritises the independence of the trust, and the Chair is very clear about the fact that the trust cannot be expected to report to the company [under the empowerment deal].

Challenges & opportunities

The Ponahalo/De Beers BEE transaction had struggled due to its high gearing coupled with business conditions. Following a decline in diamond sales, De Beers followed a "disproportionate dividend policy" where the company paid dividend only to Ponahalo Investments but not to other shareholders which include Anglo American, the Oppenheimer family and the Botswana government. In 2010, De Beers restructured its debt with Ponahalo Investments, agreeing to guarantee 57% of the preferential shares Ponahalo Investments holds, at the DBCM level, and which carry a total value of R3.6-billion. There are four different classes of preferential shares of which one class is being amortised and which Standard Bank has agreed to roll over in return for De Beers guaranteeing Ponahalo's debt.

Subsequently, the value of Ponahalo's investment in DBCM continued to decline below the value of the loan due to economic conditions, making the deal "underwater." The new deal in 2014 saw Ponahalo also acquiring 26% of De Beers Sightholder Sales SA, the sales arm of De Beers, in addition to the existing stake in DBCM. Unlike the mines, it generates a great deal of cash from the sale of diamonds, which will flow through to Ponahalo. The increased cash flow is expected to allow DBCM to declare dividends to Ponahalo, which improves the ability to service the debt and benefit the beneficiaries.

As a result of the challenges, the Ponahalo/De Beers Trusts are intentionally keeping a low profile without significant public or online presence. The trustees are also only composed of De Beers and Ponahalo representatives due to the concern of not wanting to expose external trustees to liabilities associated with the financial sustainability of the trusts.

6.4. Royal Bafokeng Nation Development Trust - A blend of tradition and modernity

Royal Bafokeng Nation Development Trust represents a unique and effective integration of customary and modern institutions of governance that is 100% led by the community.

Founding entity	Royal Bafokeng Holdings	**Year Established**	2004
Legal form	Trust (confirm PBO status)	**Geography**	The Royal Bafokeng Nation
Size	R46 bn (NAV of RBH) as at 31 December 2021	**Project focus**	Health & Social Development; Education & Skills Development; Economic Development; Food Security, Public & Community Services; Public & Community Utilities; Land, Agriculture & Environment and Sports.
Trust structure / Operating model	Hybrid model with multiple entities providing internal capacity; some outsourcing	**Trustee composition**	Kgosi (Chairman) 1 Dikgosana rep 1 Traditional Council rep 4 Kgosi appointees (independent) 5 from RBN (community) CEO

Background

The Royal Bafokeng Nation is a kingdom in the North West province. The nation owns 1 200 square kilometres of land in the Rustenburg valley, and is home to 150,000 people of whom two-thirds are Bafokeng. In the late 1800s, Lutheran missionaries helped the Bafokeng tribe to purchase land by circumventing the restrictions on African land ownership. The land purchased was held in trust for the benefit of the tribe.

Kgosi (King) Leruo Molotlegi became the 36th king of the Royal Bafokeng Nation in 2000 when his two elder brothers passed away unexpectedly. Kgosi Leruo was committed to leveraging the platinum assets to secure the financial independence of the Bafokeng people. In 2002, Royal Bafokeng Resources was set up as a company whose mandate was to maximise the

opportunities of the Nation's mineral reserves. Realising that he lacked training and experience in professional investment management, Kgosi Leruo recruited Niall Carroll, an experienced investment manager, to run newly established Royal Bafokeng Finance to build a diversified non-mining investment portfolio.

The Royal Bafokeng Nation Development Trust ("RBNDT") was established in 2004 as the vehicle through which all of the Royal Bafokeng Nation's resources are managed. When RBH was set up in 2006, it became a wholly-owned subsidiary of RBNDT. The beneficiaries of these commercial assets are members of the collective Bafokeng Nation. RBNDT is described as being "both the agent providing guidance of how our funds should be distributed to fund the socioeconomic objectives of the nation, as well as the sole shareholder of Royal Bafokeng Holdings,

and is thus mandated to take care of the commercial imperatives of the nation."

In 2006, Royal Bafokeng Holdings ("RBH") was established through a merger of Royal Bafokeng Resources and Royal Bafokeng Finance to "rationalise oversight and bring a holistic focus to the management of the Royal Bafokeng Nation asset base." RBH's mandate is to grow the wealth of the Bafokeng Nation, enabling the independence and sustainability of future generations, while supporting the ongoing social development of the nation. Overtime RBH has become a BEE partner of choice for a number of South African companies (e.g. Vodacom, Thebe Investments, etc). RBH currently manages a portfolio with a net asset value of c.R46-billion (as at 31 December 2021) consisting of listed and unlisted assets in a diverse range of sectors, including agriculture, infrastructure, real estate, financial services, telecoms, mining and industry. In 2007, royalties from Impala Platinum were exchanged for 9.4 million shares (valued at about R10.6-billion at the time), making RBH the single largest shareholder in Impala Platinum. As of 2021, RBNDT has received

R6.3-billion in cumulative dividend from RBH, which has gone towards social initiatives such as the construction of schools, roads, health facilities and the provision of various other social services.

At the core of RBNDT are the goals of communal effort for communal benefit and intergenerational wealth. As such, sustainability is key – the trust intends to ensure that the nation will be better for future generations. Recognising mining as a finite resource, the trust has diversified its investments beyond mining, to the point where, in 2018, mining investments made up only 15% of its portfolio.

Trust Structure

The trust is resourced by dividends from RBH. The trust has a board chaired by Kgosi (king), who also oversees the Supreme Council ("SC"). The SC comprises 72 Dikgosana (hereditary leaders) and 18 elected Traditional Council members. The SC is the "custodian of culture and tradition" and decides on detailed social programmes and budgets, which are then approved by RBNDT.
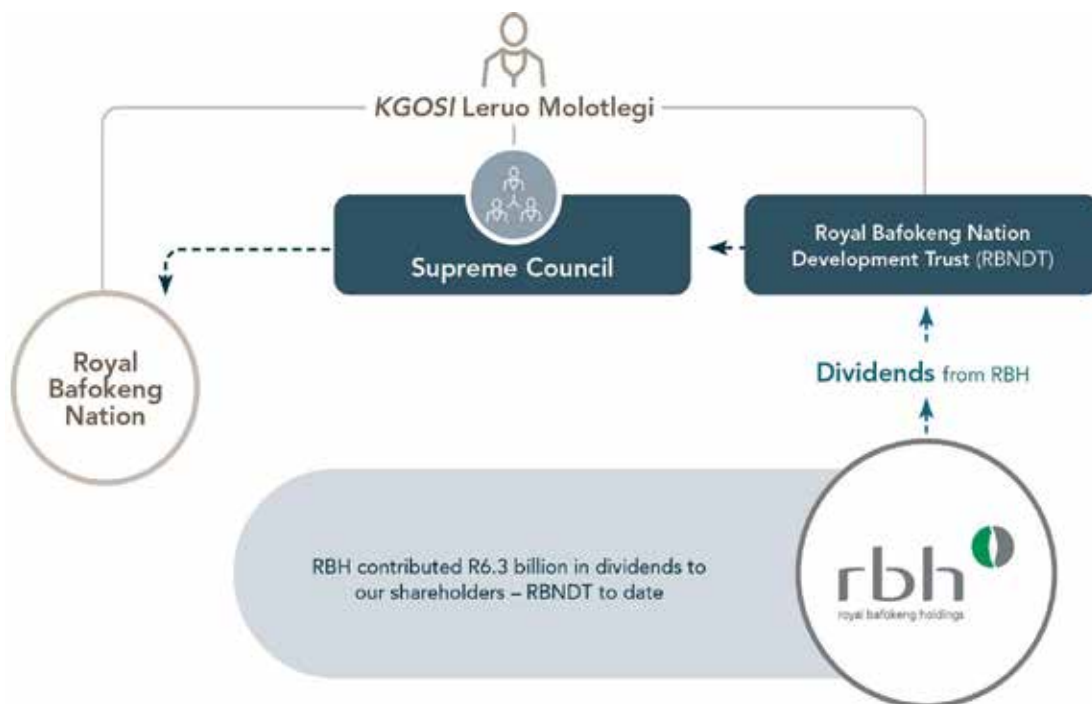
Source: Royal Bafokeng Holdings

Figure 15: Royal Bafokeng Nation Development Trust Structure

The trust itself is not registered as a PBO as it oversees RBN's commercial imperatives; however, there are entities within a group that are PBOs and focus on social delivery.

Operating model

Within the RBN are a number of entities, with commercial institutions like RBH falling under the trust, and entities to address social imperatives falling under the Royal Bafokeng Administration. This means that, in many cases, projects can be identified and implemented by entities within the group. Typically, the SC will identify a need in the community, and will then engage a professional entity to create and cost a solution. The trust is presented with all such requests and creates a consolidated budget. It will push back if the overall annual budget is too high, maintaining the balance between meeting current development needs and sustainability for future generations – to this end, the trust spends R1 for every R3 it receives. This offers a three-year buffer if dividends drop.

External service providers will be identified if needed for implementation. The aim is not to build up all-inclusive internal capacity. "Our mandate is not to run entities – it's people's development," said CEO Obakeng Phetwe.

The trust has a three-pillared strategy, looking at the development of the individual, development of the collective, and stewardship of resources.

Governance

RBNDT has a hybrid system of governance representing "co-existence between traditional and corporate structures". The board of trustees includes representatives from the Council of Dikgosana (hereditary leaders) and a representative of the Traditional Council (elected leaders) alongside Kgosi (king), Kgosi-appointed independent trustees, and trustees elected by the community every five years. The trust works closely with the SC. The purpose of this hybrid approach is to "allow deep community participation and wide accountability in how we administer our plans and funds… Bafokeng do not lose their identity while the trust delivers on its corporate

mandate." Phetwe noted that traditional and corporate should not interfere with each other. Boards are given the mandate and the space to deliver, and all aspects of governance are working towards the same goal: "We are serving one customer here, and that's the community."

There is a potential conflict of interest in the fact that the king leads both the SC and the board of trustees. CEO Obakeng Phetwe raised this point but emphasised that conflict exists everywhere, and the question is how it is managed. In this instance, the king's overall role and responsibilities are relevant: "people will come to the king if something goes wrong", so he is motivated to exercise good governance. He is also not the sole decision maker, as he is advised by the SC and the trustees.

In analysing various community trusts, Harvey notes that "the apparently strong governance of RBH does bode well for achieving inclusive objective benefit in the near to medium term future."

Trustee Composition and Appointment

The RBNDT board of trustees is composed of the following:

- Kgosi (Chairman)
- 1 representative of Dikgosana
- 1 representative of Traditional Council
- 4 Kgosi appointees (independent)
- 5 Members elected from the Royal Bafokeng Nation
- 1 CEO

Kgosi, who is also the chairman of RBNDT, has the right to appoint independent trustees unilaterally. In practice, he discusses candidates with the board to inform his decision. The five members from the RBN are elected by the regions every five years.

The minimum requirement for trustees is a matric, but RBNDT is considering raising this to a post-matric qualification for elected trustees. The trust identifies the essential skills for the board of trustee as including investment, legal knowledge, and community development. It is important for a trustee

not to look at people as numbers, and understand business commercially but with a human development perspective.

Community engagement / iInvolvement

RBNDT makes excellent use of traditional structures and communication channels for community reporting and feedback. These engagements include:

- Regional meetings once a year where traditional councillors account directly to their constituencies
- Kgotha-Kgothe (AGM) called by Kgosi twice a year where programmes and simplified audited financial statements are presented to the community. The annual budget is presented at these meetings, and Bafokeng over the age of 18 can attend and vote.
- Kgotla (ward) meetings once a month, led by the Kgosana, where pressing needs, bursary applications and requests for conflict resolution, among other things, can be raised and directed to the appropriate channels.

Monitoring & evaluation

RBNDT has a performance monitoring system that tracks spend as well as inputs and outcomes. This in-house capability for monitoring is supplemented by a Population and Use of Land Audit, an assessment of all relevant areas of development (e.g. health, education) conducted every five years. This assessment is run by an independent company based in Cape Town.

Relationship with the founding entity & special provisions

There is no founding entity in the sense it has generally been used here, as the trust was created by the RBN to house its commercial interests. In terms of special provisions, some members of the royal family work as regular employees and are paid salaries accordingly; for example, the late queen mother was graded as an executive based on her work, and the prince heads a department and is paid in line with that role. The king himself earns a salary as an employee. Bafokeng also recognise that the royal family must be taken care of by the community, and the SC passes an annual budget each year towards this aim. This represents less than 1% of the overall budget, and is determined transparently. This is enough for them to "take care of things within the palace" and meet expectations the community has of them.

Challenges & opportunities

RBNDT is often cited as an example of an effective community trust . This is partly due to the RBN's ability to balance the development of its people, land, and business through its commercial and socio-economic entities. The other part is directly attributed to the RBN remaining firmly rooted in its heritage and the co-existence between traditional and corporate modalities of governance, which is the hallmark of their success.

Whilst this co-existence may potentially appear to be an inhibitor, a key consideration is the RBN's hybrid model of governance where traditional structures are deliberately leaned on for decision-making after taking into account technical inputs from the corporate structures of the Nation. This is seen as an advantage by the RBN where trust, leadership and accountability in Kgosi, Dikgosana and traditional councillors is highly valued.

With the focus on sustainability and investing for the future, there is a need to communicate and ensure that RBN social entities funded through the Trust do not under-perform. The difference between the growth in the net asset value (equity value) and cash is sometimes not well understood by some community members. This becomes an important factor in considering what the RBNDT can afford to spend on socio-economic programs in any particular year without depleting RBN's balance sheet for future generations.

Working with government presents both challenges and opportunities. RBN has a relationship of mutual respect with Government, especially the municipality, but this does not always translate into tangible delivery outcomes hence the deliberate approach that the RBN has adopted in its operating model to deliver to Bafokeng and surrounding areas whilst supporting and contributing towards Government's initiatives.

7. Conclusions and recommendations

7.1. Identified best practices

Drawing on the insights from our literature review, desktop research and interviews, well-managed trusts share a number of characteristics. These could serve as best practices for the governance, operation, and strategy of community trusts in achieving long-term sustainable impact.

A Purpose-driven approach

- The purpose of the trust is clear (beyond appeasing the community or maintaining a B-BBEE status). Design of an appropriate structure and strategy flow from a well thought-through purpose. The trust must be clear what role it intends to play in the community.
- Project design and implementation approach is based on a clear long-term strategy with an organised framework. This prevents trusts from allocating resources for short-term programs in a haphazard manner. Trusts are able to focus on implementing meaningful projects with a lasting impact.
- One of the most effective ways of defining and mapping out a purpose-driven approach is through a theory of change. It is used as a tool to frame the outcomes that will be tracked against the overall strategy and to illustrate the relationship between actions, results, and desired impact.
    - As an example, Tshikululu's approach to defining purpose draws on: understanding the intended role of a community trust within a community and its relationship to the founder company; the needs of different stakeholder groups; the strategy of the founder company; the desired impact of the trust; as well as practicalities such as compliance requirements and the size of the trust. These complex factors, among others, inform the shaping of the theory of change. This ensures that the theory of change is relevant, meaningful and measurable - a practical way to capture the purpose of the trust.
- Financial sustainability has emerged as a theme across many trusts. Several trusts have diversified their investments to ensure that their beneficiaries are able to thrive even after Life of Mine. A diversified investment portfolio provides additional stability to the future funding of the trusts' development project.

Strong governance and oversight

- Trustees have a combination of complementary skills and a profile that is appropriate for a specific trust and its objectives, which enables them to contribute tangibly to the trust. Given the scarcity of such talent and the time and commitment required, trustees are remunerated fairly. Fees may be benchmarked against other similar organisations, if it is possible to identify comparable entities.
- In terms of specific expertise, the board should have trustees with financial and legal skills to be able to engage meaningfully with financial statements and to understand the legal implications of the trust's activities.
- Different trusts have different relationships with their founding companies, but oversight by the founding company is an essential part of good governance. All trusts interviewed have at least one founder trustee representing the founding company. It should be clear how (and to what degree) the trust reports into the company.
- There is a good balance between independent and founder trustees (as well as community trustees, where appropriate). The minimum and maximum number of trustees (ideally 6-10) as well as the composition of the board is specified in the trust deed.
- The trustees are supported in carrying out their responsibilities by skilled staff/ management in order to promote good governance and accountability through separation of powers.
- A formal induction and training of all trustees is considered a good governance practice.
- The issuing of audited annual financial statements is a critical compliance requirement. It promotes transparency, compliance, accountability and builds the trust of key stakeholders. Furthermore, it provides

critical information that enables the trustees to formulate appropriate policies and strategy for the future.

Independence

- The role of independent trustees is recognised as good governance practice in line with local and international guidelines. All of the trusts interviewed have at least one independent trustee. The chair of the trust should be also independent.
- While maintaining a healthy relationship with the founding company through regular reporting and board representation is seen as positive, there is also a clear understanding and appreciation for the trust's independence. It is critical that the trust is not influenced (or seen to be influenced) by the founding company, to uphold the integrity of the trust and avoid compromising BEE status.

Sufficient capacity

- There is internal capacity both in the management of projects and at the board level to ensure effective running of the trust. Additional capacity may be acquired through third-party suppliers, though some fundamental capabilities need to reside within the trust. This is irrespective of the type of structure or the operating model of the trust.
- The importance of having financial and legal skills on the board was emphasised by multiple interviewees.

Intentional community engagement and involvement

- Community engagement is consistent, transparent, and deliberately planned. There are strong mechanisms for feedback to the community. Not all trusts deliberately solicit input from the community on how funds are used, but some of the more effective ones supplement research into community needs with feedback on proposed projects.
- Community involvement in the trust is clear and well-defined, whether this is through direct engagements or via community trustees. Formal engagement structures ensure that a wide range of beneficiaries are

meaningfully involved in the trust's activities.
- There is no direct or preferential benefit for any special interest group, including traditional leaders.

Robust M&E practice

- There is a well-defined M&E process in place to monitor progress and impact, to conduct evaluations, and/or to conduct data verification. This can be managed internally, but using an expert external service provider is a widely used option.
- M&E is embedded into the project planning process rather than after the fact. Trusts that do not consider M&E in their planning and approval process experience difficulties when trying to measure the outcomes and impact of approved projects.

7.2. Recommendations

Based on the above best practices carefully observed through the research, there are a number of recommendations for stakeholders involved in establishing or managing community trusts. It is important to recognise the wide range of community trusts in the research and beyond that differ in their structure, context, culture, and circumstances. What works for one community trust may not work for another. Therefore, the recommendations are made with an appreciation that simply copying one successful approach and applying it to another without context would be difficult and not advisable. These recommendations are intended to serve as potential input for all stakeholders involved in community trusts and to help them deliver a sustainable strategy in the future. It should also be noted that proper legal and tax advice should be sought as part of any implementation.

Purpose

- The purpose and public benefit nature of the trust must be contained in the objectives of the trust.
- A trust cannot be all things to all people. In addition to the stated purpose in the trust deed, it is important to define the role a trust intends to play in the community and who its most important stakeholders are. This purpose can be defined through a well-articulated

strategy with clear timeframes and implementation plans, a theory of change to define the impact chain and what success may look like, and a well-developed understanding of who its core beneficiaries are.

- The strategy should encapsulate the purpose of the trust, including what it wants to achieve and for whose benefit. It takes into account factors such as the size of the trust, the geographic context, critical stakeholders, and the needs and priorities of the beneficiary communities and the founder company.
- A well-defined theory of change illustrates clearly how desired change is expected to happen, and provides a framework for a community trust to achieve success. At its core, it guides the trust towards achieving its purpose by linking long-term goals to shorter-term outcomes, outputs, and activities. It takes into account the assumptions, risks and constraints affecting the strategy, so it is also tailored to the context in which the trust is operating.
- The development work of the trusts can complement the development work of RBM to enhance the social impact of the work.

Trustee Issues

- **Trustee composition**. A good balance between founder and independent trustees is essential, whether or not community trustees are specifically included. It is also recommended that independent trustees are appointed to the trust to augment skills in finance, legal and governance. The recommended composition is 6-9 trustees per trust. A smaller board of trustees would also be suitable for the purposes of these trusts, but if founder, independent and community trustees are to be included in reasonable ratios, a slightly bigger board is required. The recommended composition is as follows:
  - Independent trustees: 3-4 (at least 50%, and including the chairperson);
  - Founder trustees: 1-2
  - Community trustees: 2-3

- **Trustee appointment:**
  - **Founder trustees:** Such trustees can be appointed by the company directly (should be based on the skills they bring to the board and their link to the structure the trust reports into).
  - **Independent trustees:** Recruitment of independent trustees can be supported by RBM's internal resources, the trust administrator/manager or an independent recruitment agency.
  - **Community trustees** - It is critical to follow a transparent process. This could be the appointment of someone via a representative community engagement forum (although this has a higher risk of being hijacked), or ideally an independently managed election process, such as the approach adopted by SIOC-CDT using the IEFSA, where the community has the opportunity to engage prospective trustees and vote for a representative.

- **Trustee term:** A fixed term for trustees is ideal and following the King IV guidelines of 3 x 3 terms is recommended. Tenure should be reflected in the trust deed. Continuity is important and transition should be carefully managed and supported. Key considerations here are accountability and continuity. Overall, having fixed terms is best practice as it promotes accountability and good governance.

- I**nduction and training:** It is recommended to establish a formal trustee induction process. At minimum, trustees need to fully understand their fiduciary responsibilities as per the trust deed, and be familiar with the concept of good governance. It is also important to include an understanding of the Founder Company and its relationship to the trusts. The trustees and the trust administrator/manager should also identify additional training areas and allocate appropriate budgets on an annual basis to ensure that the trustees are trained on issues that are relevant for the trust (especially for community trustees). Additional support may be offered to community trustees to train them in skills required as trustees. This ensures that community members who have not had access to higher education are also able to participate in trust governance and represent their communities, while at the same time the trust has trustees with the critical skills needed for good governance and effective functioning.

- **Board evaluation:** It is recommended that a review of the effectiveness of the board be conducted. An agreed process needs to be approved by the board. It is important that the evaluation is standardised year on year to identify gaps and that action plans are put in place to address these. Once the board is "settled", evaluations can be done on a biennial basis. The board evaluation should form part of the annual work plan.

Structure

- The structure needs to support the strategy and ultimately the achievement of social impact for the intended beneficiaries
- The advantage of a PBO status is that it ensures that the work of the trust remains for a public benefit and not for the interests of a select group. The B-BBEE trusts which have a social intent are largely registered with SARS as PBOs as a reflection of the intent and purpose of the trust. Section 30 is, generally speaking, a more suitable registration for a trust that receives dividends, but specific tax advice should be sought for RBM's trusts.

Oversight

- Appropriate governance structures and oversight mechanisms must be developed by the Founding Company and the trust to support the trust's purpose and strategy.
- Regular and transparent reporting structures and monitoring processes need to be agreed to by all stakeholders.
- To support this function a founder company may want to consider the establishment of committees of the board that provide assurance. In the first instance it is important that audit, risk and governance oversight is provided by an Audit, Risk and Compliance Committee with clearly defined terms of reference. With time, and depending on the eventual size of the trusts, the founder company may also consider a Social and Ethics Committee to provide oversight in terms of stakeholder engagements, reputation management, and adherence to policies such as a Code of Ethics, procurement and whistleblower policies and procedures.

Operating model & capacity

- There is no one right model but internal capacity or at least a clear model of outsourcing is necessary. The trusts may share services with the founding company where appropriate, especially in areas where the company has strong expertise or capabilities. This approach can be revisited once the trusts have sufficient internal capacity.
- The importance of having financial and legal skills on the board was emphasised by multiple interviewees. This is key to the effective operation and monitoring of the trusts; these skills can also be outsourced, but it is important that there are at least some trustees that are able to engage meaningfully with financial statements and understand the legal implications of what the trust does.
- Centralising more functions can be beneficial. However, it is important to have clear pathways for community representation, communication, input and feedback to avoid the common pitfall of losing touch with the communities.
- Some of the key skills needed (generally, and some for the trustees specifically):
  - Legal support
  - Accounting/Finance
  - Administration
  - Company secretariat - mechanisms to ensure compliance and sound governance in terms of adhering to the trust deed
  - Knowledge management
  - Specialist expertise in developing project strategies, implementation plans and monitoring, evaluation and reporting.

Beneficiaries

- It is clear from the research that the current best practice is to have no direct or preferential benefit for any special interest group.

M&E

- Clear development targets/indicators need to be attached to all money which is disbursed for community development. All funding disbursed needs

to be supported by a grant agreement or contract which has performance clauses in it.

- Embed M&E into project planning. M&E support can be provided by a third-party service provider, or by an internal resource.
- The capturing and tracking of M&E data is a specific expertise and the trusts and or founding company may want to employ or contract this expertise to track the social impact of all funding disbursed on a continuous basis.

Role of the founding company

- It is important to have more oversight by and connection to the founding company. At the same time, trusts must remain independent, and the governance and decision-making must reside with the trustees. Having founder trustees with the right technical competencies, character, and fit with the culture is essential in creating the link to the company, ensuring effective governance, and building trust. Founder trustees can also be responsible for reporting back to the founding company in an agreed manner and frequency. We also note that there are valid security concerns that need to be carefully assessed when appointing founder trustees to a trust in a volatile community setting.
- It is imperative that community trusts should publish audited financial statements on a timely basis.
- The founding company may consider adding step-in-rights similar to that of Amplats in Project Alchemy where the company can take remedial action in its sole discretion in adverse circumstances - however, these would need to be agreed upon with the trustees as part of a process of reviewing the trust deeds. Similar to Alchemy, remedial action may include (but not be limited to) the suspension of the board, the suspension of the voting rights of a trustee, the amendment of the voting procedure, and/or the removal and replacement of some or all of the trustees. Further legal advice is required in this regard.
- If there is a concern about lack of independence and power imbalance on the board, a founding company can also explore adding a clause to allow founder-appointed trustees to jointly have a casting vote in the event of a deadlock on the appointment of an independent trustee.

Community and stakeholder engagement

- Develop an intentional and clear community and key stakeholder engagement strategy. Gaining a deep understanding and appreciation for the concerns, pain points and motivations that each stakeholder category has is an important first step in designing an effective strategy. There are a number of engagement tools used by other trusts (e.g., roadshows, annual meetings, project co-development of projects) that can be tailored to the needs and circumstances of the founding company's key stakeholders.
- Wherever possible, make use of existing engagement platforms established by the founding company's mining operations to avoid duplication and make use of local knowledge and relationships. Similarly, use existing community structures and platforms where possible as a means of engaging with different segments of the community.
- Consider community involvement coupled with capacity development. It is critical for the community and also advantageous for the founding company for the community members to be capacitated with transferable skills that are relevant after the life of mine. Examples of this include: corporate governance training for community trustee and future candidates; capacity building for local organisations that could act as project implementation partners; and community projects that focus on skills development beyond mining.
- In anticipation for future conflicts, another potential solution in addition to active engagement is to consider having a conflict resolution mechanism spelt out in a trust deed is paramount. For example, it could be a mediation clause with the option of arbitration if mediation fails, with mediators potentially specified in the trust deed.

7.3. Policy considerations

A list of policy related issues that may be considered is prepared below. These are not recommendations but rather points that may require careful attention.
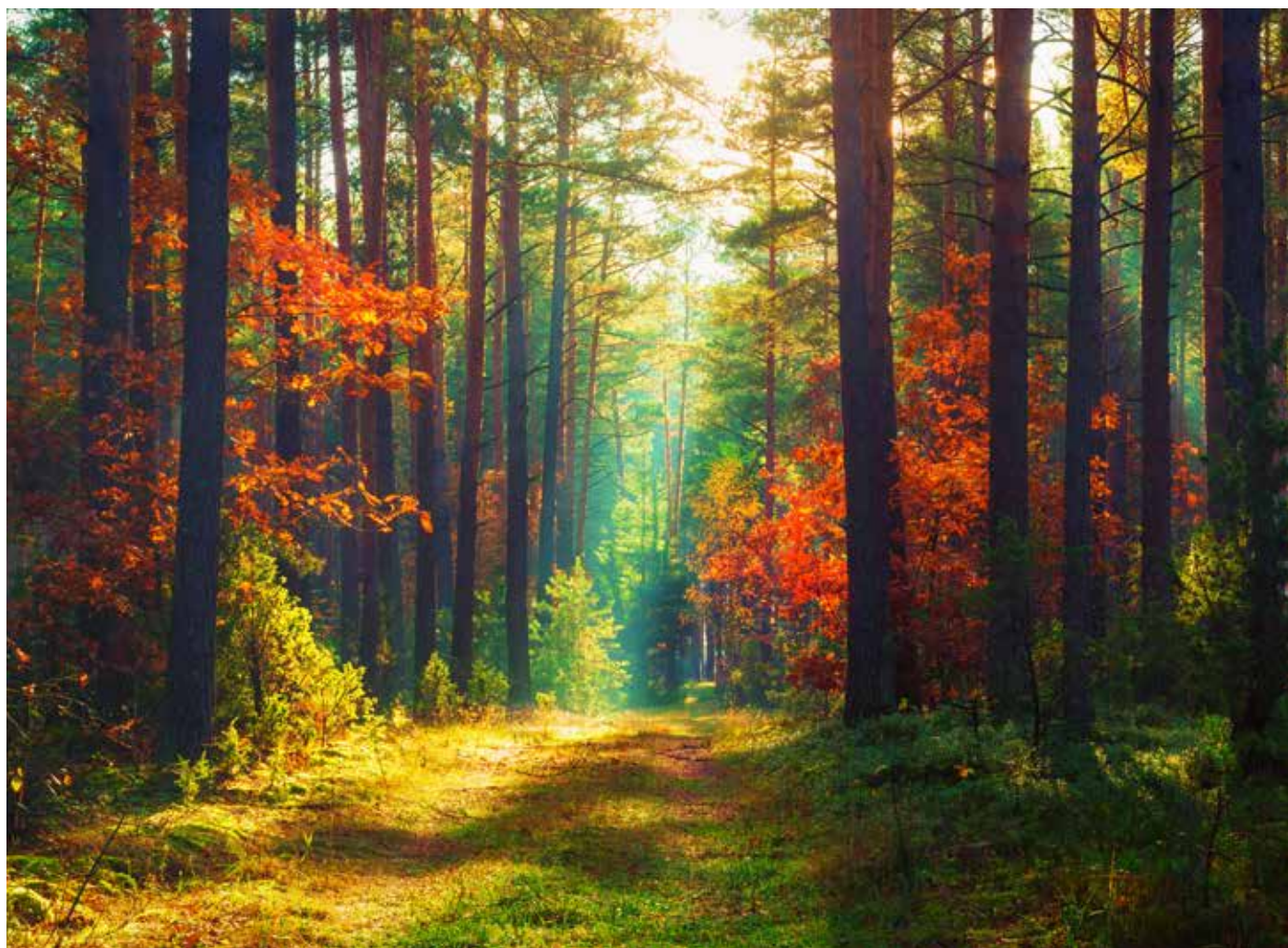
- The Trust Property Control Act, in conjunction with the South African common law in respect of trusts, governs the administration of all trusts in South Africa.

An inherent challenge with using trusts as vehicles for broad-based empowerment is that the Trust Property Control Act is "not designed for trusts with hundreds of thousands of beneficiaries". Reliance would normally be placed on a trust's deed of trust to provide for such mechanisms, and in the absence of adequately drafted provisions to this effect (or where such provisions are ignored or not enforced), the results can be problematic.

- Establishing an ombudsman is a possible consideration so that there is a degree of external oversight to provide support and protection, and to monitor compliance with the MPRDA. An amendment of the Act to establish a mechanism to "independently investigate and advise on community grievances in an efficient, democratic, and transparent fashion," is recommended in a submission to the High-Level Panel on behalf of Land and Accountability Research Centre. However, an establishment of an ombudsman may not be possible given the discretionary nature of trusts. At the same time, there is a risk of duplicating structures that could already exist in some capacity. Further exploration would be required here.

- The DTI Codes of Good Practice require broad-based ownership schemes to make statutory documents available on request to any participant in the language with which they are familiar, as well as for the financial reports to be presented at the AGM. There are no such requirements for community trusts that are not structured as B-BOS.

- Despite challenges, many organisations including the IDC assert that community trust is an appropriate model for furthering development. Development of standardised best practice guidelines for community trust as well as opportunities for knowledge-sharing across sectors are recommended.

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9. Appendices

9.1. List of questions

1. General

1) Could you give us a very brief overview of your community trust strategy?
2) How does the trust fit into [company name's] overall social performance strategy/SLP plans?
3) In your view, what would you say are the significant learnings from your experience with the trust? What are some of the key lessons that you have learned that you think may be helpful for other trusts?

2. Trust structure

We are interested in how your trusts are set up and how they work together to accomplish their social objectives.

1) Please tell us about your community trust structure. What was the rationale behind how you designed your structure?
2) What is the involvement of the traditional authorities for the trusts?
3) In your experience, what are the pros and cons of your particular structure?
   a) If you had the opportunity to design the trust structure, what would you do differently?
4) Have you seen any other structures that you feel are working well? How are they structured, and why do you think they work well?

3. Project management and Implementation

1) How does your trust identify and define its beneficiaries and permitted activities?
2) (General) In terms of the trust's community projects, what criteria are used for project selection?
   a) Is there a standard funding procedure that guides the types of funding requests that will be accepted by the trust?

b) How do you obtain input from the community?
3) Please tell us about how your trusts implement the approved projects.
   a) Does the trust have an internal team that implements the projects? Do you outsource the function?
   b) What support or infrastructure is needed to successfully implement the projects in line with approval and expectations?
   c) How does the trust ensure that they have the necessary resources to successfully implement the projects? Does the sponsor company provide any support?

4. Supervision and monitoring

1) How do you manage and monitor the funded projects? What has worked for you and what hasn't worked for you?
2) What controls, policies, processes do you have to ensure trustee accountability and that trust activities are reported regularly to their respective communities?
   a) Do you have any mechanisms or provisions (e.g. suspension of payments, other rights of intervention) in case of trust governance breaches or operational mismanagement?

5. Trustee composition, appointment, and remuneration

1) (General) Could you tell us the composition of your board of trustees?
   a) Do you have any independent trustees? How many of them are there out of the entire board of trustees?
   b) How are Amakhosi and Traditional Councils incorporated into trust management/ governance?
2) (General) How are the trustees appointed?
   a) How are the communities involved, if they are involved?
   b) How are the traditional leaders/councils

involved, if they are involved?

   c) Does the sponsor company have the right to appoint trustees?

   d) What qualifications do you require from their trustees? [Are there any skills that you believe need to be strengthened?]

3) Do you have an induction programme for newly appointed trustees?

4) Are trustees trained on a regular basis? In which areas?

5) How do you determine the trustee fees?

   a) Do you benchmark them? If so, how often and again what?

6. Closing

Do you have any last thoughts? Perhaps any other insights that we missed that could be helpful for other trusts?

9.2. Overview of benchmarked trusts

1. Lefa La Rona (Project Alchemy)

Founding entity	Anglo American Platinum	**Year Established**	2011
Legal form	Trust with (Section 30 PBO registration)	**Geography**	Northwest, Lesotho, Mozambique, Eastern Cape
Size	R2-billion (value of shares at vesting)	**Project focus**	Community empowerment and sustainable development
Trust structure / Operating model	Decentralised structure: Top-down "development facilitator" model	**Independent director**	Founding: Up to 2 Independent: 1 Community: Up to 5
Overview	Launched in 2011, Project Alchemy is a R3.5-billion community development and empowerment transaction to provide equity ownership to mine host communities around four operations and labour sending areas of Anglo American Platinum. The Lefa La Rona Trust acts as a conduit to four other Development Trusts and the Zenzele Itereleng Non-Profit Company (NPC). The Development Trusts drive community development in each of the benefit areas.		

2. Exxaro Matla Setshabeng Development NPC

Founding entity	Exxaro	**Year Established**	2020
Legal form	NPC	**Geography**	Mpumalanga, limpopo and Kwazulu Natal
Size	R60-million annual dividend (2020)	**Project focus**	Anti-poverty initiatives; healthcare services to poor and needy persons; education and training programmes
Trust structure / Operating model	Single trust: Bottom-up approach	**Trustee composition**	Founding: 3 Independent: 2
Overview	In May 2020, Exxaro sold 5% of its shares held in Eyesizwe to Exxaro Matla Setshabeng Development NPC. The share purchase was funded utilising contributions received from the participating Exxaro business units. The NPC is a non-profit company established for the benefit of communities in areas where Exxaro and its subsidiaries operate. An additional donation of R30-million was made by Exxaro to Exxaro Community NPC to fund the first project focused on aiding communities negatively impacted by COVID-19.		

3. SIOC-CDT

Founding entity	Kumba Iron Ore	**Year Established**	2006
Legal form	Trust with (Section 30 PBO registration)	**Geography**	Northern Cape & Limpopo
Size	R5.1-billion Annual program: R126-million	**Project focus**	Education and skills development, enterprise development and social welfare.
Trust structure / Operating model	Centralised structure; Hybrid operation	**Trustee composition**	Founding: 5 Independent: 4 Community: 4
Overview	SIOC-CDT was established in 2006 by Kumba Iron Ore Limited to invest in the development of the communities in which the company operates. It adopted a centralised structure where SIOC-CDT has developed capacity, processes and robust governance to manage community projects centrally. SIOC-CDT also has an investment arm which is mandated to invest 30% of the funding for long-term capital growth.		

4. AECI Community Education and Development Trust

Founding entity	AECI Ltd	**Year Established**	2012
Legal form	Trust	**Geography**	Northern Cape, Limpopo, Gauteng, Free State, Mpumalanga
Size	3.5% ordinary share capital	**Project focus**	Education, skills development, the environment, and food security
Trust structure / Operating model	Centralised structure	**Trustee composition**	Founding: 2 Independent: 3 Community: 0
Overview	The AECI Community Education and Development Trust was established as part of AECI's B-BBEE transaction in 2012. The Trust is a 3,5% shareholder in AECI and its primary objective is to support the sustainable socio-economic empowerment of vulnerable communities in South Africa.		

5. Fricker Road Trust and Boleng Trust

Founding entity	Assore Ltd	Year Established	2011
Legal form	Trust	Geography	Limpopo, North West, Northern Cape
Size	Fricker Road Trust: R33.4-million (2019 annual dividend) Boleng Trust: R49.3-million (2019 annual dividend)	Project focus	Health & Social Development; Education & Skills Development; Economic Development; Food Security, Public & Community Services; Public & Community Utilities; Land, Agriculture & Environment and Sports.
Trust structure / Operating model	Merged group. The trust has no dedicated staff members and relies on the sponsor company for services and facilities	Trustee composition	Founder: 2 Independent: 4
Overview	The Boleng and Fricker Road trusts (the trusts) have been established for the benefit of HDSAs and broad-based HDSA community groupings residing in the areas in which the Assore group's mines and beneficiation plants are located. Since the objectives of the trusts are very similar and they have the same trustees.		

6. Enel Green Power Community Trusts

Founding entity	Enel Green Power	Year Established	2009-2014
Legal form	Trust (PBO registration not known)	Geography	Operational areas
Size	Not yet receiving dividends	Project focus	To be determined by each board of trustees
Trust structure / Operating model	Multiple trusts	Trustee composition	Founder: 1 BEE partner: 1 Independent: 4 Community: 1
Overview	Each project has a community trust with the aim of sharing ownership in each project company with the host community. A dedicated SPV takes loans on behalf of the community, with dividends flowing through to the trusts. The trusts are not yet receiving dividends but will do so once the loans are repaid.		

7. Hotazel Manganese Mine Education Trust

Founding entity	South32 Ltd	**Year Established**	2009
Legal form	Trust (with Section 18A PBO registration)	**Geography**	John Taolo Gaetsewe District, Northern Cape
Size	Dividends of R14.3-million for the period 2013–2015; R91-million for 2021; and a projected R114-million for 2022	**Project focus**	Education and skills development
Trust structure / Operating model	Centralised structure, outsourced management and administration	**Trustee composition**	Founder: 1 Independent: 5
Overview	HMMET was established in 2009 as part of an empowerment deal to introduce Black shareholding into Hotazel Manganese Mines (Pty) Ltd. There are four empowerment partners which own a total of 26% in the Hotazel Manganese Mine, one of which being HMMET, which owns a 5% stake in the mine. The trust exists to uplift historically disadvantaged persons in communities near the mine - specifically John Taolo Gaetsewe District, with a particular focus on Joe Morolong Local Municipality, in the Northern Cape. HMMET invests in education and skills development in the target communities with the vision of opening up diverse learning opportunities for individuals and communities and ultimately enhancing their chances of success in finding work, starting and sustaining businesses, improving the quality of their lives, and progressing into other post-school institutions.		

8. Ponahalo/De Beers Trusts

Founding entity	De Beers Consolidated Mines (DBCM)	**Year Established**	2005
Legal form	Trust (with Section 18A PBO registration)	**Geography**	John Taolo Gaetsewe District, Northern Cape
Size	R3.8-billion (transaction value) R5-million annual budget	**Project focus**	Women, people with disabilities, community development
Trust structure / Operating model	Multiple trusts; shared board of trustees	**Trustee composition**	Founder: 2 BEE partner: 2 Independent: 1
Overview	Ponahalo is a BEE entity that owns 26% of DBCM. Of that 26%, 50% is owned by Ponahalo Investment Holdings and the remainder by trusts benefitting De Beers employees. Three broad-based trusts collectively own 45% of Ponahalo Investment Holdings: the Ponahalo Women's Trust (17.5%), the Ponahalo Disabled Persons' Trust (10%), and the Ponahalo Community Trust (17.5%). The original agreement also held that Ponahalo would set aside R50-million in aggregate over the first 10 years to flow directly through to the trusts, in priority to debt service. As of 2014, Ponahalo also owns 26% of De Beers Sightholder Sales South Africa (DBSSSA). The trusts are still indebted and operate on a trickle dividend.		

9. Mzimela Nkonjane Community Development Trust

Founding entity	Ingonyama Trust	**Year Established**	N/A
Legal form	Trust	**Geography**	KwaZulu-Natal
Size	Unknown	**Project focus**	No unified strategy
Trust structure / Operating model	Centralised	**Trustee composition**	10 trustees
Overview	The Mzimela Nkonjane Community Development Trust (Mzimela Trust) was set up by the previous chief. The main driver for setting up this Trust was to access funding from Ingonyama Trust. Currently, organisations such as Lafarge, Vodacom, MTN, Cell C, etc. operate in the Mzimela area and pay rent to the Ingonyama Trust. The Mzimela Trust is able to access their share of the rent from the Ingonyama Trust. 10% of the rent paid over to the trust is reserved for the chief whilst the remaining 90% is split between the community and Ingonyama Trust.		

10. Sibanye-Stillwater trusts

Founding entity	Ingonyama Trust	**Year Established**	2014-2016
Legal form	Trust	**Geography**	North West
Size	Unknown	**Project focus**	No unified strategy
Trust structure / Operating model	Multiple trusts; administrator appointed by trustees	**Trustee composition** (Rustenburg Mine CDT)	Founder: 4 Independent: 0 (2 per deed) Community: 0 (2 per deed)
Overview	Sibanye-Stillwater inherited two trusts when it took over Lonmin, namely the Lonplats Marikana CDT and the Bapo ba Mogale CDT. Rustenburg Mine CDT is the only one set up by Sibanye-Stillwater itself. All three are ownership trusts. The Lonmin trusts retain their historical structures and operate in different ways and cannot easily be categorised in the same way as the Rustenburg trust. The Rustenburg Mine CDT composition is given above; Lonplats Marikana CDT has one founder trustee and the remainder are ward councillors; and Bapo ba Mogale CDT has one founder trustee and a number of trustees representing the royal family and the traditional council.		

9.3. Comparison of RBM against best practices

	Best Practices	RBM
1	**Purpose-driven approach**	
	Clear purpose	The CDTs and PBTs have their purpose defined in their trust deeds. The purpose of the CDTs is to acquire and hold shares and other assets for the benefit of the beneficiaries. The purpose of the PBTs is to carry on one or more of the PBAs in a non-profit manner for the benefit of the beneficiaries. In the broader sense of understanding the role the trusts intend to play in the community, this could stand to be more thoroughly defined as part of developing a strategy.
	Project design and implementation approach based on a clear long-term strategy	There is no unified strategy and only some trusts appear to have developed a strategy. Selection criteria are not clear.
	Clear, objective definition of "the community" and beneficiaries	"The community" is defined geographically in the trust deeds. The beneficiaries are also defined. A potential gap is determining who constitutes a "member of the community".
	Financial sustainability	There do not appear to be financial sustainability plans to sustain the trusts beyond life of mine.
2	**Strong governance and oversight**	
	Trustees with a combination of complementary skills and an appropriate profile	Trustees are selected by Amakhosi. They tend to lack the necessary skills and experience, e.g. accounting and legal.
	Benchmarking of trustee fees	Fees are not benchmarked.
	Board with financial and legal skills	At present, community trustees appear to be selected not based on specific skills.
	Oversight by founding company including founder trustee representation	Founder trustees are not currently part of each trust's board. Oversight mechanisms (e.g., reporting to the founder company before dividends are released) have not been functioning effectively.
	Good balance between independent and founder trustees (as well as community trustees where appropriate)	There are no founder trustees or strictly independent trustees.
	Minimum and maximum number of trustees and composition specified in the trust deed	Each deed specifies the minimum and maximum number and that 25% of trustees must be women.
	Clear separation of powers between trustees and staff	No separation.

	Formal induction and training for trustees	RBM initially appointed an administrator and trained trustees. At present there is no consistent induction and training.
	Audited annual financial statements	The trust deeds require that audited financial statements be supplied annually before dividends can be released to the trust; however, this has not been upheld consistently across all trusts.
3	**Independence**	
	Independent trustee	No independent trustee.
	Trust independent and not unduly influenced by founding company	The trust is independent and not influenced by the founding company.
4	**Sufficient capacity**	
	Internal capacity management of projects	Some trusts have appointed administrators. The trusts do not have extensive internal capacity.
	Internal capacity at the board level	The trustees are "volunteers" who cannot necessarily (and do not necessarily have the skills) to support implementation or manage the trusts' affairs.
5	**Intentional community engagement and involvement**	
	Consistent, transparent, and deliberate community engagement	RBM has identified a gap here. Communities do not have a good understanding of what the trusts are doing and there is limited transparency.
	Clear and well-defined community involvement	The CDTs are required in the trust deed to hold community meetings once per year. At present it does not seem that these meetings are taking place or that community input and feedback is sought.
	No direct or preferential benefit for any special interest group	The trust deeds provide for benefit to Inkosi and Inkosi's immediate family.
6	**Robust monitoring & evaluation**	
	M&E process in place	There is no M&E process. No external or internal M&E capabilities.
	M&E of projects embedded into the project planning	Currently no M&E is conducted.

9.4. Consent form

**Community trust benchmarking exercise
Participant consent form**

Tshikululu is conducting a benchmarking study on community trusts in South Africa. The purpose is to explore how trusts in different sectors are resourced and structured, how they function, and lessons learned in these areas. You have been invited to participate in a key informant interview as part of this project.

- I voluntarily agree to participate in this interview.
- The interview will take place via MS Teams and will be recorded by default. I may, however, opt out of being recorded.
- I understand that I can withdraw at any time or refuse to answer any question without any consequences.
- I understand that I can withdraw permission to use data from my interview within one week after the interview, in which case the material will be deleted.
- I understand that Tshikululu may use this data in this and related research projects into community trusts. All confidential data will be anonymised.

Name:

Signature:

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