

Appendix II: Information on asset locks

An asset lock is intended to protect the assets of an organisation for its community or public purpose, rather than for any private or personal gain of the members of the organisation. The strength of the asset lock differs depending on the legal structure used and some are easier to break than others.

Consideration should be given to the value of the assets held by the organisation; how important it is to protect those assets and what measures a particular structure permits to protect those assets from distribution among the members.

Legal structure	Legal entity	Governing documents	Type of asset lock	Comment	Overriding the asset lock	Comment
Unincorporated association	No separate legal entity. Assets (and liabilities) belong to the members.	Members agree their own constitution or rules.	Rules may include requirement to protect the asset for community benefit. This would be a voluntary asset lock.	If the members can make the rules, they can amend the rules. However, it can also be written into the rules that a large majority of members must agree such a change.	Member decision. Insolvency or liquidation.	The members own the assets (and liabilities) and would be personally liable to creditors if the trust were unable to pay its debts.
Trust	No separate legal entity. Assets (and liabilities) belong to the trustees.	Trust Deed.	The Trust Deed specifies that assets must be used in the interest of beneficiaries. This would be a voluntary asset lock.		Insolvency or liquidation.	The trustees own the assets (and liabilities) and would be personally liable to creditors if the trust were unable to pay its debts.

Legal structure	Legal entity	Governing documents	Type of asset lock	Comment	Overriding the asset lock	Comment
Company Limited by Guarantee	Company. Members' liability limited to small amount, as defined in the Articles of Association.	Memorandum and Articles of Association (Mem&Arts).	A requirement can be written into the Mem&Arts, stating that assets must be used for specific community benefit and if the company is dissolved, assets must be transferred to another organisation that has a similar asset lock. This would be a voluntary asset lock.	If the members can make the rules, they can amend the rules. However, it can also be written into the rules that a large majority of members must agree such a change.	Insolvency or liquidation.	

Legal structure	Legal entity	Governing documents	Type of asset lock	Comment	Overriding the asset lock	Comment
Community Interest Company (CIC)	Company with limited liability, with additional regulation to ensure community benefit.	Constitution. CICs can be companies limited by guarantee or by shares.	An asset transfer out of the CIC can only be made if it is for full market value; it is made to another asset-locked body specified in the Articles of Association; it is made to another asset-locked body with the consent of the Regulator or it is made for the benefit of the community. This would be a statutory asset lock, regulated by the Community Interest Companies Registrar.	Land, buildings or other physical assets can be sold at full market value if the CIC board reasonably decides that it is the best way to ensure community benefit.	CIC assets can be returned to members who are themselves asset locked bodies. Assets may be used as collateral, which could mean that the assets must be sold to repay debts.	Partial asset lock in that CICs limited by shares can pay limited dividends to shareholders.

Legal structure	Legal entity	Governing documents	Type of asset lock	Comment	Overriding the asset lock	Comment
Industrial & Provident Society (Co-operative Society)	Corporate society with limited liability.	Rules, accepted by and registered with the Financial Conduct Authority.	Most co-operative societies adopt a voluntary asset lock in their rules.	There is scope to specify that these rules are fundamental to the society by requiring a higher voting threshold to change these rules.	There is no legal mechanism to entrench these rules to prevent them from being changed under any circumstance.	
Community Benefit Society (CBS)	Corporate society with limited liability.	Rules, accepted by and registered with the Financial Conduct Authority. CBSs with an asset lock are called 'prescribed community benefit societies'.	CBSs may choose to adopt an asset lock, known as a 'restriction on use' of the society's assets. This prevents the CBS from transferring its assets to any other person or company apart from one with a similar asset lock. This would be a voluntary asset lock.	There is scope to specify that these rules are fundamental to the society by requiring a higher voting threshold to change these rules. Land, buildings or other physical assets can be sold at full market value if the CBS board reasonably decides that it is the best way to ensure community benefit.	There is no legal mechanism to entrench these rules to prevent them from being changed under any circumstance. A CBS facing insolvency may be wound up and its assets disposed of to repay creditors.	Unlike CICs limited by shares, CBSs cannot receive dividends or a share of the profits, which must be retained to further the objects of the society.

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Charity 'Wrapper' round different legal entities	<p>There are four main legal forms that a charity may take:</p> <ul style="list-style-type: none"> - Trust - Unincorporated association - Company Limited by Guarantee - Charitable Incorporated Organisation. 	<p>Trust deed Constitution or rules.</p> <p>Memorandum & articles of association.</p> <p>Constitution.</p>	Statutory asset lock, regulated by the Charity Commission.	<p>Some governing documents contain a clause that expressly prohibits the trustees from disposing of land or buildings. Some charities hold land that is designated for particular uses, such as a recreation ground, almshouse, church or school.</p>	<p>Trustees can sell or lease property if the sale is in the charity's best interests and the property is not designated for a particular purpose that would not be served if the sale or lease goes ahead. The value of the asset must return to the charity.</p>	

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Community Land Trust (CLT) 'Wrapper'	A CLT must be a corporate body, such as a community benefit society, Community Interest Company limited by guarantee or Company Limited by Guarantee.	Depends on the legal structure (details above).	Statutory asset lock, defined by section 79 of the Housing and Regeneration Act, 2008.	It must be established for the express purpose of furthering the social, economic and environmental interests of a local community by acquiring and managing land and other assets in order to provide a benefit to the local community. It must ensure that its assets are not sold or developed except in a manner which the members think benefits the local community.	CLT members can decide to sell or lease property if it furthers the social, economic and environmental interests of the local community. The value of the asset must return to the CLT.	A CLT must be set up so that individuals who live or work in the specified area have the opportunity to become members (in addition to those people who benefit directly from the CLT's housing assets).