

# Reviewing sanctions and counterterrorism clauses in donor agreements

## TOOL 8

Your organisation must review each grant agreement thoroughly before signing to ensure you are aware of what the agreement contains, regardless of whether you have signed previous agreements with that donor in the past. Donors are not obliged to inform partners when they introduce new language or change the wording of sanctions and counterterrorism clauses. Additionally, sanctions and counterterrorism clauses are not always found in the sections of grant agreements where you might expect them and are sometimes prerequisites for funding inserted in the pre-negotiation or proposal submission phase. A complete review, which might include searching the agreement for relevant terms, helps you ensure that you have identified any problematic language in time to seek clarity from the donor or to try and renegotiate the wording. Additional information on sanctions and counterterrorism compliance for humanitarian organisations may be issued in other documentation from donors but not included in grant agreements, for example, official guidance, FAQs, or interpretation notices.

### Questions to consider

**The following checklist is not exhaustive, but highlights some of the questions you can consider when reviewing an agreement:**

- ✓ Does the agreement refer to international conventions or treaties, United Nations Security Council (UNSC) resolutions, donor policies, domestic or international laws or donor state regulations?
- ✓ Does the sanctions/counterterrorism clause include the terms “intent”, “knowledge”, “knowingly” or “reasonableness”?
- ✓ Does the clause include language that is vague or unclear, such as “associated with” or “directly or indirectly”?
- ✓ Would you be required to screen staff, contractors, partners or beneficiaries against lists of persons or entities designated under sanctions or counterterrorism measures? [Note that this requirement might not be stated expressly but could be inferred from obligations to ensure that funds or assets do not reach designated persons or entities].
- ✓ Does the grant agreement reference relevant humanitarian exemptions or licenses in international, regional, and domestic legislation if they exist?
- ✓ Does the grant agreement require you to report to the donor on any transfers to designated or sanctioned actors, even if permitted by relevant humanitarian exemptions?
- ✓ Would you be required to vet staff, partners or beneficiaries – i.e. share personal information with the donor?
- ✓ Does the agreement include specific requirements or language on the recruitment of staff?

- ✔ Does the sanctions/counterterrorism clause oblige you to incorporate the same clause in any sub-agreements with partners?
- ✔ Would complying with the agreement impede your ability to adhere to the humanitarian principles?
- ✔ Would complying with the sanctions/counterterrorism clause affect your acceptance among affected populations and parties to the conflict?
- ✔ Would you be unable to give staff and partner organisations clear instructions about how to comply with the obligations?

## If the answer to any of the questions above is “yes”

### 1 Clarify the obligations and terms of the partnership agreement

- ✔ Consult internally with your senior management, policy advisers, legal personnel and others.
- ✔ Consult an external legal adviser for an interpretation of the clause.
- ✔ Based on this information, consider developing a note to file outlining an internal interpretation of the clause.
- ✔ Consult other organisations that receive funds from the same donor or partner.
- ✔ Ask the donor or partner for its own interpretation of the clause, the degree of liability inferred and the nature of obligations to ensure compliance, bearing in mind that the donor’s interpretation is likely to be as restrictive as possible.

### 2 Negotiate the terms of the agreement

As a result of the above consultations, you may choose to negotiate the terms of the partnership agreement. This decision should be agreed upon by your senior management, policy advisers, legal personnel and other relevant departments.

- ✔ Identify areas of potential conflict between the terms of the agreement and your organisation’s policies, operational capacity and humanitarian principles.
- ✔ Reference relevant humanitarian exemptions or licenses in international, regional, and domestic legislation if relevant.
- ✔ Establish a position on which terms of the agreement are acceptable or unacceptable.
- ✔ Clarify the above position with the donor or partner.
- ✔ Share existing or planned risk management policies and practices.

**If the answer to any of the initial questions is still “yes” after negotiation, your organisation’s management will have to assess the risks and liability involved for your organisation, your potential partners and sub-contractors and other humanitarian organisations before deciding whether to sign the agreement. The [go/no-go checklist](#) is an additional tool that could help guide any such decision.**