

REVIEWING COUNTERTERRORISM CLAUSES

TOOL 3

INTRODUCTION

Each grant agreement should be reviewed thoroughly before signing, regardless of whether your organisation has signed agreements with that donor in the past. Donors might not inform partners when they introduce new counterterrorism clauses or change the wording of existing clauses. Additionally, counterterrorism clauses are not always found in the sections of grant agreements where you might expect them. A complete review, including staff from across the organisation such as partnership advisers, legal advisers and programme managers helps ensure that any problematic language is identified in time to seek clarity from the donor or to try and renegotiate the wording. It should be noted that not all donor-imposed counterterrorism requirements appear in grant agreements. Other documents and information required by the donor, including as part of proposal submission, should also be considered.

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, UNSC resolutions, donor policies, domestic or international laws or donor state regulations?
- ✓ Does the 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 vet or screen staff, partners or beneficiaries against lists of designated terrorist groups?
- ✓ Does the agreement include specific requirements or language on the recruitment of staff?
- ✓ Does the counterterrorism clause oblige you to incorporate the same clause in any sub-agreements?
- ✓ Would complying with the agreement impede your ability to adhere to the humanitarian principles?
- ✓ Would complying with the counterterrorism clause affect your acceptance among affected populations and parties to the conflict?

- ✓ What would the impact on beneficiaries be if your organization does not accept the agreement, or if it does accept and agrees to comply with the clause?
- ✓ 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 obligations to ensure compliance, bearing in mind that this interpretation may be as strict as possible.

2 Negotiate the terms of the agreement

As a result of the above consultations, you may choose to negotiate terms of the partnership agreement. This decision should be agreed 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.
- ✓ 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”

If the answer to any of the initial questions is still “yes” after negotiation, the organisation’s management will have to assess the risks and liability involved for the organisation and its staff, its potential partners and sub-contractors and other humanitarian organisations. These risks should be weighed against potential risks to the organisation’s humanitarian objectives before a decision is taken regarding whether to sign. The [go/no-go checklist](#) could help to guide any such decision.