PRIZE PROMOTIONS AROUND THE WORLD

Full Handbook
# TABLE OF CONTENTS

About Prize Promotions around the World .................................................. 2
Argentina ........................................................................................................ 4
Australia ......................................................................................................... 9
Austria ........................................................................................................... 28
Belgium ......................................................................................................... 34
Brazil ............................................................................................................ 40
Canada ......................................................................................................... 46
Chile ............................................................................................................. 51
China ............................................................................................................. 57
Colombia ...................................................................................................... 65
Czech Republic ............................................................................................. 71
Denmark ....................................................................................................... 76
Finland ......................................................................................................... 83
France .......................................................................................................... 88
Germany ..................................................................................................... 98
Hong Kong ................................................................................................. 106
Hungary ....................................................................................................... 113
India ............................................................................................................. 118
Ireland ......................................................................................................... 125
Italy .............................................................................................................. 134
Japan ........................................................................................................... 140
Luxembourg ................................................................................................. 145
Mexico ......................................................................................................... 152
Netherlands ................................................................................................. 160
New Zealand ............................................................................................... 166
Nigeria ......................................................................................................... 171
Norway ....................................................................................................... 175
Poland ......................................................................................................... 182
Portugal ....................................................................................................... 188
Romania ..................................................................................................... 195
Russia ......................................................................................................... 201
Saudi Arabia ............................................................................................... 205
Singapore .................................................................................................... 210
South Korea ................................................................................................. 219
Spain .......................................................................................................... 223
Sweden ....................................................................................................... 228
Thailand ...................................................................................................... 234
Turkey ......................................................................................................... 239
Ukraine ....................................................................................................... 244
United Arab Emirates - Dubai ................................................................. 250
United Kingdom .......................................................................................... 256
United States .............................................................................................. 263
ABOUT

Welcome to the fourth edition of DLA Piper’s popular Guide to Prize Promotions Around the World. Prize promotions remain a popular marketing tool used globally by businesses to attract customers. The internet and various social media platforms make this an attractive, cost efficient means of reaching a large, multi-jurisdictional customer base; but it is not without its legal challenges.

This handbook is designed to equip our clients with a useful tool to assist them with the management of the early development stages of a promotion, and to bring potentially problematic issues to their attention as soon as possible.

NEW FEATURES AND TRENDS

In response to client demand, this fourth edition of the Guide has been expanded to cover 39 jurisdictions which count among the most significant for our clients, with the addition of Denmark, Hungary, Nigeria and Turkey.

As our interactive map shows, the extent of regulation and sanctions in this area is on the rise, with the most noticeable change being brought about by the introduction of GDPR across the EU. GDPR extends obligations around handling promotion entrants’ personal data (eg for winner publicity, use of promotions to generate marketing leads and use of UGC entries containing personal data), and introduces the possibility of huge fines for breaches of those obligations.

ABOUT OUR GLOBAL ADVERTISING AND MARKETING TEAM

The DLA Piper global advertising and marketing team is well-versed in handling complex, frequently multi-jurisdictional compliance projects. This includes advising on compliance aspects of international prize promotions, which we are often asked to clear across large numbers of jurisdictions, while working to short deadlines.

More broadly, our global advertising and marketing team is able to support the full range of advertising-related work, from copy clearance to dealing with advertising regulators and litigation, to negotiating advertising and sponsorship deals, to e-privacy issues and ad-tech. Our advertising and marketing lawyers offer deep understanding of the advertising and media industries, and combine this with a sophisticated approach to cross-border working.

DISCLAIMER

This Guide is not a substitute for legal advice. Nor is it intended to be an exhaustive guide to all rules and regulations relating to promotions in the jurisdictions covered, or to cover all aspects of the legal regimes surveyed, such as specific sectoral requirements. Rather, it aims to simplify what are often complex provisions into a more manageable summary and to highlight areas of potential concern to promoters. It is current as at the last modified date stated in each section.
ARGENTINA

Last modified 08 January 2019

GOVERNING LAW

What are the main applicable governing laws or codes for prize promotions?

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<thead>
<tr>
<th>Name</th>
<th>Law or Code?</th>
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<tbody>
<tr>
<td>The Civil and Commercial Code of the Argentine Republic ('CC Code')</td>
<td>Code</td>
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<tr>
<td>The Commercial Loyalty Law (Law number 22,802 as amended)</td>
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<tr>
<td>Customers’ Protection Law (Law number 24,240 as amended)</td>
<td>Law</td>
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<tr>
<td>Personal Data Protection Law (Law number 25,326 as amended)</td>
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<tr>
<td>Decree 961/2017 and Resolution 915/2017 (of the Secretariat of Commerce modified the regulations of the conditions for those who organize or promote contests, draws and sweepstakes with the aim of simplifying certain formalities)</td>
<td>Law</td>
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</table>

Note: Prize promotions regulations in Argentina are the responsibility of each province. Argentina is subdivided into twenty-three provinces (provincias) and one autonomous city, the City of Buenos Aires. Even though the provinces and the City of Buenos Aires exist under a federal system, they have their own constitutions, and local regulations. Organisers/sponsors must be aware of the applicable legislation for the provinces included within the territory.
EXTRA-TERRITORIALITY

Do national regulators enforce rules against entities operating abroad?

Yes. Even when a chance-based game or skill-based contest is solely online and no promotion takes place in Argentina, if it is open to Argentinean residents, it will be subject to the laws of our country. As a consequence, national regulators might enforce rules against organizers/companies operating abroad.

SKILLS COMPETITIONS

Can a prize promotion be run that is based on skill?

Yes, but ensure that:

- The purchase of a product or service is not a requirement in order to be able to participate in the promotion; the elements required to enable a person to participate should be made available for free to anybody willing to participate;
- No element of chance should be used to determine the winner of the promotion;
- The Rules are available in Spanish; and
- You disclose information regarding prizes, territorial scope and participation requirements.

PRIZE DRAWS

Can a prize promotion be run where there is an element of chance in the selection of the winner?

Yes, but ensure that the purchase of a product or service is not a requirement in order to be able to participate in the promotion. The elements needed to enable a person to participate must be made available for free to anybody willing to participate.

SELECTION OF WINNERS

Are there any requirements for the selection of winners and award of prizes?

The terms and conditions of the promotion must be made available to the public and the process through which the winners shall be determined needs to be clearly established, including dates and place where the process will take place. It is suggested that the process be supervised by a Notary Public.

If the awards are to be determined by chance, the mathematic adjudication used to determine the winner needs to be provided; if this is not possible, an approximate estimation of it needs to be provided.

The names of the winners shall be published within ten (10) days, counted from the end of the promotion, by the same media used to promote the contest/promotion.

The terms and conditions should indicate date and place where the prizes will be delivered.
JUDGES

*Are there any particular requirements in relation to judges or judging for skills competitions?*

There are no legal requirements in relation to judges and judging in skill competitions. However, the judging criteria should be clearly stated within the Rules and it’s advisable to include the list of judges.

PRIZES

*Are there any restrictions on the prizes awarded?*

Prizes awarded must be as described in their marketing communications, or reasonably equivalent to the description.

No forbidden and/or illegal goods should be awarded as prizes.

REGISTRATION REQUIREMENTS AND FEES

*Are there any registration requirements, or any fees/taxes payable?*

Note that in February 2018, the government of Argentina dissolved the National Lottery (LNSE). As a result, at least for now, Argentina no longer requires sweepstakes and contests to be registered. Prior to the dissolution, only promotions/contests in which the winners were totally or partially determined by chance – involving prizes greater than 6,666 Pesos (approx. US$148) – needed to be registered with LNSE and had to meet all the applicable requirements.

With regard to skill-based contests, they do not require registration. However, the Official Rules must conform to local law. When a prize is awarded to a winner selected by chance a 31% special tax is levied. If the prize is cash, the entity awarding it must withhold and pay for the tax. If the prizes are goods the beneficiary must provide the entity awarding the prize the amount of money requested to pay for the special tax. Specific provincial taxes may apply in different jurisdictions.

OTHER LOCAL REQUIREMENTS

*Are there any other key local requirements?*

Promoters must provide certain and detailed information in relation to the prize promotion, including the essential characteristics of the prizes offered, and any other relevant terms.

Conditions expressed in advertisements, brochures, circular letters or any other media are considered to be included in the contract concluded with the consumer, as binding terms.

In such respect, Organisers must comply with the requirements as established by Decree 961/2017 and Resolution 915/2017 of the Secretariat of Commerce.

TIMING

*Is time required to ensure compliance (other than reviewing the terms and conditions)?*

For chance-based promotions, time is required to request the permit from the Provinces that regulate
contests/promotions at a local level. Time and costs involved may vary depending on the Province.

Note that Provinces regulating promotions/sweepstakes at a local level can be excluded in order to avoid compliance with local regulations.

TRANSLATIONS

Are the terms required to be translated by law?

Yes, the terms and conditions must be provided in Spanish.

PENALTIES FOR NON-COMPLIANCE

What are the penalties for non-compliance?

According to the Commercial Loyalty Law, the penalties for non-compliance are the following:

- Fines from AR$500 (approximately US$11) to AR$ 5,000,000 (approx. US$111,000);
- Suspension for up to 5 years from the providers registries that allow promoters to conclude contracts with the State;
- Loss of concessions, tax or special credit benefits;
- Closure of the facility for up to 30 days.

According to the severity of the breach, and if it is convenient, publication of a notice of the penalty in the same media may occur.

In case of fraud, criminal actions may be initiated.

RESTRICTIVENESS OF REGULATIONS

How restrictive are the legal obligations applicable to prize promotions?

Due to the recent dissolution of the National Lottery there are only a few restrictions on prize promotions in Argentine national regulations. However, as previously mentioned, some provinces like Mendoza, Córdoba, Salta, Neuquén and Tierra del Fuego have their own local regulations. In addition, forbidden acts under the Competence Defense Law must be avoided. Advertisements that contain false indications, lead or could lead to mistake and/or are abusive, discriminatory, or lead the consumer to behave in a dangerous or harmful way, must be avoided as well.

REGULARITY OF SANCTIONS

How frequently does the regulator impose serious sanctions for non-compliance?

Fines and prison sentences are rarely imposed.

Generally, in cases of breach, a complaint is submitted to the Consumer’s Defense Office, where a monetary sanction can be applied to the non-compliant entity, and it can also be requested that the
misleading advertisement be deleted.

KEY CONTACTS

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GOVERNING LAW

What are the main applicable governing laws or codes for prize promotions?

In Australia, Prize Promotions are governed by State and Territory legislation. The laws and codes that will apply to a prize promotion will depend on where the Prize Promotion is advertised and made available to entrants. If a Prize Promotion is to be advertised nationally, the promoter will need to ensure compliance with the laws and codes in each State and Territory. A promoter may be required to obtain permits in more than one State or Territory.

Australian Capital Territory

<table>
<thead>
<tr>
<th>Name</th>
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<tbody>
<tr>
<td>Lotteries Act 1964 (ACT)</td>
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<tr>
<td>Gambling and Racing Control (Code of Practice) Regulation 2002</td>
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New South Wales

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<tr>
<th>Name</th>
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<tr>
<td>Lotteries and Art Unions Act 1901 no 34 (NSW)</td>
<td>Law</td>
</tr>
<tr>
<td>Licensing and Registration (Uniform Procedures) Act 2002 (NSW)</td>
<td>Law</td>
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<tr>
<td>Lotteries and Art Unions Regulation 2007 (NSW)</td>
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Northern Territory
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<tr>
<th>Name</th>
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<tr>
<td>Gaming Control Act 2000 (NT)</td>
<td>Law</td>
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<tr>
<td>Gaming Control (Community Gaming) Regulations 2011 (NT)</td>
<td>Law</td>
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<tr>
<td>Northern Territory Code of Practice for Responsible Gambling</td>
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**Queensland**

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<tr>
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<tr>
<td>Charitable and Non-Profit Gaming Act 1999 (QLD)</td>
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**South Australia**

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<th>Name</th>
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<tr>
<td>Lottery and Gaming Act 1936 (SA)</td>
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<td>Lottery and Gaming Regulations 2008 (SA)</td>
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**Tasmania**

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<th>Name</th>
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<tr>
<td>Gaming Control Act 1993 (TAS)</td>
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<td>Gaming Control Regulations 2004 (TAS)</td>
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**Victoria**

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<th>Name</th>
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<tr>
<td>Gambling Regulation Act 2003 (VIC)</td>
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<td>Gambling Regulation Regulations 2005 (VIC)</td>
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Gambling Regulation Amendment Regulations 2012 (VIC) | Law

WA

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<tr>
<th>Name</th>
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<tr>
<td>Gaming and Wagering Commission Act 1987 (WA)</td>
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<td>Gaming and Wagering Commission Regulations 1988 (WA)</td>
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Australia

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<tr>
<th>Name</th>
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<tr>
<td>Australian Consumer Law (ACL), set out in Schedule 2 of the Competition and Consumer Act 2010 (Cth)</td>
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<td>Privacy Act 1988 (Cth)</td>
<td>Law</td>
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<tr>
<td>Spam Act 2003 (Cth)</td>
<td>Law</td>
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<tr>
<td>Do Not Call Register Act 2006 (Cth)</td>
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EXTRA-TERRITORIALITY

Do national regulators enforce rules against entities operating abroad?

The laws and codes apply where a prize promotion is advertised to, or entry is otherwise available to, persons located in the relevant state or territory, regardless of where the promoter is based.

Given the significant challenges in enforcing penalties against foreign entities, whether the laws and codes are likely to be enforced by the regulators against a foreign promoter is likely to turn on the structure of the promoter, whether the promoter operates in a highly scrutinized industry and the severity of the non-compliance and penalty. Breaches of the laws and code are more likely to be enforced where the foreign promoter has Australian operations or assets, the promoter is in a highly regulated industry (e.g. utilities, financial services or airline), where it is perceived that a multi-national has operated a promotion out of its offshore operations to avoid enforcement of local requirements or where the nature of the infringement is particularly objectionable (e.g. fraud or flagrant repeat non-compliance).

Please note that a foreign entity must have an ABN (Australian Business Number) in order to obtain a
permit in NSW and the prize must be drawn in Australia. In the ACT, the foreign entity must also have an address in Australia. Additionally, for those states and territories that require entities to obtain a permit, their terms and conditions will be subject to the discretion of the relevant regulatory body.

**SKILLS COMPETITIONS**

*Can a prize promotion be run that is based on skill?*

Prize promotions based on skill are permitted in all Australian States and Territories.

Importantly, any such skill competition must comply with Australia’s national consumer law, the Australian Consumer Law (ACL) included in Schedule 2 of the Competition and Consumer Act 2010 (Cth). Under s.18 of the ACL, an entity can be held liable for misleading and deceptive conduct if terms and conditions are not clearly explained and displayed to a customer. To avoid this, the conditions of the promotion must be prepared prior to the commencement of the competition and be clearly displayed for all participants to see during the course of the event. The promotion must then be conducted in accordance with those conditions.

Please see below further requirements particular to each state and territory.

*Australian Capital Territory*

When the determination of the prize winner involves skill only (i.e. no element of chance is involved), an approval and permit is not required.

In this context, ‘skill’ means any competition that involves a decision or input by the participant, such as guessing a sound or number or weight, submitting a description of an item or activity or describing or stating reasons for liking something. Skill may also include any event or competition that is judged by people qualified in a field relevant to the event or competition.

*New South Wales*

A permit is not required for a game of skill whereby the winners are determined by qualified or expert judges, the decision is judged against set criteria and there is no element of chance involved.

*Northern Territory*

A permit is not required if the promotion involves a game of skill which has no element of chance.

*Queensland*

A game of skill which has no element of chance is not regulated and therefore not subject to the Charitable and Non-Profit Gaming Act 1999 (QLD).

However, guessing competitions are considered to be games of chance.

*South Australia*

A competition in which the winners are determined by skill does not come under the Lottery and Gaming Act 1936 (the Act), and therefore does not require a permit. If, however, there is any random element to the prize draw (even where an entrant has answered a game of skill question first, but a
winner is then drawn from all correct entries) a permit is required.

**Tasmania**

A permit is not required if the promotion is a game of skill which has no element of chance.

**Victoria**

A game of skill with no element of chance is not regulated and therefore the Gambling Regulation Act 2003 (VIC) would not apply.

**Western Australia**

A game of skill with no element of chance is not regulated and therefore the Gaming and Wagering Commission Act 1987 (WA) would not apply.

**PRIZE DRAWS**

*Can a prize promotion be run where there is an element of chance in the selection of the winner?*

Trade promotions that involve an element of chance are permitted in all States and Territories of Australia. See below for specific requirements.

**Australian Capital Territory**

A permit is required if the promotion involves distribution of prizes determined by any means that includes an element of chance or a mixture of skill and chance, and entry must be free.

A permit is not required if the only prizes offered are rebates or discounts off goods sold by the business holding the promotion and the promotion is open to all customers of that business (i.e. a ‘private lottery’) or if the total prize value does not exceed:

- A$3,000 (approx. US$2,077) for a Trade Promotion Lottery;
- A$2,500 (approx. US$1,731) for a Raffle;
- A$1,000 (approx. US$693) for a Housie session; and
- A$1,000 (approx. US$693) for a Calcutta event.

However if the prize value exceeds A$3,000 (approx.US$2,077), the business will need to obtain a permit from the ACT Gambling and Racing Commission.

**New South Wales**

A permit is required for all trade promotion lotteries and games of chance conducted in NSW.

Entry must be free. Accordingly, entry into the trade promotion lottery cannot be gained by participants providing anything that has intrinsic value. For example, participants cannot redeem loyalty or reward
points for entry into a trade promotion lottery. However, a trade promotion lottery for which entry is gained by purchasing goods or services at their normal retail value (for example, where proof of purchase is required) is still allowed.

An entrant or other person must not be required to call or message a telephone service on more than one occasion to provide personal information or particulars, or to answer questions, or for any other reason in order to obtain a right to a valid entry into the proposed trade promotion lottery.

Please note it is inappropriate for business directors, management and employees, their immediate families, their retailers, suppliers, associated companies and agencies to participate in a game of chance conducted for their own business –unless the lottery is specifically conducted as an 'in house' lottery (for example among sales staff). Only members and guests of a registered club should participate in a lottery aimed at promoting the business of the club.

**Northern Territory**

A permit is required for the conduct of a 'major' trade lottery (ie where the total prize value is greater than A$5,000 (approx. US$3,463).

Additionally, the Northern Territory recognizes permits issued by other Australian states and territories. If the promoter holds a current permit to run the promotion in New South Wales for example, it will not need to obtain a Northern Territory permit.

Each entry must have an equal probability of winning the major prize.

No employees of the business or family members of those employees may participate in the trade promotion lottery.

**Queensland**

No permit is required but the promotion must comply with certain requirements if it is a game of chance.

A person is not eligible to enter if the person is:

1. A member of the management committee of the eligible association conducting the art union; or
2. Directly engaged in conducting the draw of the art union; or
3. The eligible association conducting the art union; or
4. A member of the immediate family of a person mentioned in (1) or (2).

**South Australia**

A permit is required for a 'major' trade promotion lottery which is where the total value (nationally) of all prizes in the lottery exceeds A$5,000 (approx. US$3,643), or the prizes include both instant and drawn prizes (regardless of the value of the prizes).

A permit is not required for 'minor' trade promotion lotteries (ie "where the maximum prize value is less than A$5,000 (approx. US$3,643)"), however they must comply with the minor trade promotion lottery rules.
Tasmania

No permit or approval is required for trade promotions.

However, if making a purchase is necessary to enter a trade promotion, the following conditions apply:

- the cost of the goods or services must not exceed the prevailing market price; and
- determination of the market price lies with the Commission.

Victoria

No permit or approval is required. However, trade promotions lotteries must comply with conditions set out in Gambling Regulation Act 2003 (Vic) and related regulations.

Please note that a members’ draw is considered a trade promotion lottery and involves the drawing of a member’s number from a pool of numbers. Terms and conditions should be available at the place of entry and to all members. The conditions of entry only require the member to be present at the draw if the entry and draw are to occur on the same day. If a member enters the draw through buying goods or services throughout the week, then the member does not need to be present at the time of the members’ draw.

Western Australia

A permit is not required if the trade promotion lottery complies with the terms and conditions of the blanket permit published on the Department of Racing, Gaming and Liquor’s website (see here). Otherwise a permit will need to be obtained to be able to vary these terms and conditions.

SELECTION OF WINNERS

Are there any requirements for the selection of winners and award of prizes?

There are slightly different requirements in different States and Territories. We have considered these different requirements for each State and Territory and prepared below a high watermark list of the requirements. There are also a small number of requirements which are specific to certain States and Territories and these follow at the end of the common high watermark requirements.

Conduct of draw

The draw must occur within 12 months of the issue date of the permit unless approval has been provided by the relevant authority.

The determination of the winner must be undertaken in a transparent manner with each participant having an equal chance of winning the competition.

If more than one prize is being determined at a draw, the major prize must be drawn first unless winning entries of lesser prizes are eligible to be redrawn.

Winning must not be contingent on the participant being present at the drawing of the lottery except for lucky-badge draws. It is acceptable to offer bonus prizes if the winner is present as long as the bonus prize does not exceed the value of the base or initial prize.
Where a computerized system is used to decide the winners of prizes (including a device used in connection with a 190-telephone service, an SMS telephone facility, an MMS telephone facility or the Internet) the permit holder must obtain two reports:

1. Appraisal Report; and

For trade promotion lotteries involving instant win prizes, additional conditions are required to be met, including printing and lodging requirements.

Notifications of winners and publication

The results must be available within 7 days of the determination of the prize winners, if requested.

The name and address of each winner of a prize valued at over $250 (approx. US$173) must be published within 30 days of the draw:

- published within 30 days of the draw;
- in a newspaper circulating generally throughout the State;
- if the lottery has only been advertised in a particular magazine, newspaper, newsletter or other publication (whether electronic or otherwise) or on a particular website, in that magazine, newspaper, newsletter or other publication or on that website;
- if entry in the lottery is only permitted on a particular website, on that particular website; and/or
- on the internet for a minimum period of 28 days.

Redraw

All prizes in the lottery must be distributed or allocated as approved.

If, despite every reasonable effort, a prize-winner cannot be contacted, the prize must be retained for 3 months after the draw. At the end of 3 months, if the prize remains unclaimed, the promoter should write to the relevant authority body requesting approval for a redraw.

However, if a prize is perishable (for example, a meat tray), the prize may be sold or otherwise disposed of in a way that the entity considers will bring a reasonable price. The money realized (after deducting the reasonable costs of sale or disposal) must be held in trust by the entity or the organization for the winner of the unclaimed prize.

Australian Capital Territory

All winners must be notified directly, by written means (email, mail, fax or SMS) within 21 days of the results.

The method, date, time and place of the redraw must be stated in the terms and conditions of the lottery.

New South Wales
For prizes worth more than A$10,000 (approx. US$6,926), the draw and the announcement of the prize winner(s) must be scrutinized by an independent person unless otherwise approved by the Department (unless the promotion involves an instant win).

**Northern Territory**

Prizes unclaimed for more than 3 months after the date of the draw must be surrendered to the Director of Licensing.

The names of the major prize winners must be published in a local or a national newspaper.

**Queensland**

If a prize is an antique, a gem, memorabilia or a work of art the prize winner must be given a current written market valuation from an appropriate valuer for the antique, gem, memorabilia or work of art.

If a prize is an animal, the prize winner must be given:

- A certificate from a veterinary surgeon about the distinguishing characteristics and markings, health and physical condition of the animal; and
- A current written market valuation from an appropriate valuer for the animal.

If a prize is a second hand motor vehicle, the prize winner must be given the following documents for the motor vehicle:

- A current certificate of road worthiness;
- A current written market valuation from an appropriate valuer;
- A warranty for a period of three months after the day it is delivered to the winner; and
- A security interest certificate under the Motor Vehicles Securities Act 1986.

If a prize is a thing, other than a motor vehicle, that is second hand, the prize winner must be given a current written market valuation from an appropriate valuer for the prize.

An existing prize with a value of more than A$5,000 (approx. US$3,463) must be insured against loss or damage for an amount equal to its current valuation for the period from when tickets for the art union go on sale to the day the prize is delivered to the winner.

If the prize is not claimed within one year the eligible association may apply the prize or its sale proceeds to the association's purposes.

**South Australia**

A participant cannot be restricted to winning only one prize if they are permitted to submit multiple entries.

The participants in a trade promotion lottery cannot be required to be present at the drawing of a trade promotion lottery in order to win a prize. Therefore, a prize cannot ‘jackpot’ if the winner is not present or a redraw conducted because the winner is not present.
If a prize is not delivered to its winner at the time the lottery is drawn, the winner must, within 14 days of the draw, be notified in writing of the prize he or she has won and the particulars of how the prize is to be delivered or collected.

Under the Regulations, a minor trade promotion lottery must not be drawn electronically unless the system has been approved by the Minister.

A scrutineer is required to attend a draw where the total value of all prizes (nationally) in the draw equals or exceeds A$20,000 (approx. US$13,852).

**Tasmania**

There must be no cost of entry, though it may be a condition of entry that goods or services must first be purchased in order to participate. If making a purchase is necessary to enter a trade promotion:

- The cost of the goods or services must not exceed the prevailing market price; and
- Determination of the market price lies with the Department of Liquor and Gaming and Department of Treasury and Finance.

If in doubt as to whether the amount charged exceeds the market price, details may be submitted to the Department for determination. If it is determined that the amount being charged exceeds the market price of the goods or services, the scheme would be deemed a lottery and would be unlawful.

**Victoria**

The winners of prizes must be advised in writing of the prize.

The winner of a prize must not incur a cost to accept a prize (other than a trivial cost).

The prize must be paid or transferred to the winner within 28 days after the draw.

A prize may only be substituted if the substituted prize is of the same or greater value than the original prize and the winner either agrees in writing, or the original prize is unavailable due to circumstances beyond the control of the person conducting the trade promotion lottery and reasonable attempts are made to reach agreement with the winner that are unsuccessful.

**Western Australia**

The draw must be conducted within one month of the closure of the lottery.

Where practicable, members of the public must be afforded the opportunity to witness the draw.

Where not practicable, audit records confirming the prize draw must be made available to an authorised officer of the Gaming and Wagering Commission or a Police Officer upon request.

All advertising must provide a description of the prizes and must contain the terms of the lottery or direct contestants to where the terms can be found.

**JUDGES**

*Are there any particular requirements in relation to judges or judging for skills competitions?*
No.

However, for the ACT and NSW, skill competitions may include judges who are qualified in a field relevant to the event or competition but this is not obligatory.

**PRIZES**

*Are there any restrictions on the prizes awarded?*

As a general rule, prizes awarded must be as described in their marketing communications, pursuant to Australian Consumer Law otherwise the business could be found guilty of deceptive and misleading conduct.

In general, if a prize involves travel, all relevant information must be included in the terms of entry (eg destination, class of travel, name of accommodation, duration etc).

Where participants are under the age of 18 years, an application must not include any unlawful or inappropriate prizes eg liquor products, tobacco products or dangerous goods, will not be approved.

The below list includes prohibited prizes in all States and Territories except for Tasmania (additional prohibitions specific to each state and territory are listed below).

Prohibited prizes:

- Tobacco products in any form;
- Firearms or ammunition;
- Explosives;
- Weapons;
- Cosmetic surgery or other procedure designed to improve personal appearance;
- Liquor prizes – more than 20 litres of liquor with an alcohol content not exceeding 20% by volume or more than 5 litres of liquor with an alcohol content exceeding 20% by volume; and
- Any other item by which the sale or acquisition is restricted by legislation of the State or Commonwealth.

**New South Wales**

Where a lottery is being conducted on the premises of a hotel (excluding general bar licenses), registered club or a casino, it is a condition of a permit that cash prizes cannot be awarded between 10:00pm and 8:00am the next day.

If you propose a money prize greater than A$2,000 (approx. US$1,385), the prize winner must be paid the amount exceeding A$2,000 (approx. US$1,385) by a crossed cheque made out to the winner (or by EFT if the winner so requests). The full prize amount can be paid in this manner, if desired.

**Queensland**
Prohibited prizes: A ticket or other chance in a game that is not approved under a gaming act.

South Australia

Prohibited prizes: Liquor within the meaning of the Liquor Licensing Act 1997 is prohibited from being offered as an inducement to enter or participate in the lottery. It is not prohibited for participants to purchase liquor to enter the lottery or to be given by the trader as a prize in the lottery.

Tasmania

Prohibited prizes: Nil.

Victoria

Prohibited prizes: Prostitution services.

REGISTRATION REQUIREMENTS AND FEES

Are there any registration requirements, or any fees/taxes payable?

Registration Requirements

Australian Capital Territory (ACT)

A permit must be obtained from the ACT Gambling and Racing Commission. The fee to apply for a trade permit will depend on the prize value. As at the 21 December 2018, the fees can range from A$211 (approx. US$146) to A$3,372 (approx. US$2,335).

New South Wales

A permit must be obtained from the Office of Liquor, Gaming and Racing. The fee to apply for a trade permit will depend on the prize value and will range from A$80 (approx. US$55) to A$2,185 (approx. US$1513). These are the fees as at 21 December 2018 and are subject to change.

Northern Territory

A permit is required for a major trade lottery where prizes total more than A$5,000 (approx. US$3,463). No fee is required to obtain the permit.

Please note that no permit is required if it has been already obtained elsewhere.

South Australia

A permit must be obtained from the Office of the Liquor Gambling Commissioner for a ‘major trade’ promotion lottery, that is if the total value of all prizes in the lottery exceeds A$5,000 (approx. US$3,463).

A permit is also required for trade promotion (instant prize) lotteries.

The fee to apply for a ‘major trade’ or ‘instant prize’ permit will depend on the prize value but will range from A$195 (approx. US$135) to A$3,938 (approx. US$2,727). There is also a premium fee to speed
up the application process which ranges in price from A$391 (approx. US$271) to A$7,867 (approx. US$5,449). These are the fees as at 21 December 2018 and are subject to change.

Queensland
Permit is not required.

Tasmania
Permits are not required.

Victoria
Permits are not required.

Western Australia
A permit is not required but the promotion must comply with the WA blanket permit conditions (see here).

Taxes Payable
No taxes payable in any Australian jurisdiction.

OTHER LOCAL REQUIREMENTS

Are there any other key local requirements?

There are slightly different requirements in different States and Territories. We have considered these different requirements for each State and Territory and prepared below a high watermark list of the requirements. There are also a small number of requirements which are specific to certain States and Territories and these follow at the end of the common high watermark requirements. Any advertising material and/or lottery rules should include the following:

- The permit number;
- The conditions of entry (including the minimum age of the participants);
- The closing date and time for the receipt of entries in the lottery;
- The place, date and time of the lottery draw;
- How prizes will be awarded;
- The method for claiming prizes (including any requirement for entrants to be present at the draw);
- How prize-winners will be notified;
- How the results of the lottery will be published;
• The promoter’s name, address and telephone number; and

• Details of the prizes and their value (including conditions, if any, relating to receiving, accepting or using the prizes).

All advertisements of a major trade promotion lottery on television, radio or at the cinema must contain the following information:

• The permit number;

• How a person may enter the lottery;

• The nature and value of the prizes to be won;

• How and where to get a copy of the full terms and conditions of the lottery; and

• For the majority of states, no advertising of a trade promotion can commence until a permit/approval has been granted.

For multiple lottery permits, the types of contests, promotions, prize giveaways, etc. that are planned or intended to be conducted under the authority of the permit should be included.

Where entry is made into a promotion by telephone, SMS or MMS, the cost to the caller must not exceed A$0.55 (approx. US$0.38) (including GST) and the cost should be included on the promotional material.

Keep records in relation to finances, entries and prizes for three years.

**Northern Territory**

Information that must be included in the promotional material:

• If the promoter advertises, gives information or issues publicity about the lottery before a permit is granted, the promoter must state in the information or publicity that the lottery is subject to the grant of a permit and will not proceed if a permit is not granted.

**Victoria**

• Ensure the lottery is conducted in a manner that is not offensive or contrary to the public interest.

• Ensure prize winners are not required to incur any cost to accept a prize (other than a trivial cost).

• Only substitute an advertised prize if the winner agrees in writing and the substituted prize is of the same or greater value than the original prize.

**Western Australia**

• If entry is via the Internet, there must be no additional cost to the participant to register his/her name other than the cost paid by the participant to access the web site via the internet service provider.
PRIZE PROMOTIONS AROUND THE WORLD

TIMING

Is time required to ensure compliance (other than reviewing the terms and conditions)?

For States and Territories which require permits, including New South Wales, Western Australia, Northern Territory and the Australian Capital Territory, 2-3 weeks should be allowed from the finalization of terms and conditions to commencement of promotion since the permit approval process can take up to a few weeks.

TRANSLATIONS

Are the terms required to be translated by law?

No (for all states and territories).

PENALTIES FOR NON-COMPLIANCE

What are the penalties for non-compliance?

Australian Consumer Law (ACL)

The ACL applies nationally and in all States and Territories, promoting fair trading and the protection of consumer rights and interests. The three key elements of the ACL are:

1. A prohibition on misleading and deceptive conduct: A court may award damages where a person is found to have engaged in conduct that is in breach of this provision of the ACL. Conduct can include the making of representations in terms and conditions for, or advertisements promoting, trade promotions so it is important to ensure they are accurate and correct.

2. The imposition of a number of statutory guarantees in relation to the supply of goods and services (eg guarantees as to due care and skill; guarantees as to fitness for purpose; guarantees as to reasonable time for supply): The guarantees imposed under the ACL apply to goods and service which are ordinarily supplied for personal, domestic or household use or which are valued at under A$40,000 (approx. US$27,703), so the guarantees will apply to most prizes awarded. The guarantees generally apply even if goods or services are given away, including as prized. The guarantees, and consumers' rights and remedies for breaches of them, cannot be excluded, restricted or modified.

3. The unfair contract terms (UCT) regime that applies to standard form consumer contracts: This regime will apply to trade promotions terms and conditions since they are standard form agreements that are presented on a 'take it or leave it' basis. A provision is unfair if, it would cause a significant imbalance in a party's rights or obligations under the contract, would cause detriment to a party if relied on, is not reasonably necessary to protect the legitimate interest of the party advantaged by them, having regard to the extent to which the term is transparent and the contract as a whole. The ACL and the ACCC note that provisions which are at risk of being unfair include asymmetrical liability regimes, unilateral amendment rights, broad termination rights in favor of one party only and provisions which reserve discretion in favor of one party only.

If a term is found to be unfair, it is void and unenforceable. While the UCT regime doesn't allow the
ACCC to seek pecuniary penalties where a term is found to be ‘unfair’, the ACCC has successfully relied on other sections of the ACL prohibiting false and deceptive conduct to obtain pecuniary penalties from suppliers in connection with the inclusion of unfair terms in contracts (essentially on the basis that including a term which the supplier knows is likely to be contrary to law and unenforceable is misleading and/or deceptive). The maximum pecuniary penalty which can be awarded is currently the larger of:

- A$10,000,000 (US$6,925,960);
- Three times the value of the benefit received; or
- 10% of annual turnover of the entity in the preceding 12 months, if court cannot determine benefit obtained from the offence.

So the possible consequences of including unfair terms are quite severe.

**Privacy Act**

The Privacy Commissioner is responsible for the enforcement of the Privacy Act and will investigate an act or practice if the act or practice may be an interference with the privacy of an individual and a complaint about the act or practice has been made. Generally, the Privacy Commissioner prefers mediated outcomes between the complainant and the relevant organization. Importantly, where the Privacy Commissioner undertakes an investigation of a complaint which is not settled, it is required to ensure that the results of that investigation are publicly available. Currently, this is undertaken by disclosure through the Office of the Australian Information Commissioner website of the entire investigation report.

The Privacy Commissioner may also investigate any 'interferences with the privacy of an individual' (i.e. any breaches of the Australian Privacy Principles) on its own initiative (i.e. where no complaint has been made) and the same remedies as below are available.

After investigating a complaint, the Privacy Commissioner may dismiss the complaint or find the complaint substantiated and make declarations that the organization rectify its conduct or that the organization redress any loss or damage suffered by the complainant (which can include non-pecuniary loss such as awards for stress and/or humiliation). Furthermore, fines of up to A$420,000 (approx. US$290,890) for an individual and A$2,100,000 (approx. US$1,454,450) for corporations may be requested by the Privacy Commissioner and imposed by the Courts for serious or repeated interferences with the privacy of individuals.

**Australian Capital Territory**

Penalties apply for various offences under the Lotteries Act, including fines and/or imprisonment for conducting lotteries that are not approved or exempt from approval. The maximum financial penalty imposed under the Lotteries Act is A$40,500 (approx. US$28,050).

**New South Wales**

If a party does not comply with a permit issued by the Office of Liquor, Gaming and Racing, the Office can take a range of actions, including:

- Prohibit further fundraising or community gaming activities;
Penalties also apply for offences against the Lotteries and Art Unions Act, including severe penalties for serious offences such as misappropriation of funds or prizes or fraudulent conduct. The maximum financial penalty imposed under the Lotteries and Art Unions Act is A$5,500 (approx. US$3,809).

**Northern Territory**

Depending on the nature of the non-compliance and the findings of any investigations by the director, the outcome could include directions being issued by the director to either:

- Invalidate the draw and direct another draw to be undertaken under the supervision of the director and under appropriate conditions;
- Cancel the lottery or game of chance and undertake appropriate actions as required by the director;
- Direct the organizer to adopt, vary or cease practice in the conduct of the lottery or game of chance.

Serious breaches of the act or regulations may result in severe penalties, including fines and imprisonment. Under the Gaming Control Act, the maximum penalty that can be imposed is a fine of up to A$13,175 (approx. US$9,125) as well as a term of imprisonment of up to 2 years.

**Queensland**

There are various penalty provisions in the Charitable and Non-Profit Gaming Act, including failure to comply with the rules of the promotion and failing to comply with various record-keeping requirements. A range of monetary penalties may be imposed depending on the breach (up to a maximum of A$26,110) (approx. US$18,084) as well as a term of imprisonment of up to 2 years.

**South Australia**

Penalties may be imposed under the Lottery and Gaming Act and Regulations. Serious breaches of the Act and Regulations may attract penalties up to 2 years imprisonment and more than A$10,000 (approx. US$6,926) in fines.

**Tasmania**

Penalties may be imposed for breaching the Gaming Control Act 1993, noting that trade promotions are not regulated. Serious penalties apply for conducting unauthorised lotteries, including large fines, some in excess of A$159,000 (approx. US$110,123) and imprisonment for up to 2 years for some offences, although these generally relate to gambling related activities and wagering.

**Victoria**

Monetary penalties apply for breaches of the Gambling Regulation Act. The maximum penalty for a first time offence is A$9,671 (approx. US$6,698). For subsequent offences, the maximum penalty is A$16,119 (approx. US$11,164). Other disciplinary action may also be taken, including suspension or withdrawal of the trade promotion permit.
Western Australia

Various penalties apply for breaching Western Australian trade promotions regulations. For example, monetary penalties apply for:

- failing to ensure that every ticket or chance is included in the draw; and
- failing to hold the draw within one month of the closure of the lottery.

Penalties can include fines up to A$10,000 (approx. US$6,926) or 2 years imprisonment.

RESTRICTIVENESS OF REGULATIONS

How restrictive are the legal obligations applicable to prize promotions?

The Australian laws in relation to trade promotions and games of chance are State and Territory based and as a result care must be taken to ensure compliance if a promotion is to be run nationally. For example, permits are not required in Queensland, Tasmania, Victoria and Western Australia while trade promotion lotteries in New South Wales and the Australia Capital Territory require a permit. Permits are required in the Northern Territory and South Australia only if the total prize pool value exceeds A$5,000 (approx. US$3,463).

It is however, comparatively simple to avoid the gaming / lotteries legislation by running promotions as a game of skill.

REGULARITY OF SANCTIONS

How frequently does the regulator impose serious sanctions for non-compliance?

With the Australian States that have stringent rules surrounding trade promotions, powers exist for government officers to investigate concerns.

For example in New South Wales, concerns can be lodged with the Office of Liquor Gaming & Racing whose enforcement policy involves promoting voluntary compliance while applying escalating enforcement action that target industry participants who demonstrate more serious, repeat or sustained contraventions or other misconduct inconsistent with community expectations and the public interest.

If the incident is not a repeated occurrence, it would appear that imprisonment is an unlikely sanction. Usually, a fine is imposed which ranges depending on the gravity of the crime. For example, in 2015, online gambling company Bet365 was fined with a A$2,750,000 (approx. US$1,904,640) penalty after being found guilty of breaching the ACL and deceiving Australian consumers with a false ‘free bets’ offer. Another example occurred in 2014-2015 which involved the NSW Office of Liquor, Gaming and Racing issuing a fine of A$5,500 (approx. US$3,809) to various bars for irresponsible alcohol promotions and enforcing restrictions such as banning beer keg prizes and banning Barbie themed cocktails which could appeal to minors.
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AUSTRIA

Last modified 10 January 2019

GOVERNING LAW

What are the main applicable governing laws or codes for prize promotions?

<table>
<thead>
<tr>
<th>Name</th>
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<tr>
<td>Games of Chance Act (Glücksspielgesetz, ‘GSpG’)</td>
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<td>Criminal Act (Strafgesetzbuch, ‘StGB’): s. 168 StGB</td>
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</tr>
<tr>
<td>Consumer Protection Act (Konsumentenschutzgesetz, ‘KSchG’)</td>
<td>Law</td>
</tr>
<tr>
<td>Unfair Competition Act (Gesetz gegen den unlauteren Wettbewerb, ‘UWG’) – General Provisions</td>
<td>Law</td>
</tr>
<tr>
<td>E-Commerce Act (E-Commerce-Gesetz, ‘ECG’) - relevant where prize promotions are offered online</td>
<td>Law</td>
</tr>
<tr>
<td>EU General Data Protection Regulation (GDPR) Data Protection Act (Datenschutzgesetz, ‘DSG’)</td>
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EXTRA-TERRITORIALITY

Do national regulators enforce rules against entities operating abroad?

Yes, the courts will apply and enforce domestic provisions in relation to prize promotions, which are published on foreign media, but directed at the domestic public, especially if published on the internet.

As concerns data protection issues, the GDPR applies also to entities not established in the EU if they
offer goods or services to data subjects in the EU or monitor their behaviour.

SKILLS COMPETITIONS

*Can a prize promotion be run that is based on skill?*

Yes, but ensure the winner is picked on the basis of skill, not chance.

The skill element must be predominant, i.e. sufficiently complex to ensure that everyone cannot automatically be considered a winner.

In addition:

- The promotion must not invoke a psychological pressure on participants to buy the promoted products or services; and
- The conditions for participation must be stated clearly and unambiguously.

PRIZE DRAWS

*Can a prize promotion be run where there is an element of chance in the selection of the winner?*

Unlawful, unless:

- Participants do not pay to enter.

  'Payment' is broadly interpreted by courts and includes a scenario where the purchase of goods or services is a pre-condition for participation and the price for the goods or services is higher than the market rate for such goods or services. A requirement to use a telephone number triggering a higher than standard rate is considered an unlawful payment for entry.

- The promotion does not invoke a psychological pressure on participants to buy the promoted products or services; and
- The conditions for participation are stated clearly and unambiguously.

**Note:** If participants pay to enter, in order to participate, a license, granted under the Austrian Games of Chance Act, is required.

SELECTION OF WINNERS

*Are there any requirements for the selection of winners and award of prizes?*

The conditions for both skills competitions and prize draws, including for the awarding of the prizes, have to be transparent to participants.

JUDGES
Are there any particular requirements in relation to judges or judging for skills competitions?

The applicable laws on prize promotions do not include a provision regarding the selection of judges or judging for skill competitions.

Nevertheless the conditions for skill competitions and prize draws have to be transparent and easily accessible for participants (Art. 6 Sec 1 Cif 4 ECG).

PRIZES

Are there any restrictions on the prizes awarded?

The promotion must not invoke a psychological pressure to buy the promoted products or services, nor may it be aggressive.

A promotion is deemed aggressive if a false impression is given to the consumer that the prize has already been won, will be won, or will be won upon undertaking specified activities and:

- There is no prize or benefit; or
- The prize will be awarded only upon paying an amount or assuming costs.

REGISTRATION REQUIREMENTS AND FEES

Are there any registration requirements, or any fees/taxes payable?

Registration Requirements

Certain prize draws (e.g. lotteries) require an authorization from the Ministry of Finance and are subject to strict regulations.

Fees / Taxes payable

Certain prize draws (e.g. lotteries) require payment of taxes.

Prizes from promotional free of charge games are subject to a tax of 5% of the total value of all prizes (if the value of all prizes exceeds €10,000 (approx. US$11,203). The prize promotion organizers or contracting parties are liable for the tax.

OTHER LOCAL REQUIREMENTS

Are there any other key local requirements?

For business-to-consumer promotions, supporting terms and conditions must be in German.

For business-to-business promotions the use of German language is recommended but not mandatory.

TIMING

Is time required to ensure compliance (other than reviewing the terms and conditions)?
Austrian laws do not require any registration of terms and conditions of prize promotions.

But time should be allowed to deal with data protection issues (e.g. ensuring an appropriate privacy policy is in place and including appropriate tick box functionality for consents).

**TRANSLATIONS**

*Are the terms required to be translated by law?*

For promotions aimed at consumers, the terms and conditions must be in German.

In respect of business-to-business promotions, the use of German language is highly recommended but not mandatory.

**PENALTIES FOR NON-COMPLIANCE**

*What are the penalties for non-compliance?*

According to Art.168 Sec 1 Criminal Code the organization of a game in which profits and losses exclusively or predominantly depend on chance or which is expressly prohibited may result in monetary fines of up to 360 times the daily rates* of the conducting person's average daily income or imprisonment for up to six months.

(*The court determines a certain amount of the fine dependent on the economic capacity of the infringer. A daily rate for an individual may range from €4 – €5,000 (approx. US$4,400 – $5,600). Businesses conducting such games are subject to a monetary fine of up to 40 times the business's average daily profit (calculated by dividing the annual return by 360).)

Art.52 Games of Chance Act provides for administrative penalties when violating provisions of this Act.

The conduct of illicit draws is punished by the authority with a fine of up to €22,000 (approx. US$24,646).

The E-Commerce Act includes administrative penalties with a fine of up to €3,000 (approx. US$3,361) in Art. 26, when violating the information requirements (transparent and easy access to the conditions) applicable to prize promotions.

Unlawful conduct of promotional games may be determined as misleading practice under the Austrian Unfair Competition Act, especially if the announced prizes are not awarded.

In such cases civil claims for injunctive relief, for cease and desist and for damages can be filed as well as a claim for publication of the judgment can be made.

Additionally the confiscation of infringing products can be ordered by the authority according to Art. 53 Games of Chance Act.

Finally, there is the possibility that the personal data processing aspects of the promotion could breach GDPR, which has maximum fines of up to the higher of:

- €20 million, or
• 4% of the promoter’s worldwide annual revenue.

RESTRICTIVENESS OF REGULATIONS

*How restrictive are the legal obligations applicable to prize promotions?*

In Austria there are only a handful of provisions setting out requirements regarding prize promotions. Those provisions are not unduly onerous, as there is no registration or other formality requirement. Therefore most prize promotion mechanisms are allowed as long as it is not a game of chance as defined by applicable Austrian gaming laws. Also the provisions of the Unfair Competition Act prohibiting misleading or aggressive prize promotions need to be complied with. Finally, GDPR has introduced various obligations around processing personal data which have significant application to prize promotions (eg. use of submissions including personal data, winner publicity, etc.).

REGULARITY OF SANCTIONS

*How frequently does the regulator impose serious sanctions for non-compliance?*

Administrative fines are rarely imposed by the competent regional administrative authorities (Bezirksverwaltungs-behörden). In the few existing cases the fines have always been moderate.

**Note:** Prize draws that are games of chance, as defined under the Austrian Games of Chance Act, require a license. Their operation without a license is a criminal offense.

Misleading practice due to unlawful conduct of promotional games often give rise to complaints of competitors. A few complaints result in proceedings in front of the courts.
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Last modified 14 January 2019

GOVERNING LAW

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<td>Privacy Act 2018, as a transposition and specification of the European General Data Protection Regulation</td>
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EXTRA-TERRITORIALITY

Do national regulators enforce rules against entities operating abroad?

Yes, this is possible as the respective rules are criminally sanctioned. However, as a general observation, the enforcement risk against foreign operators seems rather low.

An exception to that last statement should be made for prize promotions which fall under the ambit of ‘games of chance’ (poker games, casino games, etc), which are heavily regulated and enforced by the Belgian Gaming Commission, including through actions against operators established abroad.

SKILLS COMPETITIONS

Can a prize promotion be run that is based on skill?

Yes, but it should be ensured that the winner is selected only on the basis of his physical or intellectual
skill, not on chance (not even partly). The skill involved should be sufficiently convincing (e.g. not: What is your name?, which requires no effort). There is no need to involve an external jury to assess the entries made in this respect.

Specific rules may apply in cases where the winner is selected on the basis of both skill and an element of chance (see Prize Draws section).

**PRIZE DRAWS**

*Can a prize promotion be run where there is an element of chance in the selection of the winner?*

Lawful, provided:

1. The promotion also involves some degree of physical or intellectual effort, hence the promotion does not solely depend on chance. If no effort is required from the participant or the required effort is too hard (e.g. a very difficult question, like how many people will participate in the promotion, so that it comes down to guessing), the contest is to be considered a prohibited lottery (note: a company can organize a lottery in collaboration with and through a not-for-profit organization that has obtained a license from one of the competent public authorities but this is likely to substantially increase the cost of the promotion).

   And

2. Participants do not pay to enter. 'Payment' is interpreted to mean any stake or direct contribution required from the participants to enter, eg any price to be paid or the obligation to purchase goods or services at a price higher than its market rate (i.e. purchasing a newspaper containing a participation form at its normal price is not considered a stake from the participants). Internet connection, mail and phone costs (with the exception of phone calls to an 0900- or an 070-number (i.e. at higher rates) and premium text-messages) are not considered to be a stake from the participants.

   Or, if it is the case that (2) is not applicable (hence, participants do need to pay to enter the promotion):

3. A license is obtained from the Belgian Gaming Commission (required both for the offline and online offering of games of chance)

**SELECTION OF WINNERS**

*Are there any requirements for the selection of winners and award of prizes?*

None but it is strongly recommended to set out requirements (e.g. age) and restrictions in a terms and conditions document, especially as the promotions will often be offered to consumers (filing the terms and conditions with a notary public is not required by law).

There is no formal requirement to involve an external jury, judge or panel to select the winners, but doing so may decrease the risk of disputes afterwards.

**JUDGES**
Are there any particular requirements in relation to judges or judging for skills competitions?

There is no formal requirement to involve an external jury, judge or panel to select the winners, but doing so may reduce the risk of disputes afterwards.

PRIZES

Are there any restrictions on the prizes awarded?

Generally, none.

If a company organizes a lottery in collaboration with and through a not-for-profit organization that has been granted a license to organize lotteries (see Prize Draws section), the prize awarded may not, in general, consist of the payment of money.

REGISTRATION REQUIREMENTS AND FEES

Are there any registration requirements, or any fees/taxes payable?

Registration Requirements

There is no requirement to register prize promotions.

Games of chance (involving an element of chance and requiring the participant to make a stake) can only be offered by companies that have obtained a license from the Belgian Gaming Commission (in principle: casinos, arcades and betting shops). The number of these licenses is limited.

Lotteries (solely depending on chance) are generally prohibited and can only be organized by the Belgian National Lottery or, after formal approval, by some non-profit organizations for charitable purposes. In the latter case the competent authority for providing formal approval depends on the geographical scope of the lottery. Companies can work together with such approved not-for-profit organizations.

Fees/Taxes payable

These licensed companies for games of chance as referenced above in ‘Registration Requirements’ are subject to a specific tax regime.

In the current interpretation and enforcement of the legislation relating to lotteries, no specific taxes are being imposed on the organizing company.

OTHER LOCAL REQUIREMENTS

Are there any other key local requirements?

It is recommended that supporting terms and conditions appear in Dutch and French if the prize promotion targets consumers.

Significant conditions, or information which, if omitted, is likely to mislead, must be communicated before purchase or, if no purchase is necessary, before entry into the promotion. Examples of significant conditions include: restrictions on entry (eg age, geographical), how to participate, costs of
participating, start and close dates, details of prizes (and restriction of prizes).

**Note:** Where there are space limitations e.g. Twitter/banner ads, you must communicate as much information as possible and direct the entrant to where all significant terms are stated.

A promoter’s name and address must be stated unless it is obvious from the context.

The Code of Economic Law (which carries potential criminal liability for breach) specifically prohibits claiming to offer a prize without awarding it, and creating a false impression that a consumer has won a prize.

**TIMING**

*Is time required to ensure compliance (other than reviewing the terms and conditions)?*

No, although time should be allowed to deal with data protection issues (eg ensuring an appropriate privacy policy is in place and including appropriate tick box functionality for consents).

**TRANSLATIONS**

*Are the terms required to be translated by law?*

Yes, Dutch and French language versions are required if the prize promotion targets consumers.

**PENALTIES FOR NON-COMPLIANCE**

*What are the penalties for non-compliance?*

In the case of prohibited games of chance:

- In the case of unlawful operation of games of chance:
  - For individuals: fines from €800 (approx. US$896) to €800,000 (approx. US$896,223) and/or imprisonment from 6 months to 5 years;
  - For companies: fines from €24,000 (approx. US$26,887) to €1,600,000 (approx. US$1,792,450).

- In the case of advertising, facilitating the operation or recruiting players for unlawful games of chance:
  - For individuals: fines from €208 (approx. US$233) to €200,000 (approx. US$224,056) and/or imprisonment from 1 month to 3 years;
  - For companies: fines from €4,000 (approx. US$4,481) to €576,000 (approx. US$645,281).

In the case of prohibited lotteries:
• The perpetrators, administrators, agents or employees:
  ○ For individuals: fines from €400 (approx. US$448) to €24,000 (approx. US$26,887) and an imprisonment from 8 days to 3 months;
  ○ For companies: fines from €4,000 (approx. US$4,481) to €48,000 (approx. US$53,773).

• Those who have distributed unlawful lottery tickets:
  ○ For individuals: fines from €208 (approx. US$233) to €8,000 (approx. US$8,962) and an imprisonment from 8 days to 1 month or only one of these sanctions;
  ○ For companies: fines from €4,000 (approx. US$4,481) to €16,000 (approx. US$17,924).

Finally, there is the possibility that the personal data processing aspects of the promotion could breach GDPR, which has maximum fines of up to the higher of:

• €20 million (approx. US$22.4m); or

• 4% of the promoter's worldwide annual revenue.

RESTRICTIVENESS OF REGULATIONS

How restrictive are the legal obligations applicable to prize promotions?

The rules in Belgium allow for the organization of prize promotions quite easily without formal requirements. Having said this, it should be taken into account that certain prize promotion mechanisms are prohibited in Belgium and can therefore not be organized. Also, GDPR has introduced various obligations around processing personal data which have significant application to prize promotions (eg. use of submissions including personal data, winner publicity, etc.).

REGULARITY OF SANCTIONS

How frequently does the regulator impose serious sanctions for non-compliance?

For lotteries, there is low enforcement.

For games of chance, enforcement is high.
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GOVERNING LAW

What are the main applicable governing laws or codes for prize promotions?

<table>
<thead>
<tr>
<th>Name</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Federal Law No. 5,768, of December 20, 1971 ('First General Regulation on Promotions')</td>
<td>Law</td>
</tr>
<tr>
<td>Decree No. 70,951/72, of August 9, 1972 ('Decree 70.951') (provides specific regulations on Promotions)</td>
<td>Law</td>
</tr>
<tr>
<td>Ordinance MF No. 41/2008, of February 19, 2008 ('Ordinance 41') Updated general regulation of promotions</td>
<td>Law</td>
</tr>
<tr>
<td>Ordinance MF No. 422/2013 (related exclusively to Cultural Promotions)</td>
<td>Law</td>
</tr>
<tr>
<td>Federal Law No. 13,756/2018, of December 18, 2018 (changes the competence authority to deal with matters relating to Promotions from CAIXA to SEFEL)</td>
<td>Law</td>
</tr>
</tbody>
</table>

EXTRA-TERRITORIALITY

Do national regulators enforce rules against entities operating abroad?

Yes. The Brazilian laws/rules are considered to apply to prize promotions in Brazil, including promotions operated purely online.

Prize promotions in Brazil require prior approval from the Ministry of Treasury, through its internal department named Secretariat for Fiscal, Energy and Lottery Accompaniment ("SEFEL").
Although the laws are silent regarding prize promotions organized by entities operated abroad, the First General Regulation on Promotions set forth that promoter entities must perform commercial, industrial, service and/ or real estate activities, as well as being in compliance with all tax payment and social security obligations. For that purpose, prize promotions can only be organized by companies duly registered in Brazil with a valid Corporate Taxpayer Identification Number (CNPJ/MF), which means that foreign companies must run prize promotions through their Brazilian subsidiary or in partnership with a Brazilian company that is in compliance with said requirements.

The only exceptions to the requirement for approval occurs in case of exclusively cultural promotions, in which no marketing purpose is involved, and prize promotions organized by public entities.

The distribution of the prize may be based on three different formats of prize promotions: Prize Draws (Sorteio), Coupons (Vale-Brinde) or Contests (Concurso).

Finally, with respect to language, the law is very protective towards consumers, and it is necessary to offer all information and content in Portuguese.

**SKILLS COMPETITIONS**

*Can a prize promotion be run that is based on skill?*

Yes.

For the contest (Concurso) form of prize promotion, a contest occurs through intelligence tests, selection of predictions, calculations, or similar competitions of any nature. It is required that the conditions of promotions are applied uniformly, so as to guarantee equal treatment and opportunity for everyone interested in participating in the prize promotion.

Promoters may provide that entry is subject to the participant presenting or delivering a label, wrapping, or packaging and/ or satisfying any requirements, preconditions or stipulations required by the promoter, relating to the products or commercial activity of the promoter, provided that said material does not constitute a series of multiple labels/wrappers/ packaging (see Other local requirements).

**PRIZE DRAWS**

*Can a prize promotion be run where there is an element of chance in the selection of the winner?*

Yes.

For the prize promotion formats known as Prize Draws and Coupons, winning is connected to chance.

Firstly, with respect to Prize Draws, assigned numbers must be issued and distributed concomitantly, randomly and equitably.

As regards to the Coupons format of prize promotion, the method of winning is instantaneous, as it occurs by the winning coupon or prize being discovered inside the product or its packaging. This must be done in accordance with rules set forth by government agencies responsible for public health and control of weights and measures. In this case, the maximum value of the prize cannot exceed R$400.00 (approx. US$100).
SELECTION OF WINNERS

Are there any requirements for the selection of winners and award of prizes?

Promoters must guarantee that the prize promotion is conducted and the distribution of the assigned participation numbers are made in a concomitant, random and equitable way.

The authorized entity will be the one responsible for identifying and notifying the winners. In case the winner does not collect its prize in up to 180 days, its right will be forfeited and the promoter must pay a corresponding sum as income to the state. Brazilian law does not allow the promoter to find an alternative winner.

JUDGES

Are there any particular requirements in relation to judges or judging for skills competitions?

There is no provision in this regard under Brazilian Law.

PRIZES

Are there any restrictions on the prizes awarded?

Yes. The distribution of cash prizes and the conversion of prizes to cash is prohibited. Also, promoters may not distribute as prizes: medicines, weapons and ammunition, explosives, fireworks, tobacco and derivatives, alcoholic beverages above a certain alcoholic content.

Furthermore, prizes must not:

- Be related to or encourage gambling;
- Generate an immoderate profit for promoters;
- Impact negatively on the education of a child or adolescent;
- Involve coupons or any other thing that imitates or resembles the national currency.

General authorized prizes that are distributed in Brazil are:

- Goods produced in Brazil or regularly imported;
- Residential units, located in the country or in urban areas;
- Tourism trips (encompassing the transport from the residence to the destination and from the destination to the residence of the winner, lodging and at least one meal);
- Scholarships;
- Tickets to concerts, parties and plays, along with a physical prize of any value.

REGISTRATION REQUIREMENTS AND FEES
Are there any registration requirements, or any fees/taxes payable?

An Authorization Certificate permit must be obtained from SEFEL.

The fee to apply for this Authorization will depend on the prize total value:

<table>
<thead>
<tr>
<th>Prize Value</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to R$ 1,000.00 (Up to approx. US$250)</td>
<td>R$ 27 (US$7)</td>
</tr>
<tr>
<td>From R$ 1,000.01 to R$ 5,000.00 (From approx. US$ 250 to US$ 1,254)</td>
<td>R$ 133 (US$ 33)</td>
</tr>
<tr>
<td>From R$ 5,000.01 to R$ 10,000.00 (From approx. US$ 1,254 to US$ 2,507)</td>
<td>R$ 267 (US$ 67)</td>
</tr>
<tr>
<td>From R$ 10,000.01 to R$ 50,000.00 (From approx. US$ 2,507 to US$ 12,536)</td>
<td>R$ 1,333 (US$ 334)</td>
</tr>
<tr>
<td>From R$ 50,000.01 to R$ 100,000.00 (From approx. US$ 12,536 to US$ 25,072)</td>
<td>R$ 3,333 (US$ 836)</td>
</tr>
<tr>
<td>From R$ 100,000.01 to R$ 500,000.00 (From approx. US$ 25,072 to US$ 125,360)</td>
<td>R$ 10,667 (US$ 2,674)</td>
</tr>
<tr>
<td>From R$ 500,000.01 to R$ 1,667,000.00 (From approx. US$ 125,360 to US$ 417,951)</td>
<td>R$ 33,333 (US$ 8,357)</td>
</tr>
<tr>
<td>Above R$ 1,667,000.01 (Above approx. US$ 417,951)</td>
<td>R$ 66,667 (US$ 16,715)</td>
</tr>
</tbody>
</table>

Note: Fees as at 10 January 2019 and subject to change.

OTHER LOCAL REQUIREMENTS

Are there any other key local requirements?

The maximum value of a prize will be fixed based on the operating income of the promoter or the nature of its economic activity, so as not to distort the market.

The Authorisation certificate number must be included in all promotional material.

The prize promotion must not allow the promoter(s) to use the promotion authorisation to exploit the promotion as a source of income.
Promoters of prize promotions must not create an exaggerated expectation of obtaining prizes.

The award of a prize cannot be conditional on the participant collecting a series of product-related items (eg cards, stickers, objects, labels, packaging, and wrappers).

The distribution of prizes must not be linked to the results of the Sports Lottery. Promoters must ensure equal treatment for all competitors.

TIMING

Is time required to ensure compliance (other than reviewing the terms and conditions)?

It is required by the law that all requests for Authorisations must be filed within the minimum prior term of 40 days before the initial date of the promotion and/or its marketing campaign.

Also, the execution period of the promotion may not exceed 12 months.

TRANSLATIONS

Are the terms required to be translated by law?

All documents that are mandatory to request the Authorization Certificate must be presented in Portuguese, as well as all information disclosed to consumers / participants.

PENALTIES FOR NON-COMPLIANCE

What are the penalties for non-compliance?

The main situations where Administrative Proceedings may be initiated and sanctions may be imposed are:

- Promoting free distribution of prizes without prior authorization of SEFEL;
- Non-compliance with the approved promotions terms and conditions;
- Failure to deliver an accountability report to SEFEL, after the end of the promotion.

In those scenarios, the Brazilian legislation provides for the possibility of the following penalties:

- Cancellation of the authorization;
- Prohibition of free distribution of prizes for a period of up to two years;
- Fine up to 100% of the total value of the prizes;
- Fine of 10 to 40 times the highest minimum wage in force in Brazil (this can be doubled in the case of recurrence).

Such penalties may be applied independently or together, and may be combined with the suspension / cancellation of the Authorisation Certificate.
RESTRICTIVENESS OF REGULATIONS

*How restrictive are the legal obligations applicable to prize promotions?*

Not very restrictive. While authorization is required, the authority is usually aiming to approve promotions and work alongside promoters in order to find a better way to enable the promotion to be run.

In view of that, it is not likely that a prize promotion mechanic will be refused altogether.

REGULARITY OF SANCTIONS

*How frequently does the regulator impose serious sanctions for non-compliance?*

Fines are imposed, however not very often. There are no provisions for prison sentences.

### KEY CONTACTS

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PRIZE PROMOTIONS AROUND THE WORLD

CANADA

Last modified 04 January 2019

GOVERNING LAW

What are the main applicable governing laws or codes for prize promotions?

<table>
<thead>
<tr>
<th>Name</th>
<th>Law or Code?</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Criminal Code</td>
<td>Law (federal)</td>
</tr>
<tr>
<td>The Competition Act</td>
<td>Law (federal)</td>
</tr>
<tr>
<td>Act Respecting Lotteries, Publicity Contests and Amusement Machines</td>
<td>Law (province of Québec)</td>
</tr>
<tr>
<td>Charter of the French Language</td>
<td>Law (province of Québec)</td>
</tr>
<tr>
<td>Canada’s Anti-Spam Law</td>
<td>Law (federal)</td>
</tr>
<tr>
<td>Personal Information Protection and Electronic Documents Act</td>
<td>Law (federal)</td>
</tr>
<tr>
<td>Various provincial privacy legislation</td>
<td>Law (provincial)</td>
</tr>
</tbody>
</table>

EXTRA-TERRITORIALITY

Do national regulators enforce rules against entities operating abroad?

Regulators can attempt to enforce the laws against foreign entities, although there are few published examples of such enforcement activities.

The province of Québec, in particular, has specific rules dealing with foreign entities and, for example, requires foreign entities to pay a bond if the value of the prizes exceeds certain thresholds.

SKILLS COMPETITIONS
Can a prize promotion be run that is based on skill?

Yes, and this avoids the need to impose a skill-testing question requirement prior to awarding a prize. However, it likely does not overcome the 'no purchase entry' requirement unless the amount of the potential prize is no greater than the purchase amount.

PRIZE DRAWS

Can a prize promotion be run where there is an element of chance in the selection of the winner?

Yes, but before being awarded a prize, contestants must correctly answer a skill-testing question. The question must be a true test of skill, and ideally should be administered within a limited amount of time.

Also, contestants must be able to enter the draw without paying any money or providing any other form of consideration.

SELECTION OF WINNERS

Are there any requirements for the selection of winners and award of prizes?

There are no specific requirements for how winners are selected, except that:

- The selection must be done fairly, giving each entrant an equal chance of winning;
- The selection process must be disclosed clearly in all rules, advertisements, and point of purchase materials; and
- Winners must be notified within 30 days.

JUDGES

Are there any particular requirements in relation to judges or judging for skills competitions?

There are no specific requirements for judging, except that:

- The judging must be done fairly; and
- The criteria and method of selection must be disclosed clearly in all rules, advertisements, and point of purchase materials.

PRIZES

Are there any restrictions on the prizes awarded?

There are no specific restrictions on prizes. However, the number of prizes and their approximate retail value must be disclosed clearly in all rules, advertisements, and point of purchase materials.
Are there any registration requirements, or any fees/taxes payable?

The only jurisdiction in Canada that requires registration is Québec. Registration and payment of a registration fee at least 30 days in advance is required if the total value of the prizes exceeds a minimal threshold (currently CDN$1000 (approx. US$743)). It may also be necessary to pay a bond in some cases.

OTHER LOCAL REQUIREMENTS

Are there any other key local requirements?

As mentioned above, Canadian contest law generally requires a no-purchase entry option and correctly answering a skill testing question prior to being awarded a prize.

Canadian law also requires the following to be disclosed in all rules, advertisements, and point of purchase materials:

- The conditions for entering the contest;
- The prizes;
- The method of awarding the prizes;
- The number and approximate value of retail value of the prizes;
- Whether any purchase is required;
- Whether there is a skill-testing question;
- The chances of winning;
- The contest closing date;
- The place where full contest rules may be obtained; and
- Any other relevant information.

Canadian privacy law requires consent prior to collecting, using and disclosing personal information from any individual, including a contest entrant.

Canadian anti-spam laws require individuals and entities (including contest providers) to obtain consent before sending any commercial electronic messages to or from Canada (including to contest entrants), and to provide certain disclosures and unsubscribe mechanisms in those messages. This must be done in a particular way.

The age of majority in Canada is 18 in some provinces and 19 in others. Minors can participate in a contest with parental consent; however, in general, contracts signed by minors are unenforceable. Therefore, contest entries and prize waivers/releases should be signed by parents/guardians and should contain personal indemnities from the parents/guardians.
TIMING

*Is time required to ensure compliance (other than reviewing the terms and conditions)?*

Yes, if the contest will be open to Québec residents, then registrations are required at least 30 days prior to the contest commencing.

TRANSLATIONS

*Are the terms required to be translated by law?*

Yes, all relevant documentation must be translated into French if the contest will be open to Québec residents.

PENALTIES FOR NON-COMPLIANCE

*What are the penalties for non-compliance?*

Violation of Canadian contest laws can be a criminal offence, which is punishable by a fine or by imprisonment of up to two years. There appear to be few cases where imprisonment has been imposed, but even for those without imprisonment, then court has issued fines and criminal records against the contest providers.

The consequences for misleading advertising under the federal Competition Act can include a penalty of up to CDN$10 million (approx. US$7,430,000) for a first offence. Typically penalties are much lower than the maximum, but still significant; for example, one contest provider was fined CDN$170,000 (approx. US$126,000) for running misleading contests.

The consequences for violation Canada’s antispam legislation can include a penalty of up to CDN$10 million (approx. US$7,430,000) per occurrence. To date, the largest penalty issued under the legislation has been CDN$1.1 million (approx. US$817,000).

RESTRICTIVENESS OF REGULATIONS

*How restrictive are the legal obligations applicable to prize promotions?*

Canadian contest laws are slightly more onerous than those of other countries, due to the no-purchase entry option, the skill-testing question requirement, the disclosure requirements, and the privacy/anti-spam restrictions.

Quebec contest laws are significantly more onerous because they require registration, translation and bonds. Accordingly, many contests in Canada exclude Quebec registrants.

REGULARITY OF SANCTIONS

*How frequently does the regulator impose serious sanctions for non-compliance?*

Fines and prison sentences are rarely imposed, but they can be quite serious when they are imposed.
KEY CONTACTS

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### GOVERNING LAW

**What are the main applicable governing laws or codes for prize promotions?**

<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>Chilean Civil Code</td>
<td>Code</td>
</tr>
<tr>
<td>Chilean Criminal Code</td>
<td>Code</td>
</tr>
<tr>
<td>Law 19,995, which establishes the general bases for the authorization, operation and control of casinos</td>
<td>Law</td>
</tr>
<tr>
<td>Law 20,851, which regulates bingos, lotteries or other similar sweepstakes, with a beneficial or solidarity purpose</td>
<td>Law</td>
</tr>
<tr>
<td>Law 18,568, which establishes standards of Lottery of Concepcion (Lotería)</td>
<td>Law</td>
</tr>
<tr>
<td>Decree No. 152, of the Ministry of Finance, setting the refunded, coordinated and systematized text of the Chilean Charity Polla organic law</td>
<td>Decree</td>
</tr>
<tr>
<td>Decree 1,298, which assigns to Polla the administration of the system of sports forecasts (Sistema de Pronósticos Deportivos)</td>
<td>Decree</td>
</tr>
<tr>
<td>Law 4,566, of Hippodromes</td>
<td>Law</td>
</tr>
<tr>
<td>Law N° 19,496, on the protection of rights of consumers rights Law 19,628, Data</td>
<td>Law</td>
</tr>
</tbody>
</table>
PRIZE PROMOTIONS AROUND THE WORLD

<table>
<thead>
<tr>
<th>Protection Act</th>
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</thead>
<tbody>
<tr>
<td>Law Nº 19,628, on data protection</td>
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<td>Law</td>
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</tbody>
</table>

Note 1: Gambling is a regulated activity which is only lawful in situations expressly authorized by law. Games of chance are unlawful, unless authorized by special laws. There is no specific regulation regarding online gambling.

Note 2: The Ministry of Finance regulates through decrees the games of chance administered by Lotería and the Chilean Charity Polla. The supreme decree will establish terms and conditions applicable to the games with regards to the operation of them, the steps that Lotería should take to modify them and the conditions for participation by gamblers.

EXTRA-TERRITORIALITY

Do national regulators enforce rules against entities operating abroad?

There are neither specific rules nor jurisprudence in regard to these matters. However, according to the Chilean Law on the protection of consumer rights, if the promotion targets Chilean consumers, but is promoted from outside Chile (for example a non-Chilean website or direct marketing from outside Chile), the promoter must inform the consumers:

- The terms and conditions for the promotion;
- The amount or number of prizes; and
- The period in which the prizes can be claimed.

Also the promoter should publish (as on the contest website) the results of the contests, competitions or raffles. The National Consumer Service (SERNAC) in turn requires that the terms and rules of contests or competitions must specify the following:

- Description of the prize;
- Number of prizes;
- The way to participate in the contest;
- How to collect the prize.

SERNAC and the Superintendence of Casinos (SCJ) do not have sanctioning powers, but they will do what they can to take action; however, this is limited and they are unlikely to prioritise such cases.

SKILLS COMPETITIONS
Can a prize promotion be run that is based on skill?

Yes, since these kinds of competitions are lawful bets and games. However, it is important to take into account that the winner should be determined on the basis of ability and not chance, since in the latter case it would be considered gambling (which is only allowed in a limited manner as expressly authorized by law).

PRIZE DRAWS

Can a prize promotion be run where there is an element of chance in the selection of the winner?

Yes, but only in the cases specifically allowed by law:

1. Draws authorized by Law Number 20,851, which regulates bingos, lotteries or other similar sweepstakes, with a charitable purpose.

2. Raffles authorized by the Law on the protection of consumer rights, that is sweepstakes used as a method to run a promotion, which imply an additional benefit for the user for the acquisition of a product or service by the consumer (sweepstakes for other purposes are illegal).

Any other draw in which there is an element of chance in the selection of the winner involved, would be considered and potentially deemed an illegal lottery or game of chance, which is defined in Law 19,995 of Casinos as ‘those games whose results do not depend exclusively on the skill of the players, but essentially on chance or luck’. The direct exploitation of games of chance and development of games officially incorporated in the catalogue of games can only be done by authorised operators.

SELECTION OF WINNERS

Are there any requirements for the selection of winners and award of prizes?

The terms of competitions and sweepstakes must indicate the terms for claiming prizes.

The names of the winners should be published (for example on the website of the promoter), and participants must be informed of the results of the contests, competitions or sweepstakes.

The right to collect the prizes will expire after 60 days from the date of the relevant sweepstake (Law 18.568, which establishes standards of the Lottery of Concepcion).

JUDGES

Are there any particular requirements in relation to judges or judging for skills competitions?

Not applicable.

PRIZES

Are there any restrictions on the prizes awarded?

No, but as indicated before, the terms of competitions and sweepstakes should indicate the terms for claiming the prizes and a description of the prizes.
REGISTRATION REQUIREMENTS AND FEES

Are there any registration requirements, or any fees/taxes payable?

In relation to competitions and draws authorized by the Law on the protection of consumer rights, although it is not mandatory, it is recommended to deposit before a notary a copy of the terms and conditions of the competition or lottery. In addition, participants should be informed that the terms and conditions were deposited before a notary and they must be made available to the contestants, which is usually achieved by publishing the terms and conditions on the contest’s web page.

The operators can only use the machines or implements previously approved and registered in a registry that carries the Superintendence of Casinos (as stated in the Law of Casinos).

In regard to taxes, the Chilean VAT Law stated the delivery or free distribution of movable goods for promotional purposes is subject to Value Added Tax of 19%. The promoter should charge this tax.

OTHER LOCAL REQUIREMENTS

Are there any other key local requirements?

The form of participation (including its conditions), the time or term of the competition or sweepstake, the amount of prizes and the method and the period to claim them must be indicated in the terms and conditions of the competition or sweepstake. Promoters should properly publish the results, including the winners, of competitions or sweepstakes.

Any gambling not explicitly regulated is illegal and only authorized operators can directly exploit games of chance and develop games officially incorporated in the catalogue of games (Law of Casinos).

The lottery system is reserved to Polla Chilena and Lottery of Concepción, except for those lotteries run for charitable purposes.

According to Law N° 19,628, that currently regulates data protection in Chile, if any personal data of the participants, and especially winners, is used for advertising, surveys, market research, product sales, promotional transactions or any other specific purpose, relevant wording must be included in the competition’s materials, so that the participants grant a prior written authorization for the use of said information (i.e. name, ID, images, age, etc).

TIMING

Is time required to ensure compliance (other than reviewing the terms and conditions)?

No. However, time should be planned in order to deal with data protection compliance issues.

TRANSLATIONS

Are the terms required to be translated by law?

Yes, terms and other documents of competitions should be translated into Spanish (Law on the protection of consumer rights).
**PENALTIES FOR NON-COMPLIANCE**

*What are the penalties for non-compliance?*

**Criminal Code:**

- **Art. 276:** Authors, entrepreneurs, administrators, commissioners or agents of lotteries not legally authorized, will incur a fine of eleven to twenty monthly tax units (approx. US$750 to US$1,360) and will lose the movable objects placed in lottery.

  If objects placed in lottery are real property, the penalty shall be a fine of twenty-one to thirty monthly tax units (approx. US$1,430 to US$2,040).

  In cases of re-offending, imprisonment for a short period of time will also be applied.

- **Art. 277:** Bankers, owners, administrators or gambling agents of luck, gambling or chance will be punished with imprisonment in any of its degrees and a fine of eleven to twenty monthly tax units (approx. US$750 to US$1,360)

- **Art. 278:** Those who play at the referred places, will suffer the penalty of lesser imprisonment in their minimum degree or fine of eleven to twenty monthly tax units (approx. US$750 to US$1,360)

- **Art. 279:** The money or effects put into gambling and the instruments, objects and tools destined for it will always be confiscated.

**Law of Casinos:**

- **Art. 51:** Any person manipulating, modifying or altering the implements of the games or their development, to the detriment or benefit of the players or the operator, or substituting the material with which the game is played for the same purpose shall be sanctioned with a fine of 60 to 150 monthly tax units (approx. US$4,075 to US$10,200).

**Law on protection of consumers rights:**

- **Art. 24:** Breach of this law will be sanctioned with a fine up to 50 monthly tax units (approx. US$3,400) In the case of repeat offences, the judge may, as much as, triple the original fine.

**RESTRICTIVENESS OF REGULATIONS**

*How restrictive are the legal obligations applicable to prize promotions?*

Prize promotions are unlawful, except if they are explicitly permitted by law.

In this way, prize promotions related to lawful bets and games, such as prize promotions based on skill, sweepstakes and contests allowed by law of protection of consumer rights and games of chance for recreational purposes, will be allowed. Other types of mechanisms used for prize promotions will only be accepted provided that they are specifically accepted by law and under the condition they are operated by authorized operators.
REGULARITY OF SANCTIONS

*How frequently does the regulator impose serious sanctions for non-compliance?*

Fines and prison sentences indicated in the Criminal Code are seldom imposed.

In regard to sweepstakes and competitions permitted by the Law of Protection of Consumer Rights, if the promoter does not comply with their terms or the law, frequently the regulator imposes a fine. Also, if the promoter refuses to deliver a prize to a winning entrant, the entrant may forced fulfilling the promoter to comply with its obligation.

**KEY CONTACTS**

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**GOVERNING LAW**

What are the main applicable governing laws or codes for prize promotions?

<table>
<thead>
<tr>
<th>Name</th>
<th>Law or Code?</th>
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<tbody>
<tr>
<td>Anti-Unfair Competition Law of the People's Republic of China 2017</td>
<td>Law</td>
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<tr>
<td>(反不正当竞争法)</td>
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<tr>
<td>Certain Regulations on Prohibiting Unfair Competition in Prize-offering Sales 1993</td>
<td>Code by the State Administration for Industry and Commerce</td>
</tr>
<tr>
<td>(关于禁止有奖销售活动中不正当竞争行为的若干规定)</td>
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<tr>
<td>Certain Regulations on Anti-unfair Competition in Pharmaceutical Industry 1993</td>
<td>Code by the State Pharmaceutical Administration</td>
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<td>(医药行业关于反不正当竞争的若干规定)</td>
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<td>(国家工商行政管理局关于抽奖式有奖销售认定及国家工商行政管理局对《反不正当竞争法》具体应用解释权问题的答复)</td>
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<td>Law of the People's Republic of China on the Protection of Consumer Rights and Interests 2013</td>
<td>Law</td>
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<td>(消费者权益保护法)</td>
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Advertising Law of the People's Republic of China 2015
(广告法) | Law
---|---
Measures for the Administration on Sales Promotion Acts of Retailers 2006
(零售商促销行为管理办法) | Code jointly issued by the State Administration of Taxation, State Administration for Industry and Commerce, Ministry of Commerce, Ministry of Public Security and National Development and Reform Commission
Decision on Internet Information Protection 2012 (and data protection provisions scattered in various laws and regulations)
(全国人民代表大会常务委员会关于加强网络信息保护的决定) | Laws and Codes
Cyber Security Law of the People's Republic of China 2017
(网络安全法) | Law
Personal Information Security Specification 2017
(个人信息安全规范) | National Standard

EXTRA-TERRITORIALITY

Do national regulators enforce rules against entities operating abroad?

In relation to prize promotions which are operated purely online and outside China, Chinese regulators, such as the Ministry of Finance, The State Administration for Industry and Commerce, State Administration of Taxation, Ministry of Commerce, Ministry of Public Security and National Development and Reform Commission etc. normally do not consider Chinese laws/rules to be applicable to such promotions, and in practice, generally do not enforce those rules on such promotions.

If the promotion targets Chinese consumers, but is promoted from a non-Chinese website or through direct marketing from outside China, the regulators will do what they can to take action, but in current practice enforcement is very much limited to actions against illegal lotteries, mainly by blocking the offending foreign websites. So far, there have not been any actual cases of other enforcements against offshore operators which have no physical nexus with, or presence in China.

SKILLS COMPETITIONS

Can a prize promotion be run that is based on skill?
Yes, but promoter/organizers should ensure the winner is determined on the basis of skill and not chance, particularly if the entrant needs to pay to enter. If the level of skill is not met, it could be categorized as a promotion judged on the basis of chance, and as such if payment is required, this could be considered a lottery, and may give rise to criminal liability.

There is no detailed guidance under the laws and regulations as to the level of skill, knowledge or judgement the entrants should exercise in a skill competition. The common practice in China is that the requirement for entrants to exercise skill or judgement or to display knowledge should either prevent a significant proportion of potential entrants from taking part or prevent a significant proportion of entrants from receiving a prize.

**PRIZE DRAWS**

*Can a prize promotion be run where there is an element of chance in the selection of the winner?*

Unlawful (potentially deemed an illegal lottery, fraud and/or violation of the relevant anti-unfair competition laws and regulations), unless participants do not pay to enter or to claim/receive prize. China does not allow companies to conduct lotteries, although it does operate a couple of ‘state’ operated lotteries).

The laws and regulations are not clear or specific about ‘payment’. However, according to the relevant cases and professional opinions, it can be inferred that in the following situations payment is required:

- Where the only route of entry is a premium rate phone line;
- Paying more than usual rates for delivery of the prize;
- Paying to discover whether a prize has been won or to collect a prize; and
- Paying for goods and services at an inflated rate in order to take part in the promotion.

Under the current practice (which could change in the future), the provision of data does not amount to payment.

**SELECTION OF WINNERS**

*Are there any requirements for the selection of winners and award of prizes?*

Promoters should provide participants with information regarding the:

- Prize type;
- Probability of winning;
- Value of prize or variety of prize; and
- Time and method to award the prize.

If the prizes are not awarded instantly, additional information including the time, location and method to reveal winners as well as the time and method to inform the winners must be provided to participants. If the prizes are awarded instantly, for prizes above ¥500 (approx. US$73), details of how the prize is to
be awarded must be provided to participants.

Promoters must not engage in any of the following prize-offering sales:

- Conduct prize-offering sales by deceptive means, such as falsely declaring to have prizes or making false representation regarding the prize type, probability of winning, the value of the highest prize, total prize value, prize volume, prize quality, or method of prize awarding etc.

- Provide unclear information about the prize promotion, such as the prize type, conditions to claim the prize, the prize value etc.

- Use unfair means to ensure a designated insider wins the prize.

- Intentionally keep the goods or lottery tickets with winning marks from being released to the market, or not release them simultaneously with the other goods and lottery tickets.

- Intentionally release the goods or lottery tickets with different prize values or prize marks at different times.

- Conduct prize-offering sales employed as a means to sell goods of low quality at a high price.

- Conduct prize-offering sales in the form of lucky draw (on the basis of chance) where the highest prize exceeds ¥50,000 (approx. US$7,270).

- Conduct other fraudulent acts of prize-offering sales.

**JUDGES**

*Are there any particular requirements in relation to judges or judging for skills competitions?*

No.

*Note:* This is a broad comment in relation to general commercial prize promotions and does not apply to all skill competitions such as large-scale competitions including sports competitions and singing contests on TV which may have specific rules for judges and/or judging.

**PRIZES**

*Are there any restrictions on the prizes awarded?*

For any kind of lucky draw or prize promotion based on chance, the highest prize cannot exceed the value of ¥50,000 (approx. US$7,270), including but not limited to:

- The right to use a commodity whose price exceeds ¥50,000 (approx. US$7,270), regardless of the period of time of such use right;

- Job opportunity which offers more than ¥50,000 (approx. US$7,270) salary or other interests, regardless of whether the winner has to fulfil any obligations; and
• Social welfare lotteries and sports lotteries which offer any prize exceeding ¥50,000 (approx. US$7,270).

REGISTRATION REQUIREMENTS AND FEES

Are there any registration requirements, or any fees/taxes payable?

Registration Requirements

For retail stores conducting promotions in relation to a store opening, festival celebration or store anniversary celebration etc, unless the retail store's premises is less than 3,000m², the promotion must be filed with the Administration for Industry and Commerce within 15 days after the promotion is finished.

Fees / Taxes Payable

There are no fees payable.

The grant of prizes is generally deemed as sales of goods for PRC enterprise income tax (EIT) and value-added tax (VAT) purposes, and therefore may subject the enterprise promoter to PRC EIT and VAT.

The individual winner is generally liable to PRC individual income tax (IIT) (normally at the tax rate of 20%) if the winner receives the prizes for free. Such IIT should be withheld by the enterprise promoter.

If the tangible prize needs to be brought into China from overseas, it may trigger additional PRC import taxes (such as import VAT, consumption tax, and customs duties).

The above PRC tax implications may vary depending on each case.

Note: This is a broad comment in relation to general commercial prize promotions and does not apply to all skill competitions such as large-scale competitions including sports competitions and singing contests on TV which may require additional registration and/or fees.

OTHER LOCAL REQUIREMENTS

Are there any other key local requirements?

• Medical products cannot be promoted with prizes.

• Promoters must not use un-qualified or low quality products as prizes, or compromise the after-sale services (if applicable).

• The advertising and other marketing communications regarding the promotion must be real, legal, clear, easy to understand, as opposed to ambiguous or vague. Operators (as promoters) are not allowed to reserve "their rights to interpret the advertising and other marketing communications. "Personal data involved in prize promotions should be collected and processed
in accordance with the Cyber Security Law and the Personal Information Security Specification. For example, the collection and use of personal data must be legitimate, rightful, and necessary. The promoter must publish the rules for collecting and using the personal data, and specify the purpose, means and scope of the personal data. Appropriate consents must be obtained from the data subjects before the personal data is collected, used, or shared.

TIMING

Is time required to ensure compliance (other than reviewing the terms and conditions)?

No, although time should be allowed to deal with data protection issues (e.g. ensuring an appropriate privacy policy is in place and including appropriate tick box functionality for consents).

TRANSLATIONS

Are the terms required to be translated by law?

The laws and regulations are not specific or clear on whether the terms and conditions have to be translated into simplified Chinese. However translation of the terms and conditions into simplified Chinese is the preferred approach to avoid misunderstanding between promoters and participants. Also translation is recommended if:

- The terms and conditions work as a privacy policy for personal data processing, they are required to be easily understood; and

- There is any dispute, local courts/arbitral tribunals would require evidence in simplified Chinese and the terms and conditions may be used as evidence.

PENALTIES FOR NON-COMPLIANCE

What are the penalties for non-compliance?

Violation of Anti-Unfair Completion Law, Law on the Protection of Consumer Rights and Interests, Cyber Security Law and related regulations

Sanctions are proportionate to the breach and routinely commence with requests to amend or terminate the non-compliant promotions. Fines ranging from ¥50,000 (approx. US$7,270) to ¥500,000 (approx. US$72,700) can be imposed against the promoter in breach depending on the circumstances. Also consumers who suffered from an infringement arising from an unfair competition can sue the promoter for compensation. Promoters who engage in fraudulent practice in the provision of goods or services must, on the demand of the consumers, compensate the consumers for their losses and damages (three times the value of the goods/services paid by the consumers but not less than ¥500 (approx. US$73)).

In addition, the penalties for non-compliance with certain requirements can be subject to a public announcement by the relevant authorities which can lead to brand and reputational damage.

Illegal lottery

If the promotion is deemed an illegal lottery, sanctions include criminal detention (1-6 months) or a
prison term of up to 5 years, and/or a fine of up to 5 times the value of the illegal gains. In extremely serious cases, the sanctions will be a prison term of not less than 5 years plus a fine of up to 5 times of the illegal gains or confiscation of property.

Data privacy breaches

Sanctions in relation to data privacy breaches follow a graded approach - warning and requirement to comply, then possibly fines of one to ten times the value of the unlawful income and confiscation of unlawful income; or fines of up to ¥1,000,000 (approx. US$145,450) if there is no unlawful income. In severe cases, the sanction could, for example, be suspension of the relevant business, revocation of the business license or the license to conduct the relevant business, and the closure of a website. Persons held responsible will be subject to fines from ¥10,000 (approx. US$1,450) to ¥100,000 (approx. US$14,545), and could be prohibited from engaging in relevant businesses and their conduct could be recorded in their social credit files. For illegal provision or sale of personal data to third parties, the responsible person could be subject to administrative detention with fines of one to ten times the value of the unlawful income and confiscation of unlawful income; or fines of up to ¥1,000,000 (approx. US$145,450) if there is no unlawful income, in cases where no criminal offense is committed. Where the illegal provision or sale of personal data constitutes a criminal offense, the responsible person will be subject to up to 7 years imprisonment, and potentially a concurrent fine will be imposed on the organization if applicable.

RESTRICTIVENESS OF REGULATIONS

How restrictive are the legal obligations applicable to prize promotions?

The existing rules set out some basic requirements, which are based on common sense and are not unduly onerous. There are no registration or other formality requirements, except for promotions conducted by retail stores 3,000m² or larger. Most prize promotion mechanics are allowed so long as:

- It is not a lottery; and
- The highest prize is not more than ¥50,000 (approx. US$7,270) for prize promotions based on chance.

The rules are not overly burdensome for promoters. The standard to distinguish between prize-offering and lottery is not very clear and in practice prize promotions are rarely considered as lotteries.

REGULARITY OF SANCTIONS

How frequently does the regulator impose serious sanctions for non-compliance?

Prison sentences are rarely imposed.

On the other hand, it is not uncommon to see fines imposed on promoters, mainly for violation of the Anti-Unfair Completion Law, Law on the Protection of Consumer Rights and Interests and related regulations. In particular, there are a number of cases where promoters were fined for offering prizes exceeding ¥50,000 (approx. US$7,270) in lucky draws.
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COLOMBIA

GOVERNING LAW

What are the main applicable governing laws or codes for prize promotions?

<table>
<thead>
<tr>
<th>Name</th>
<th>Law or Code?</th>
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<tbody>
<tr>
<td>Constitution – Article 336, that establishes that all profits obtained from any gambling activity represent a monopoly for the nation. Such profits can only be destined to health programs.</td>
<td>Constitution</td>
</tr>
<tr>
<td>Law 643 of 2001, which regulates all gambling activities and any kind of games of chance (meaning any game whose result is unpredictable and does not depend on the gamer’s abilities). This law also provides a definition of game of skill and dexterity.</td>
<td>Law</td>
</tr>
<tr>
<td>Decree 1068 of 2015, Part 7 – Regulation of Law 643 of 2001</td>
<td>Decree</td>
</tr>
<tr>
<td>Resolution COLJUEGOS 135 of 2012 – Establishes rates and requirements</td>
<td>Resolution</td>
</tr>
<tr>
<td>Law 1581 of 2012 – Data Protection</td>
<td>Law</td>
</tr>
<tr>
<td>Law 1480 of 2011 – Consumer Protection Law</td>
<td>Law</td>
</tr>
</tbody>
</table>

EXTRA-TERRITORIALITY

Do national regulators enforce rules against entities operating abroad?
The rules only apply to companies that operate within the Colombian territory. If the games are considered to be games of chance, they must have a prior authorization from Coljuegos (the authority in charge of administering and regulating these matters).

Regulations in relation to gambling activities do not apply to prize promotions conducted by companies from abroad with no base in Colombia, nor prize promotions from games of skill and dexterity. Nonetheless, various other laws such as the consumer protection law or data privacy law or intellectual property, in some cases, may apply to prize promotions conducted from abroad in which the customers are located within Colombia.

**SKILLS COMPETITIONS**

*Can a prize promotion be run that is based on skill?*

Yes, prize promotions can be based on skill; however, such activities are not subject to any specific regulation. They must only fulfill general Consumer Protection Law requirements and data privacy regulation, considering that through the competition, the company might collect personal data of the contestants or participants.

Profits obtained from competitions where the winners are determined merely on skill are not considered as part of a state monopoly. In this regard, when an element of chance is not involved, the activity might be carried out for marketing purposes, without requiring any specific permission from the Colombian authorities. Therefore, Law 643 applies to any game of chance whether the participant has to pay directly something to participate or not.

**PRIZE DRAWS**

*Can a prize promotion be run where there is an element of chance in the selection of the winner?*

Yes, Colombian law specifically regulates prize promotions when there is an element of chance in the selection of a winner.

Article 336 of the Colombian Constitution establishes that all profits from prize promotions and gambling activities where winners are chosen randomly, are considered as a state monopoly; nevertheless, the state might authorize private entities or individuals to perform such activities. In this event, such activities can only be performed with a governmental authorization and by paying the corresponding fee.

For promotional games, providing that they do not require a direct payment to participate, they do not generate “profits”, and so the exploitation rights or fees are calculated based on the value of the award scheme. The value of each prize from the award scheme cannot exceed 160 times the monthly minimum legal wage (approximately US $44,166 [See note 1]), and the prizes shall be delivered within 30 calendar days. Performing the activity without obtaining a governmental authorization is illegal and may be prosecuted under Colombian criminal law.

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**Note 1:** For all the purposes of this section, a Colombian monthly minimum legal wage for 2019 is equal to COP $828,116 (approximately USD $276).
SELECTION OF WINNERS

Are there any requirements for the selection of winners and award of prizes?

When a sweepstake’s winner is to be selected based on a ticket’s number, the winner number can only be determined in accordance with the winning number of a public lottery for a previously determined date. In such cases, during the day prior to the draw, all tickets that were not granted to customers must be presented before Coljuegos, which is the governmental authority in charge of supervising such activities.

Whenever the winner is not to be determined by a ticket number, winners must be selected randomly.

Prizes must be received within 30 days following the date of the draw. Nonetheless, winners have up to a year to claim a prize.

If the prize is not claimed, the promotors must pay Coljuegos an amount equal to the value of the prizes that were not claimed by the winner(s).

JUDGES

Are there any particular requirements in relation to judges or judging for skills competitions?

Competitions where the selection of winners is determined by skill, are not regulated by Colombian law. In this regard, such activities must be in accordance with the Consumer Protection Law, which states that all terms and conditions must be previously posted and completely informed to consumers.

PRIZES

Are there any restrictions on the prizes awarded?

Prizes awarded must be described in a manner that is compliant with the general consumer protection law.

Money cannot be awarded as a prize unless the promotor is a financial institution. Prizes awarded by any other type of company or individuals must be either services, real estate, or any other kind of movable goods, except for securities.

For promotional games, the value of each prize from the award scheme cannot exceed 160 times the monthly minimum legal wage (approximately US $44,166 [See note 1]), and the prizes shall be delivered within 30 calendar days.

Note 1: For all the purposes of this section, a Colombian monthly minimum legal wage for 2019 is equal to COP $828,116 (approximately USD $276).

REGISTRATION REQUIREMENTS AND FEES

Are there any registration requirements, or any fees/taxes payable?
PRIZE PROMOTIONS AROUND THE WORLD

Registration Requirements

To carry out a prize promotion in Colombia, an authorization from Coljuegos, which is the public entity in charge of administering the state monopoly of gambling activities, must be obtained.

To this effect, where there is a payment to enter, a fee equal to 14% of the value of the gross income (100% of the tickets sold) must be paid.

For promotional games (with no direct payment to enter), as they do not generate an income, the fees are calculated based on the value of the prizes to be awarded.

An administrative fee equal to 1% of the value of the prizes to be awarded must be paid.

Regarding online games, operators have to pay annual fees equivalent to 811 times the legal minimum monthly wage (US $223,867 approximately) and fees equal to 17% of the gross income.

For these purposes, online games are understood as games of chance in which the sweepstake and the payment of the prize are made through internet. If the sweepstake is made through physical means and the internet is only a means of commercialization, the game is not considered an online game.

Fees/Taxes payable

Players will be subject to capital gain tax at a 20% rate on the amount of paid prizes. This tax will be paid completely through the withholding applied by the prize promotion operator.

Prize promotion and gaming activities, unlike online gaming activities, are subject to 19% VAT. Tax basis varies depending on the type of prize promotion/gaming activity.

Prize promotion operators are subject to corporate income tax at a fixed rate of 33% over any net income generated from the prize promotion activities in Colombia. Corporate income tax rate will be reduced progressively until 30% as of 2022. For purposes of calculating the net taxable income, the online gaming/prize promotion operator can treat as deductible expenses the prizes paid to the participants.

OTHER LOCAL REQUIREMENTS

Are there any other key local requirements?

To obtain an authorization from Coljuegos, a request must be presented at least 10 days before the beginning of the marketing campaign. The request must include the following information:

- Legal identification of the individual from the company promoting the prize;
- An invoice certifying the purchase of the good or service that constitutes the prize;
- All technical and economic information regarding the prize that will be awarded;
- A certificate stating that a performance bond equal to the value of the prize will be issued by the promoter;
- A draft of the advertisement that will be used to promote the prize.
After paying the fees and issuing the performance bond, the authorization will be granted by Coljuegos for a term of up to a year.

When advertising the promotion through a visual medium, a stamp of authorization from Coljuegos will be needed. Whenever the promotion is to be made by radio or any other non-visual method, the advertisement must include a statement indicating that such promotion is authorized by Coljuegos.

**TIMING**

Is time required to ensure compliance (other than reviewing the terms and conditions)?

The application for an authorization must be presented by the promoter at least 10 days before the beginning of the advertising campaign. Nonetheless, the authorization might, in some cases, take more than 10 days. The campaign cannot, in any circumstances, start without an authorization.

**TRANSLATIONS**

Are the terms required to be translated by law?

All terms and conditions must be presented in Spanish. Additionally, when applying for an authorization before Colombian authorities, all documents must be in Spanish.

**PENALTIES FOR NON-COMPLIANCE**

What are the penalties for non-compliance?

Considering that profits obtained from gambling activities and prize promotions (excluding promotions that are competitions where the winners are determined solely on the basis of skill) are considered as a state monopoly and that, therefore, such activities can only be performed by individuals or companies that are authorized, any prize promotion carried out without such authorization is considered illegal.

Article 312 of the Colombian Criminal Code establishes that exploiting a state monopoly without a governmental authorization entails a fine of between 500 and 1,000 times the monthly minimum legal wage (between US $138,019 and $276,038 approximately), and a prison sentence from 6 to 8 years.

Additionally, Coljuegos is entitled to impose fines on individuals or companies performing prize promotions without an authorization or with an authorization obtained unfaithfully. Such fines can be up to 200% of the value of the fees that should have been paid to Coljuegos for the exploitation rights.

Other authorities might impose other penalties due to the violation of specific regulations, such as the data protection law or the consumer protection law.

**RESTRICTIVENESS OF REGULATIONS**

How restrictive are the legal obligations applicable to prize promotions?

Although permission is rarely denied, prize promotions (excluding promotions that are competitions where the winners are determined solely on the basis of skill) are subject to governmental authorization and a fee for the exploitation rights must be paid in all cases.
In addition to the general rules applied to advertisements such as consumer protection law, other specific regulation applies for prize promotions. If, during the promotion, there is collection of personal data, the company shall ensure that the data subject has granted a written authorization for the collection and processing of personal data, prior to the collection.

**REGULARITY OF SANCTIONS**

*How frequently does the regulator impose serious sanctions for non-compliance?*

Although prison sentences are rarely imposed, governmental penalties such as fines are regularly imposed when a prize promotion is being carried out without an authorization or in violation of the specific regulation. Additionally, other penalties can be imposed for the violation of the consumer protection law or the data privacy law.

**KEY CONTACTS**

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**CZECH REPUBLIC**

Last modified 07 August 2019

**GOVERNING LAW**

*What are the main applicable governing laws or codes for prize promotions?*

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<td>Consumer Protection Act, Act No. 634/1992 Coll.</td>
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<tr>
<td>Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation or GDPR)</td>
<td>Law</td>
</tr>
</tbody>
</table>

**EXTRA-TERRITORIALITY**

*Do national regulators enforce rules against entities operating abroad?*

Czech regulators do not enforce rules against entities operating abroad, unless such entities focus on Czech customers in their activities or otherwise conduct their activities in the territory of the Czech Republic.

**SKILLS COMPETITIONS**

*Can a prize promotion be run that is based on skill?*

General conditions relating to prize promotions stemming from consumer protection law must however be observed. In particular:

- Competition rules must be transparent, understandable and not mislead consumers.
The competition rules should be as detailed as possible in relation to the terms of participation in the contest and the method of determining or selecting winners. It is necessary to plan for a situation when multiple winners share first place, which can happen in certain skill, speed or betting competitions. Unless other terms and conditions have been agreed, participants who achieve the same result would be entitled to an equal share of the prize. If this is not desired, such eventuality should be excluded in the rules. It follows that terms and conditions should be very clear on this point, e.g. by determining the winner as the one who has not only achieved the correct result, but who was the first person to do so.

**PRIZE DRAWS**

*Can a prize promotion be run where there is an element of chance in the selection of the winner?*

Yes. However, in this scenario, it is necessary to avoid a situation where the prize promotion could be interpreted as a game of chance. Operation of games of chance is regulated by Czech law and is not allowed without a permit. The general distinction is that in order to be interpreted as a game of chance (and therefore subject to gambling regulation), the customer must provide a stake the return of which is not guaranteed and the result of the game must be determined based on chance or other unknown circumstance. In other words, it is not considered as gambling when the game either (i) does not require the customer to provide any stake or (ii) a stake is provided, but the result of the game is not in any way dependent on chance.

This means that if an element of chance is present in the selection of the winner, the participants must not provide any stakes (payment) the return of which would not be guaranteed.

Purchase of goods at their usual price or participation in a marketing event is not considered to be a stake. However, participation in a prize promotion cannot be tied, for example, to the purchase of goods at a price above their normal price. Similarly, if the prize promotion takes place via text messages (SMS), the price may not exceed the standard price according to the tariff of the mobile operator. Otherwise, the difference between the normal price and the increased price could be considered to be a stake within the meaning of the gambling regulation.

**SELECTION OF WINNERS**

*Are there any requirements for the selection of winners and award of prizes?*

It is however strongly recommended to set out requirements for the selection of winners and the awarding of prizes and restrictions in the terms and conditions applicable to the prize promotion, especially if the promotion will be offered to consumers.

The terms and conditions have to be transparent for participants before they enter the prize promotion, which means that among other things, information must be provided about how winners will be selected (e.g. by random draw) and notified (e.g. by email, telephone or regular mail) and what prizes will be awarded and when.

**JUDGES**

*Are there any particular requirements in relation to judges or judging for skills competitions?*

No, there are no particular requirements in relation to judges or judging for skills competitions, but any
judging process has to be communicated in the associated terms and conditions of the respective competition in a clear and unambiguous manner before entering the competition, so that the participants are not misled about the judging process.

**PRIZES**

*Are there any restrictions on the prizes awarded?*

There are no particular restrictions on prizes awarded; however, it must be legal to distribute the prize to the person who wins (e.g. no alcohol/ weapons/ tobacco products to minors).

**REGISTRATION REQUIREMENTS AND FEES**

*Are there any registration requirements, or any fees/taxes payable?*

**REGISTRATION REQUIREMENTS**

- Prize promotions do not require any registration or permit.

**FEES/TAXES PAYABLE**

- The tax consequences must be assessed on a case by case basis.
- The general rule is that the individual receiving a prize is subject to Personal Income Tax at the rate of 15%. This tax is applicable in case the value of the prize exceeds CZK 10,000 (approx. US$440) and the individual receiving the prize is obliged to observe this tax obligation in his/her tax return.

**OTHER LOCAL REQUIREMENTS**

*Are there any other key local requirements?*

No.

**TIMING**

*Is time required to ensure compliance (other than reviewing the terms and conditions)?*

There are no special requirements in this regard.

**TRANSLATIONS**

*Are the terms required to be translated by law?*

Yes. The terms and conditions and other documents relating to the prize promotion must be translated to Czech whenever the prize promotion is directed at consumers.

**PENALTIES FOR NON-COMPLIANCE**

*What are the penalties for non-compliance?*
Prize promotions are in general supervised by the Czech Trade Inspection. Misleading the consumers in connection with prize promotions may lead to a fine of up to 5 million CZK (approx. US$220,000).

There is also a possibility that the personal data processing aspects of the promotion could breach the GDPR, which imposes fines of up to 20 million EUR (approx. US$22.4m) or 4% of the entity’s worldwide annual revenue.

If the prize promotion fulfilled the criteria of gambling as explained above, the entity operating such prize promotion without a permit could be fined with an administrative penalty of up to 50 million CZK (approx. US$2 million) if the entity is a company and up to 500,000 CZK (approx. US$22,000) if the entity is a private individual. Operation of gambling without a license may also trigger criminal liability.

RESTRICTIVENESS OF REGULATIONS

How restrictive are the legal obligations applicable to prize promotions?

As there is no registration requirement for prize promotions in the Czech Republic, and the distinction from illegal gambling is quite clear, we do not consider the legal obligations under Czech law to be onerous.

The rules in the Czech Republic allow for the organization of prize promotions quite easily without formal requirements. Having said this, it should be taken into account that GDPR has introduced various obligations around processing personal data which have significant application to prize promotions (e.g. use of submissions including personal data, winner publicity, etc.).

REGULARITY OF SANCTIONS

How frequently does the regulator impose serious sanctions for non-compliance?

As regards sanctions for non-compliance with regulations specific to prize promotions (i.e. as explained above, mainly consumer protection laws), these are not very common. There are cases where companies have been fined for advertising prize promotions with rules which were not transparent for consumers or pretending to run prize promotions while no actual prizes were awarded (false offers of prizes). Such actions were considered by the regulator to be aggressive, misleading or generally unfair commercial practices towards consumers.

As regards sanctions for unlawful operation of gambling (without a license), these are more common and the regulator in this field imposes serious sanctions for non-compliance. It is therefore important to carefully assess whether the prize promotion does not fulfill the criteria for being understood as gambling in order to mitigate this risk.
PRIZE PROMOTIONS AROUND THE WORLD

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Last modified 14 January 2019

**GOVERNING LAW**

*What are the main applicable governing laws or codes for prize promotions?*

<table>
<thead>
<tr>
<th>Name</th>
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<tbody>
<tr>
<td>The Danish Marketing Practices Act</td>
<td>Law</td>
</tr>
<tr>
<td>The Danish Gambling Act</td>
<td>Law</td>
</tr>
<tr>
<td>The Danish Gambling Duty Act</td>
<td>Law</td>
</tr>
</tbody>
</table>

**EXTRA-TERRITORIALITY**

*Do national regulators enforce rules against entities operating abroad?*

The Danish Gambling Act generally applies to all games that are offered or arranged in Denmark. However, games that are solely based on skills are not governed by the Act.

Online games are offered in Denmark if the game provider receives stakes (i.e. payment) from persons in Denmark. This means that a game provider must comply with the Danish Gambling Act even if the game provider is not situated in Denmark as long as the game provider receives stakes from persons in Denmark.

According to the Danish Gambling Act games that involve payment of stakes require a license from the Danish Gambling Authority, unless specifically exempt.

**Note:** Providing gambling services without a Danish gambling license is illegal and may lead to criminal proceedings.

If a prize promotion is linked to the purchase of certain goods or a service, the payment for that good or service is not considered a stake, if the value of the good or service equals the price paid for the good
or service. However, if participation in a prize promotion requires payment of an extra amount besides what is already paid for the good or service, that amount is considered payment of a stake. Likewise, if the price of the good or service is higher than the usual price to finance a prize promotion.

The Danish Marketing Practices Act follows the so-called effect principle meaning that it applies to all prize promotions targeting the Danish market. The Danish Marketing Practices Act thus applies even if the promoter is not based in Denmark.

**SKILLS COMPETITIONS**

*Can a prize promotion be run that is based on skill?*

Yes, a prize promotion based on skill can be run. If the prize promotion is purely based on skill it is not covered by the Danish Gambling Act. However, it must be ensured that:

- the terms and conditions for the competition are clearly stated. See the Other Local Requirements section; and
- the winner of the competition is selected via the criteria stated in the terms and conditions.

**Note:** If a skill based competition e.g. a sporting event contains elements of chance, the competition is characterised as a combination game, and is thus not considered a pure skills competition. As a result, the competition will be covered by the Danish Gambling Act and a license from the Danish Gambling Authority must be obtained if the competition requires payment of a stake.

**Note:** It is by law considered unfair commercial practices if a consumer is given the impression that it has won, will win or by conducting a certain action will win a prize that either does not exist or includes the payment of an amount of money or other expenses.

**PRIZE DRAWS**

*Can a prize promotion be run where there is an element of chance in the selection of the winner?*

Yes, a prize promotion can be run, where there is an element of chance in the selection of the winners. However, see the other local requirements section.

**Note:** If the prize promotion entails payment of a stake, a license is required, otherwise it will potentially be deemed an illegal lottery. In Denmark lotteries are subject to monopolisation. However, permission can be given if a lottery is held with beneficial purposes or for other non-profit purposes.

Payment of a stake includes payments for goods and/or services, where the prices have been inflated to pay for the participation in the prize promotion. If, however, the price of the good and/or service
corresponds with the value of the good or the service, the payment will not be considered a stake.

**SELECTION OF WINNERS**

*Are there any requirements for the selection of winners and award of prizes?*

The selection of winners is not regulated as such. However, the winners of a competition must always be chosen in accordance with the criteria listed when the consumer entered the competition.

**Note:** The terms and conditions of the prize promotion must unveil clearly and unambiguously how the winner is selected, the date on which the winner is selected, where and when the name of the winner is published and the conditions for delivery/pick up of the prize.

**JUDGES**

*Are there any particular requirements in relation to judges or judging for skills competitions?*

No.

**PRIZES**

*Are there any restrictions on the prizes awarded?*

Certain prizes such as guns, explosives, dangerous chemicals and the like will most likely be considered contrary to good marketing practice.

The prize itself must also actually exist. It is considered a misleading commercial practice if a prize competition is held, but the prizes promoted or other reasonable equivalents are in fact not available.

**REGISTRATION REQUIREMENTS AND FEES**

*Are there any registration requirements, or any fees/taxes payable?*

**Registration Requirements**

Generally, companies must register their game activities with the Danish tax authorities, if the game involves the payment of duties.

**Note:** Prize promotions which are:

- Without stakes
- Based on chance
- Available to the public

and which only offers prizes with a value of US$30 or less do not require registration.
Fees/Taxes payable

The tax consequences must always be considered and specialist advice should be sought.

In terms of payable taxes, payable taxes depend on whether the prize promotion is based on skill or chance.

Where winning the prize is based on skill, the prize is considered income for the winner and the winner must pay income taxes.

Where winning the prize is based on chance and where the prize promotion is without stakes and available to the public the prize is not considered an income for the winner, and as such the prize does not result in income tax for the winner. The promoter is, however, obliged to pay a gain duty.

**Note:** If the prize consists of the company's own products, the duty is calculated based on the sales value.

Where winning the prize is based on a combination of chance and skill and where the prize promotion is with stakes the prize is also subject to a gain duty, and such duty must be paid by the person holding the license.

**OTHER LOCAL REQUIREMENTS**

*Are there any other key local requirements?*

The marketing of prize promotions is subject to quite strict rules. As such the terms and conditions for the prize promotions must generally be clear, unambiguous and easily accessible for the consumer.

The consumer must receive all necessary significant information to be able to assess the value of the prize promotion.

The marketing materials for a prize competition must include the following information:

1. Limitations based on age or geography;
2. The value of the prize;
3. The chances of winning, if such chances can be determined;
4. How many prizes that are included in the competition;
5. The selection process (i.e. how the winner is selected);
6. The date on which the winner is selected;
7. Where and when the name of the winner will be published;
8. Conditions for delivery or pick up of the prize;


**Note:** When prize promotions are marketed towards kids and youths the requirements are intensified. Special attention must be put into ensuring that the kids and youths understand not only the terms and conditions of the prize promotion, but also that the prize promotion is part of the company’s marketing.

Prize promotions on social media are in general subject to the same conditions as mentioned above.

A consumer can only by contacted by phone, e-mail or text if the consumer has given his/her clear consent hereto. Promoters are allowed to use prize promotions to achieve such a consent. However, where this is an intention, the consumer must be clearly informed hereof before the consumer provides his/her contact information. Further the consumer must actively choose to give the consent (i.e. consent hidden in the term and conditions or the data policy is not allowed).

**Note:** Children cannot give consent to be contacted. Such consent can only be given by the child’s parents.

**TIMING**

*Is time required to ensure compliance (other than reviewing the terms and conditions)?*

If the company is subject to a license or payment of duties time must be allowed in order to ensure compliance with local Danish law.

**TRANSLATIONS**

*Are the terms required to be translated by law?*

Translation is not required by law, but terms and conditions for participation in the prize promotion must be clear, unambiguous and easily accessible. We therefore highly recommend that the terms and conditions are in Danish or English.

**PENALTIES FOR NON-COMPLIANCE**

*What are the penalties for non-compliance?*

Non-compliance with specific sections in the Danish Marketing Practices Act is punishable by a fine. When deciding on the penalty, emphasis is placed on the gravity, extent and the intended economic gain of the infringement.

Non-compliance with the Danish Marketing Practices Act can further result in an injunction from either
the Danish Courts or in some cases the Danish Consumer Ombudsman. Non-compliance with such an injunction is punishable by a fine or a prison term of up to 4 months. Non-compliance can also lead to the payment of damages.

In cases where a prize promotion amounts to a lottery, a combination game or gambling a number of different criminal sanctions apply, e.g., non-compliance with the Danish Gambling Act by intentional or grossly negligent arrangement of games without a license is punishable by a fine or a prison term of up to 6 months. However, for repeated non-compliances or non-compliances of particularly extensive character the punishment is a prison term of up to 1 year. The Danish Gambling Act further sanctions the promotion of games that do not have the required license.

Non-compliance with tax legislation may result in fines and criminal liability.

Finally, there is the possibility that the personal data processing aspects of the promotion could breach GDPR, which has maximum fines of up to the higher of (i) €20 million, or (ii) 4% of the promoter’s worldwide annual revenue.

**RESTRICTIVENESS OF REGULATIONS**

*How restrictive are the legal obligations applicable to prize promotions?*

The rules relating to prize promotions are not very extensive if no stake is paid for participation in the prize promotion. However, prize promotions do have a formal requirement of registration (see above in the Registration Requirements section) and quite strict requirements in regard to marketing towards consumers. Also, GDPR has introduced various obligations around processing personal data which have significant application to prize promotions (e.g. use of submissions including personal data, winner publicity, etc.).

**REGULARITY OF SANCTIONS**

*How frequently does the regulator impose serious sanctions for non-compliance?*

The regulators of the Danish Marketing Practices Act, the Danish Gambling Act and the Danish tax laws can potentially impose fines. Prison sentences are very rarely imposed.
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Last modified 11 January 2019

GOVERNING LAW

What are the main applicable governing laws or codes for prize promotions?

<table>
<thead>
<tr>
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<tr>
<td>The Consumer Protection Act (38/1978)</td>
<td>Law</td>
</tr>
<tr>
<td>Lotteries Act (1047/2001)</td>
<td>Law</td>
</tr>
<tr>
<td>The Act on Electronic Communication Services (917/2014)</td>
<td>Law</td>
</tr>
</tbody>
</table>

EXTRA-TERRITORIALITY

Do national regulators enforce rules against entities operating abroad?

Finnish prize promotion regulation applies to promotions which are targeted at Finnish consumers.

One example of such targeting is where the language used in the prize promotion is Finnish. It should however be kept in mind that Swedish is also an official language of Finland.

Prize promotions held in other countries which are not targeted at Finnish consumers are not required to conform to the requirements of Finnish prize promotion regulation.

SKILLS COMPETITIONS

Can a prize promotion be run that is based on skill?

Yes. Prize promotions can depend on the talent, knowledge and/or skill of the participants. However, also see Other local requirements section.

PRIZE DRAWS
Can a prize promotion be run where there is an element of chance in the selection of the winner?

Yes. However, see also Other local requirements section.

SELECTION OF WINNERS

Are there any requirements for the selection of winners and award of prizes?

The selection of winners is not regulated as such.

However, the terms and conditions of the prize competition must disclose clearly and unambiguously the date on which the prize draw is held and how winners will be informed about winning and receiving prizes.

JUDGES

Are there any particular requirements in relation to judges or judging for skills competitions?

No.

PRIZES

Are there any restrictions on the prizes awarded?

Certain prizes are considered improper such as guns, explosives, dangerous chemicals and living animals.

Furthermore, the prize amount and the chances of winning the prize are important factors. Very high value prizes and very high probabilities for winning prizes may be regarded contrary to ordinarily accepted business practices. However, high value prizes as such are not considered improper.

The prize itself must also actually exist. It is strictly prohibited to market through prize promotions where in fact no prize is available.

REGISTRATION REQUIREMENTS AND FEES

Are there any registration requirements, or any fees/taxes payable?

Registration Requirements

There are no registration requirements for prize promotions.

Fees/Taxes payable

Payable taxes depend on whether the prize promotion is based on skill or chance.

Where winning the prize is based on talent or skill, the prize is considered as income for the winner and the winner must pay taxes in accordance with his or her income tax.

By contrast, where the prize is won purely by chance, the winner of the prize must pay a lottery tax in
Finland amounting to 30% of the value of the prize.

**OTHER LOCAL REQUIREMENTS**

*Are there any other key local requirements?*

Two types of prize promotions are generally allowed:

- Prize competitions which do not require buying a lottery ticket or payment for participation; and
- Prize competitions which require purchasing a specific product, but do not require payment for participation in the prize promotion (i.e. the price must be the same with or without the contest).

Prize promotions must always be linked to a product or service. The product or service should always be the main subject of marketing, not the prize competition itself.

The terms and conditions for participating in the prize promotion must be clear, unambiguous and easily accessible.

The marketing materials for a prize competition must include the following information:

1. Who organizes the draw or competition;
2. When the draw or competition begins and ends;
3. What criteria are used in determining the winner in a competition based on knowledge or skills;
4. The date on which the draw is held; and
5. How winners will be informed about winning and receiving the prize.

The information referred to in points (1) – (5) must be present on all marketing materials which contain information on the prize competition. Special rules apply to, for example, television and online advertisements where the letter count is limited.

The provisions relating to prize promotions are interpreted strictly when marketing is targeted at persons under 18 years of age. In general, prize promotions which require the purchase of a product in order to participate are prohibited for adolescents less than 15 years of age.

**TIMING**

*Is time required to ensure compliance (other than reviewing the terms and conditions)?*

No, although time should be allowed to deal with data protection issues (e.g. ensuring an appropriate privacy policy is in place and including appropriate tick box functionality for consents).

**TRANSLATIONS**

*Are the terms required to be translated by law?*

Although translation is not required by law, the terms and conditions for participating in the prize
promotion must be clear, unambiguous and easily accessible. In practice, this means that the terms and conditions for the promotion must be available in the Finnish language.

**PENALTIES FOR NON-COMPLIANCE**

*What are the penalties for non-compliance?*

National authorities can prohibit the prize competition and reinforce the prohibition order by imposing a penalty payment for non-compliance. The amount of the penalty depends on the nature and scope of the obligation imposed, the paying capacity of the addressee, and other issues affecting the matter. There are no maximum sanctions as such.

In 2000 the Market Court held the defendant liable to pay a penalty payment of €50,000 (approx. US$56,000) for non-compliance with the prohibition order of the Consumer Ombudsman. Moreover, the Market Court reinstated the prohibition order and imposed a penalty payment of €100,000 (approx. US$112,000) in a case of further non-compliance. The defendant had arranged a prize promotion. The Market Court considered that the prize promotion itself was the main subject of marketing instead of the marketed service. This amounted to a violation of the Consumer Protection Act.

Non-compliance with tax legislation may result in tax consequences and criminal liability.

In cases where a prize promotion amounts to a lottery or gambling (eg participation requires payment), specific criminal sanctions apply. Penalties vary between fines and imprisonment for up to two years.

Finally, there is the possibility that the personal data processing aspects of the promotion could breach GDPR, which has maximum fines of up to the higher of:

- €20 million (approx. US$22.4m); or
- 4% of the promoter’s worldwide annual revenue.

**RESTRICTIVENESS OF REGULATIONS**

*How restrictive are the legal obligations applicable to prize promotions?*

Most prize promotion mechanics are allowed as long as the promotion does not amount to a lottery or gambling. The main focus is on providing consumers with clear and unambiguous information on the rules of the promotion and on prohibiting misleading marketing. Also, GDPR has introduced various obligations around processing personal data which have significant application to prize promotions (eg. use of submissions including personal data, winner publicity, etc.).

**REGULARITY OF SANCTIONS**

*How frequently does the regulator impose serious sanctions for non-compliance?*

When a prize promotion is prohibited, fines are only imposed in cases of non-compliance with the prohibition order.

The more serious sanctions relate to cases which concern prize promotions that amount to lottery or gambling.
KEY CONTACTS

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### GOVERNING LAW

What are the main applicable governing laws or codes for prize promotions?

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<thead>
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<tr>
<td>May 21, 1836 law, prohibiting lotteries, codified under articles L. 322-1 et seq of the Internal Security Code, as modified by March 17, 2014 law</td>
<td>Law</td>
</tr>
<tr>
<td>Article L. 121-20 of the Consumer Code deals with promotional lotteries (loteries publicitaires). Unfair / misleading / aggressive commercial practices are governed by articles L. 121-1 et seq. of the Consumer Code.</td>
<td>Law</td>
</tr>
<tr>
<td>Recommendations of French advertising self-regulatory organization (ARPP) and the International Chamber of Commerce (ICC) Code on Advertising and Marketing Communication Practice</td>
<td>Code</td>
</tr>
<tr>
<td>Decree No. 92-280 of March 27, 1992 regarding broadcast advertising</td>
<td>Law</td>
</tr>
<tr>
<td>Regulation (EU) 2016/679 of April 27, 2016 on the protection of natural persons with regard to the processing of personal data (GDPR)</td>
<td>Law</td>
</tr>
<tr>
<td>Law No. 78-17 of January 6, 1978 on 'Information Technology, Data Files and Civil Liberties' (data protection act), as amended</td>
<td>Law</td>
</tr>
</tbody>
</table>
**EXTRA-TERRITORIALITY**

*Do national regulators enforce rules against entities operating abroad?*

If the promotion targets French consumers, then French consumer and data protection laws apply.

In order to determine whether the promotion targets French consumers, the regulator may take into consideration factors such as the eligibility criteria, advertising in local media, language, etc.

**SKILLS COMPETITIONS**

*Can a prize promotion be run that is based on skill?*

Yes, although the law is unclear and skill competitions could be risky in a B2B context.

For B2B skill competitions, ensure:

- The winner is picked on the basis of skill alone (e.g. quality, accuracy, originality) not in any way by chance; and
- Criteria for awarding prizes are clear, objective and precisely defined.

Articles L. 322-1 et seq. of the Internal Security Code et seq. prohibit any and all operations (including skill competitions) offered to the public under any name whatsoever, that create an expectation of gain and the outcome of which is determined, even in part, by chance and for which a financial contribution from the participants is required by the organizer.

Article L. 322-2-1 adds that the prohibition includes games the functioning of which relies on the player’s know-how. This could be interpreted as prohibiting skill competitions. However, there might be an argument that it means that the prohibition of chance-based games also applies when know-how is a factor in the determination of the outcome of the contest.

That being said, Article L. 322-2-2 provides that this prohibition does not apply to promotional lotteries mentioned in article L. 121-20 of the Consumer Code, which is why the risk that the skill competition be considered as unlawful is lower in a B2C context.

For B2B, if the competition is totally skill-based and based on clear and objective factors that show that chance is not a factor, the competition would be lawful. If there is doubt as to whether chance is a factor, it would fall within the general prohibition of lotteries, except if participation is totally free. If reimbursement of the financial contribution is offered in the terms and conditions, this is not sufficient to make it lawful.
PRIZE PROMOTIONS AROUND THE WORLD

PRIZE DRAWS

Can a prize promotion be run where there is an element of chance in the selection of the winner?

Unlawful, unless:

- No financial contribution from the participants is required by the organiser (irrespective of whether reimbursement of the financial contribution is offered in the terms and conditions); or
- It is a promotional lottery as mentioned in Article L. 121-20 of the Consumer Code that is not an unfair commercial practice under Article L. 121-1 (which means in particular that entry conditions must at all times be clear, express and transparent).

Under Article L.121-20 of the Consumer Code, a chance-based prize draw consisting of a promotion organized by professionals to consumers is lawful to the extent it is not an unfair commercial practice.

Unfair commercial practices are either:

- Misleading practices (deemed – there is a list of 22 practices that are deemed misleading; or proven, under Articles L.121-2 et seq of the Consumer Code). For example, a promotional lottery would be deemed unfair if the prize or reasonable equivalent is not actually awarded, or if the promotion is presented as 'free' when in fact the consumer must pay anything other than the inevitable costs related to the response to the commercial practice and to taking possession of delivery of the item.

- Aggressive practices (deemed – there is a list of 8 practices that are deemed aggressive; or proven, under Articles L.121-6 et seq of the Consumer Code). For example, repeated solicitations, physical or moral constraint and certain other practices are deemed aggressive.

- 'Simply' unfair: when the practice is:
  - Contrary to professional diligence (not defined but see eg, recommendations of ARPP, ICC Code on Advertising and Marketing Communication Practice); and
  - Substantially alters the economic behavior of a reasonably careful and informed customer in respect of a good or service, under article L. 121-1 of the Consumer Code.

These criteria leave it to the discretion of the French consumer protection authority (DGCCRF/DDPP) and of the courts, to determine whether the practice is unfair; or

- It is a charity raffle (Article L. 322-3 of the Internal Security Code) or a traditional lottery, if organized for a limited amount of people and for a social, cultural, scientific, educational, sports or social activity purpose (Article L. 322-4), or within a funfair (Article L. 322-5).

SELECTION OF WINNERS

Are there any requirements for the selection of winners and award of prizes?

The conditions for the awarding of the prizes must be transparent for participants.
JUDGES

Are there any particular requirements in relation to judges or judging for skills competitions?

No, although it is recommended that judges have sufficient capability to judge a skill competition and more generally be independent from the participants and objective.

PRIZES

Are there any restrictions on the prizes awarded?

The following cannot be awarded as prizes:

- Weapons (article 5, July 12, 1985 Law).
- Anything contrary to public order or anything the distribution of which is prohibited or regulated (e.g. drugs).

The trademark owner may object to its trademarked goods being offered as prizes if the organizer is not an authorized reseller. It may also be considered unfair competition.

REGISTRATION REQUIREMENTS AND FEES

Are there any registration requirements, or any fees/taxes payable?

No.

OTHER LOCAL REQUIREMENTS

Are there any other key local requirements?

No, although it is recommended to:

- File the terms and conditions in the office of a court official, generally a bailiff (huissier de justice).
- Obtain the express, opt-in acceptance of terms and conditions and all related documentation as a condition for entry or receiving a prize.
- Include some of the terms and conditions governing the promotion in any advertising presenting the promotion. This extract of the full length terms and documents should include a short description of the prize and the conditions of participation in the promotion. The extract should also indicate where and how the full length of terms and conditions can be obtained by the participants.
Is time required to ensure compliance (other than reviewing the terms and conditions)?

Time should preferably be allowed to file the terms and conditions in the office of a bailiff, which may take a few hours or up to a couple of business days.

Time should also be allowed if the organizer has not yet made the appropriate steps towards becoming compliant with the GDPR and French data protection act requirements as regards the management of the personal data collected and processed in connection with promotional operations, including, without limitation, the creation and maintenance of a record of data processing activities, appropriate information notices provided to data subjects, and formal processes implemented in order to enable the latter to exercise their rights (i.e. access, rectification and erasure, data portability, objection, restriction of processing, the right to digital legacy).

Where the processing of personal data in the context of promotional operations is likely to result in high risks to the rights and freedoms of natural persons (e.g. where such data is used to profile participants), the organizer must also proceed with a Personal Data Impact Assessment.

In France, since the entry into force of the GDPR on May 25, 2018, the general principle is that each processing purpose for which personal data is processed must be evidenced with a record of data processing activities. Therefore, it is not a requirement to make a record entry for each promotional operation, but to have one record entry encompassing the management of the personal data collected and processed in the course of such operations (provided that means of processing and data processed are similar). If personal data is transferred outside of the European Economic Area, it is necessary to ensure that the recipient is located in a country recognized by the European Commission as ensuring an adequate level of personal data protection, or that a proper transfer mechanism is implemented (e.g. binding corporate rules, European Commission model clauses).

In addition, the organizer shall allow time to implement 'Privacy by Design' and 'Privacy by Default' principles to any further processing of personal data in the context of promotional operations (i.e. ensure that appropriate technical and organizational measures are implemented to meet the requirements of the GDPR and that, by default, only the personal data that is necessary for the purposes of promotional operations is collected and processed).

TRANSLATIONS

Are the terms required to be translated by law?

Yes, into French (August 4, 1994 Law).

PENALTIES FOR NON-COMPLIANCE

What are the penalties for non-compliance?

General prohibition of lotteries

- Up to 3 years’ imprisonment and a fine up to €90,000 (approx. US$100,800) for individuals and €450,000 (approx. US$504,100) for legal entities (or up to 7 years' imprisonment and a fine up to €200,000 (approx. US$224,000) for individuals and €1,000,000 (approx. US$1,120,280) for legal entities, if committed in an organized group).

- Additional sanctions for individuals:
● Loss of civil rights (e.g. right to vote and/or be elected to a public office);

● Confiscation of the means used to commit the offense;

● Publication of the decision;

● Closing down of facility used to commit the crime, permanently or for up to 5 years; and

● Prohibition from exercising certain activities.

● Additional sanctions for legal entities:

○ Dissolution;

○ Closing down of facility used to commit the crime, permanently or for up to 5 years;

○ Confiscation of the means used to commit the infraction;

○ Publication of the decision; and

○ Prohibition for up to 5 years from obtaining or maintaining the license required to operate online gambling activities.

● A fine up to €100,000 (approx. US$112,000) for individual ticket sellers, or for those individuals advertising the lottery and up to €500,000 (approx. US$560,100) for legal entities such as companies. The court may raise fine to four times the amount spent to advertise the lottery.

Promotional lotteries constituting misleading commercial practices

● Up to 2 years’ imprisonment and a fine up to €300,000 (approx. US$336,000) for individuals and €1,500,000 (approx. US$1,680,400) for legal entities such as companies.

● The fine may be set, for individuals, at up to 10% of the average annual turnover during the three preceding financial years or 50% of the cost of the practice constituting the offense.

● The fine may be set, for legal entities, at up to 50% of the average annual turnover during the three preceding financial years, or 250% of the cost of the practice constituting the offense.

● Possible additional sanctions for individuals: prohibition from any or all of the following for up to 5 years:

○ Exercising the activity in the context of which the violation was made;

○ Exercising a commercial or industrial profession;

○ Managing or controlling a commercial/industrial business or a commercial company.

● Possible additional sanctions for legal entities:

○ Prohibition for up to 5 years from:
○ Operating a business;

○ Operating one or more establishments involved in the violation;

○ Issuing securities to the public;

○ Submitting public procurement bids;

○ Issuing checks or using credit cards.

○ Placement under judicial control for up to 5 years;

○ Confiscation of the means used to commit the offense; and

○ Publication of the decision.

• In addition, a Court may order the cessation of the misleading practice.

Promotional lotteries constituting aggressive commercial practices

• Up to 2 years’ imprisonment and a fine up to €300,000 (approx. US$336,000) for individuals and €1,500,000 (approx. US$1,680,400) for legal entities.

• The fine may be set, for individuals, at up to 10 % of the average annual turnover during the three preceding financial years.

• The fine may be set, for legal entities, at up to 50 % of the average annual turnover during the three preceding financial year.

• Possible additional sanctions for individuals: prohibition from exercising a commercial business activity for up to 5 years.

• Possible additional sanctions for legal entities:

  ○ Prohibition for up to 5 years from:

    ○ Operating a business;

    ○ Operating one or several establishments involved in the violation;

    ○ Issuing securities to the public;

    ○ Submitting public procurement bids;

    ○ Issuing checks or using credit cards.

    ○ Placement under judicial control for up to 5 years;

    ○ Confiscation of the means used to commit the offense; and
• Publication of the decision.

• In addition, a Court may order the cessation of the aggressive practice.

Promotional lotteries constituting simply unfair commercial practices

No specific criminal sanctions set forth in the Consumer Code.

Civil sanctions

Damages in case of unfair competition / parasitism claims.

Breach of data protection rules

Administrative sanctions

In case of non-compliance with the GDPR and/or French data protection act requirements, the French data protection authority (CNIL) may impose the following sanctions:

• If the processing activities are likely to infringe the GDPR or the French data protection act: Formal warning (optional).

• If the data controller or processor infringes the GDPR or the French data protection act, but the processing operations may be brought into compliance: Formal order, within a specified period (which may be set at 24 hours in cases of extreme urgency), to:
  ○ comply with a data subject's requests to exercise his or her rights;
  ○ comply with applicable data protection provisions;
  ○ rectify or erase personal data or restrict the processing and notify such actions to recipients to whom the personal data have been disclosed.

The CNIL may decide to make the order public.

• Other sanctions, after a formal warning or in addition to a formal order:
  ○ Reprimand;
  ○ Injunction to comply with applicable data protection requirements or to comply with a data subject's request to exercise his or her rights, subject to a daily penalty of up to EUR 100 000 (approx. US$112,000) per day of delay;
  ○ Temporary or definitive limitation of processing, ban on processing or withdrawal of an authorization previously granted;
  ○ Withdrawal of a certification, or order to a certification body not to issue or to withdraw a certification;
  ○ Suspension of data flows to a recipient in a third country;
- Total or partial suspension of the decision approving binding corporate rules;
- Administrative fines - two thresholds:
  - up to EUR 10,000,000 (approx. US$11,202,800), or in the case of an undertaking, up to 2% of the total worldwide annual turnover of the preceding financial year, whichever is higher, for certain categories of infringements (Note: these sanctions will apply e.g. in case of violations of the obligation to keep a record of the data processing operations that are implemented); and
  - up to EUR 20,000,000 (approx. US$22,405,600), or in the case of an undertaking, up to 4% of the total worldwide annual turnover of the preceding financial year, whichever is higher (Note: these sanctions will apply e.g. in case of a failure to comply with the rights of the data subjects or in case of a violation of the rules governing data transfers outside of the EEA).

**Note:** the CNIL’s president may refer a case to the CNIL’s restricted committee, per an emergency procedure when (i) a violation infringes human identity, human rights, privacy, public, or individual liberties; or the CNIL’s president considers an intervention is urgent.

**Criminal sanctions**

Criminal sanctions of up to 5 years of imprisonment and a fine of up to EUR 300,000 (approx. US$336,000) for natural persons or up to EUR 1,500,000 (approx. US$1,680,400) for legal entities may also be imposed. In addition, companies may be subject to the following additional criminal sanctions:

- Order that the data processed unlawfully be deleted;
- Prohibition from (i) operating a business, (ii) operating one or several establishments having been involved in the violation, (iii) issuing securities to the public, (iv) submitting public procurement bids, (v) issuing checks or using credit cards;
- Placement under judicial control;
- Confiscation of the means used to commit the infraction;
- Publication of the decision.

**Civil liability**

Any person who has suffered material or non-material damage as a result of an infringement of the above-mentioned rules has the right to receive compensation from the data controller or data processor for the damage suffered.

When several individuals who are in a similar situation suffer a loss resulting from such a violation, a class action may be filed before a civil or administrative court having jurisdiction. Data protection class actions may only be brought by:
Associations that have been duly registered for at least 5 years and whose statutory purpose is the protection of privacy and personal data; and

Consumer protection associations recognized at national level and approved in accordance with Article L. 811-1 of the French Consumer Code, when the personal data processing affects consumers.

Individuals are not able to bring such class actions by themselves through their attorney.

Class action litigants are entitled to both seek injunctive relief and claim compensation for their material and moral losses. However, litigants may only claim compensation if what caused the loss occurred before or after May 24, 2018.

**RESTRICTIVENESS OF REGULATIONS**

*How restrictive are the legal obligations applicable to prize promotions?*

French rules have recently been simplified with respect to prize promotions, with less requirements, which are not unduly onerous (there are no registration or further formality requirements, and most prize promotion mechanics are allowed so long as it is not a prohibited lottery). The steps necessary to avoid falling into the category of prohibited lottery are (whilst important) not very restrictive. However, GDPR has introduced various obligations around processing personal data which have significant application to prize promotions (e.g. use of submissions including personal data, winner publicity, etc.).

**REGULARITY OF SANCTIONS**

*How frequently does the regulator impose serious sanctions for non-compliance?*

Enforcement is high. However, in practice, the risk of actual sanction is remote in that the French consumer protection authority (DGCCRF) would typically first request the sponsor who would be a first time infringer to comply with the law. If the organizer does not comply, then the DGCCRF would draft a report and send it to the public prosecutor. In case of successful prosecution, sanctions may be severe.

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**GOVERNING LAW**

*What are the main applicable governing laws or codes for prize promotions?*

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<thead>
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<td>German Act against Unfair Competition ('UWG').</td>
<td>Law</td>
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<tr>
<td>Interstate Treaty on Broadcasting for offers on broadcast media ('RStV')</td>
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<td>Law on Drug Advertising ('HWG')</td>
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</table>
PRIZE PROMOTIONS AROUND THE WORLD

**Note:** Providing gambling services without a German gambling license is illegal and may lead to administrative and even criminal offense proceedings. Regular prize promotions do not constitute gambling under German gambling regulations. However, caution is needed if the characteristics of gambling come into play (especially if payment is required to participate in the prize promotion and if winning the prize depends on chance).

**Note:** Prize promotions on broadcast media (TV and radio) are subject to significantly fewer rules (under the TMG and RStV) than on non-broadcast media (under the BGB and UWG). This booklet reflects the more detailed requirements relating to non-broadcast media; a careful approach would be to seek compliance with these for broadcast ads as well.

### EXTRA-TERRITORIALITY

**Do national regulators enforce rules against entities operating abroad?**

The German Agency to combat Unfair Competition (Wettbewerbszentrale) has capacity to bring civil proceedings if the prize promotion is governed by the UWG:

- The UWG always applies if the prize promotion targets the German market place. That means, German Law is applicable, even if the promoter is based in another country. It is not applicable if the promoter addresses only foreign consumers.

- In cases of online prize promotions it might be relevant if the prize promotion has worldwide scope, or is limited to particular market places, eg by using disclaimers on the website or a specific language (not sufficient in case of English language).

- Moreover, as a member of the European Advertising Standards Alliance (EASA) and the Consumer Protection Cooperation (CPC), the Wettbewerbszentrale cooperates with foreign authorities in cross-border complaints.

Telemedia and broadcasting rules are enforced on the basis of the country-of-origin principle, meaning German regulations will not be enforced if the country-of-origin of the respective medium is not Germany.

### SKILLS COMPETITIONS

**Can a prize promotion be run that is based on skill?**

Yes, prize promotions based on skill (promotional contests also known as 'skill competitions') are allowed, but:

- Public offers of reward may be subject to further restrictions, especially under sec. 657, 661 BGB; eg the public offer must include a time limitation.

Furthermore, unless other terms and conditions have been agreed, participants who achieve the same result would be entitled to an equal share of the prize. It follows that terms and conditions should be very clear on that point, eg by determining the winner as the one who has not only
achieved the correct result but who was the first person to do so.

- The UWG does not differ between skill competitions and sweepstakes, so that the same key requirements have to be fulfilled for both (see Other local requirements).

**PRIZE DRAWS**

*Can a prize promotion be run where there is an element of chance in the selection of the winner?*

Yes, prize promotions based on chance (prize draws also known as 'sweepstakes') are allowed, but ensure:

- Prize draws or sweepstakes should not constitute gambling under the German gambling regulation. Therefore, no payment should be required to enter.

  Note: 'Payment' is interpreted to mean that the participant renders a financial sacrifice in order to obtain a chance to win. 'Irrelevant' amounts are excluded, and participation fees of up to € 0.50 (approx. US$0.56) are considered irrelevant; this would include fees paid to use standard telephone and postal services.

- Sweepstakes addressed to consumers should not give the impression that the prize is already won, otherwise the consumer may have a valid claim under s.661a BGB. This would also constitute an unfair commercial practice pursuant to no. 17 of the Annex to s.3 para. 3 UWG.

- The UWG does not differ between skill competitions and sweepstakes, so that the key requirements have to be fulfilled for each (see also Other local requirements section).

**SELECTION OF WINNERS**

*Are there any requirements for the selection of winners and award of prizes?*

None, but it is strongly recommended to set out requirements for the selection of winners and the awarding of prizes and restrictions in a terms and conditions document, especially if the promotion will be offered to consumers.

The terms and conditions have to be transparent for participants before they enter the prize promotion, which means that amongst other things, information must be provided about how winners will be selected (eg by random draw) and notified (eg by email, telephone or regular mail) and what prizes will be awarded and when.

**JUDGES**

*Are there any particular requirements in relation to judges or judging for skills competitions?*

No, there are no particular requirements in relation to judges or judging for skills competitions, but:

- Any judging process has to be communicated in the associated terms and conditions of the respective competition in a clear and unambiguous manner before entering the competition, so that participants are not misled about the judging process.
• If the skill competition falls under s.661 BGB, some additional requirements apply, e.g. that the judges have to select the winner competently and adhere to the rules of the skills competition.

**PRIZES**

*Are there any restrictions on the prizes awarded?*

There are no particular restrictions on prizes awarded, however:

- It must be legal to distribute the prize to the person who wins (e.g. no alcohol/ weapons/ tobacco products to minors); and

- Where the prize promotion is directed at minors and requires the purchase of advertised products/services, then the value of the prize should be in the ‘usual range’ (e.g. a prize value of €5,000 (approx. US$5,600) for each of 100 main prizes is in the usual range according to German case law), in order not to exploit the lack of business experience of minors; otherwise this constitutes an unfair commercial practice pursuant to s.3 para. 2 UWG.

**REGISTRATION REQUIREMENTS AND FEES**

*Are there any registration requirements, or any fees/taxes payable?*

**Registration Requirements**

Prize promotions do not require any registration or permit.

**Fees/Taxes payable**

There are no specific taxes or fees for prize promotions in Germany.

**OTHER LOCAL REQUIREMENTS**

*Are there any other key local requirements?*

In brief, the key requirements, or rather recommendations, for prize promotions addressed to the German market place can be summarized as follows:

Prize promotions should:

- Not fall under the German gambling regulations (see **Governing law** section);

- Be clearly identifiable as such;

- Not create the false impression that the prize is already won, otherwise the consumer may have a valid claim under s.661a BGB;

- Respect the winner’s privacy, for instance by publishing their names only in case of explicit approval;

- Limit the use of participant's data only for this particular purpose (except where the participants
have explicitly consented to the data being used for further purposes, eg email newsletters);

- Provide easily accessible terms and conditions, which, themselves, shall ensure clear and unambiguous consumer information concerning inter alia:
  - The name and address of the promoter;
  - Any qualifying requirements, including the category of persons entitled to take part or excluded;
  - How to participate, including possible costs of participating;
  - Details of each prize and its value; possible follow-up costs (eg costs for picking up a car);
  - Period of the promotion, especially the closing date;
  - How winners will be selected;
  - Where and when the names of the winners will be published;
  - If participation is conditional on the purchase of products/services or on the use of personal data for advertising issues, this must be stated (for purchase-required promotions directed to minors, please see below).

**Note:** If a purchase-required prize promotion is directed towards minors, make sure that (1) the value of the prize is in the usual range, in order not to exploit the lack of business experience of minors (please see Prizes section); and (2) the prize promotion is not linked to the use of personal data for advertising purposes.

**Note:** Significant conditions, or information which, if omitted, is likely to mislead, must be communicated before purchase, or, if no purchase is necessary, before entry into the promotion.

**Note:** Within the scope of s.6 para 1 no. 4 TMG the promoter may be obliged to fulfill further information requirements. Broadcasting rules pose further requirements (s.8a RStV) as well as telecommunication rules (TKG).

**Note:** In case of space limitations, eg twitter/ banner ads or TV spots, it is recommended to include as much information as possible and apart from that to point out where the full terms and conditions can be obtained.
Note: There are particular restrictions for prize promotions in regard to pharmaceuticals (s.7 and s.11 of the HWG).

TIMING
Is time required to ensure compliance (other than reviewing the terms and conditions)?
No.

TRANSLATIONS
Are the terms required to be translated by law?
Supporting terms and conditions must appear in German in order to be clear and unambiguous for participants in Germany.

PENALTIES FOR NON-COMPLIANCE
What are the penalties for non-compliance?
In the case of infringement of the provisions of the UWG, the consequences are predominantly of a civil law nature. Possible civil claims are e.g. injunctive relief (s.8 UWG), damages in the event of intent or negligence (s.9 UWG), and reimbursement of the costs of the warning letter (Abmahnung) (s.12 para. 1 sentence 2 UWG).

Note: The reimbursement of the costs for a warning letter generally range between €2,000 (approx. US$2,240) and €4,000 (approx. US$4,480).

Fines and penalty provisions only apply in very special cases (e.g. promoting) prize promotions via telephone towards consumers without the prior explicit consent, s.20 UWG or by public notices, sec. 16 UWG.

In case of non-compliance with s.8a RStV and the GWS (ie if the stake for a prize promotion on broadcast media exceeds €0.50 (approx. US$0.56)) this results in an administrative fine of up to €500,000 (approx. US$560,140), depending on the gravity of the offense (s.49 para. 1 sentence 2 no. 5 RStV). First time offenders with only a violation within one promotion may expect a fine of €5,000 (approx. US$5,600).

Breaches of the BDSG constitute an administrative offense punishable with an administrative fine of up to €300,000 (approx. US$336,000), depending on the gravity of the offense.

Note: On 25 May 2018, the General Data Protection Regulation (GDPR) of the European Union came into force, which substantially increased the administrative fines for data protection breaches with fines of up to €20,000,000 (approx. US$22.4m) or 4% of the total worldwide turnover of the infringer from

104 | DLA Piper Prize Promotions | Germany | www.dlapiperintelligence.com/prizepromotions/
A breach of s.7 or 11 of the HWG constitutes an administrative offense with an administrative fine of up to €50,000 (approx. US$56,000) depending on the gravity of the offense.

RESTRICTIVENESS OF REGULATIONS

How restrictive are the legal obligations applicable to prize promotions?

As there is no registration requirement for prize promotions in Germany, and the distinction from illegal gambling is quite clear as well as the rules governing the legal scheme/set-up for prize promotions, we do not assess the legal obligations under German law as onerous.

However, please note, that the general rules on the validity of general terms and conditions (governing the conditions for participation in a prize promotion) as well as the German data protection rules are in our experience comparatively strict in comparison to other jurisdictions (eg UK and the US). Therefore, it is very important that the rules for prize promotions are reviewed in regard to these issues prior to being published/put on the market.

REGULARITY OF SANCTIONS

How frequently does the regulator impose serious sanctions for non-compliance?

Administrative offenses under the RStV, BDSG and HWG are regularly prosecuted by the competent authorities.

Non-compliance under the UWG or BGB is regularly prosecuted under civil law, likewise by competitors or the Wettbewerbszentrale.
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## GOVERNING LAW

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<td>Trade Promotion Competition Licence - Application Forms and Guide for Applicants</td>
<td>Guidance Note</td>
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<td>Guidance Notes on Application for the Grant of Amusements with Prizes Licence</td>
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CODE OF PRACTICE OF THE ASSOCIATION OF ACCREDITED ADVERTISING AGENTS OF HONG KONG

Note: The AAAA Code only applies to members of the Association of Accredited Advertising Agents of Hong Kong.

EXTRA-TERRITORIALITY

Do national regulators enforce rules against entities operating abroad?

Anyone who wishes to conduct a trade promotion with prizes in Hong Kong, which falls within the ambit of "lottery" and/or "gaming" as defined under the Gambling Ordinance, is required to obtain a license from the Office of the Licensing Authority, Home Affairs Department of the Government of the Hong Kong Special Administrative Region (the 'Licensing Authority').

'Lottery' as defined under the Gambling Ordinance includes, inter alia, raffles, sweepstakes, certain specific local Chinese gambling sports, any competition involving guessing or estimating results that does not depend to a substantial degree on skill of competitors which distributes or allots prizes by lot or chance, and any game, method, device or scheme for distributing or allotting prizes by lot or chance.

'Gaming' as defined means "playing of or at any game for winnings in money or other property whether or not any person playing the game is at risk of losing any money or other property”.

According to the internal guideline of the Licensing Authority, if such promotion with prizes involves purely a game of chance, a Trade Promotions License is required. On the other hand, if such promotion with prizes involves a game of chance and skill combined, an Amusements With Prizes License is required. In this regard, the title of the two licenses is rather misleading since the applicant will have to ascertain the nature of the game involved, as opposed to the purpose of the game, when deciding for which one of the two licenses they should apply.

The above position applies as long as a Hong Kong resident (whether permanent or non-permanent resident) is able to enter such promotion. As such, if a Hong Kong resident is able to enter a promotion with "Lottery" and/or "Gaming" involved and such promotion is operated purely online and outside of Hong Kong, one of the two licenses is required to be obtained, depending on whether an element of skill is present. In practice, it may be difficult to enforce the rules in these circumstances, but the relevant authorities in Hong Kong will begin investigations upon receiving a complaint.

For the Trade Promotions License, an overseas applicant with no branch in Hong Kong should appoint and authorize an agent whose business is registered in Hong Kong to be the applicant. Details of the applicant company are required to be stated in the application form and the license will be issued to that company.

For the Amusements With Prizes License, it is a prerequisite to obtain a valid Places of Public Entertainment License granted by the Food and Environmental Hygiene Department under the Places of Public Entertainment Ordinance (Cap. 172).

The Personal Data (Privacy) Ordinance does not explicitly have extra-territorial effect, i.e. it governs activities of data users who control the collection, holding, processing or use of personal data in or from
Hong Kong.

The Trade Descriptions Ordinance applies if, at the time of engaging in the commercial practice, the trader is in Hong Kong or if Hong Kong is the trader’s usual place of business.

**SKILLS COMPETITIONS**

*Can a prize promotion be run that is based on skill?*

Where the promotion is completely based on skill and there is no element of chance involved, such promotions do not require a license. If the promotion in any way involves chance, the promotion will be governed by the Gambling Ordinance and one of the two licenses mentioned above will be required.

**PRIZE DRAWS**

*Can a prize promotion be run where there is an element of chance in the selection of the winner?*

Under the Gambling Ordinance, a prize draw is considered to be a form of ‘lottery’. Since there is no element of skill but only chance involved in a prize draw in general, a Trade Promotions License is required accordingly.

**SELECTION OF WINNERS**

*Are there any requirements for the selection of winners and award of prizes?*

For a Trade Promotion Competition License, the application form requires a declaration that there is a prize awarding process which is random and with each participant having an equal chance of winning.

**JUDGES**

*Are there any particular requirements in relation to judges or judging for skills competitions?*

There are no particular requirements in relation to judges or judging for skills competitions.

**PRIZES**

*Are there any restrictions on the prizes awarded?*

It is not permitted to award cash prizes as part of the promotion. However, businesses can award vouchers or gift cards as long as these cannot be redeemed for cash. If award vouchers, gift cards or credit card spending credit are awarded, the competition should not carry misleading titles, such as ‘Great Chance to Win Cash’ or ‘$10,000 Lucky Draw’. If it is not a joint promotion event, the prize sponsor’s name may not be included in the title. All prizes must not contain any gambling, sex or violence elements.

Specifically for an Amusements With Prizes License, the value of the prize must not exceed HK$300 (approx. US$38).
REGISTRATION REQUIREMENTS AND FEES

Are there any registration requirements, or any fees/taxes payable?

Registration Requirements

In making an application for one of the two licenses, it is necessary to forward to the Licensing Authority various application forms and supporting documents, which include details of the specific game involved. In considering whether to grant the Trade Promotion Competition License, the Licensing Authority will take into account the public interest and will refuse to grant a license if the promotion is believed to be fraudulent or indecent or if the applicant is identified as a ‘dishonest trader’.

In considering whether to grant the Amusements With Prizes License, the Licensing Authority will take into account whether there is presence of a gambling element in the game, and the existence of obscene or indecent content, as well as the safety element of the game for the public.

Fees / Taxes Payable

In order to obtain a Trade Promotion Competition License, it is necessary to submit the relevant documentation and forms to the Licensing Authority, along with the relevant fee:

- $1,590 (approx. US$203) for a license
- $125 (approx. US$16) for a duplicate license, and
- $155 (approx. US$20) for a change in license particulars

In order to obtain an Amusements With Prizes License, it is necessary to submit the relevant documentation and forms to the Licensing Authority, along with the relevant fee:

- $3,200 (approx. US$408) for a license
- $125 (approx. US$16) for a duplicate license, and
- $155 (approx. US$20) for a change in license particulars

Please note that the fee above are exclusive of the fees for the Places of Public Entertainment License.

OTHER LOCAL REQUIREMENTS

Are there any other key local requirements?

The Licensing Authority may apply conditions to the license for the applicant to comply with. There are general conditions that must be met under the Trade Promotion Competition License or the Amusements With Prizes License, in addition to the specific prohibition on cash prizes.

Under a Trade Promotion Competition License, it is not permitted to charge a fee to enter the relevant promotion. However, the example application provided by the Licensing Authority indicates that participants can be required to purchase a product or a number of products for entry into the promotion, e.g. proof of purchase of 5 products will entitle the participant to 5 entries in a draw.

Under an Amusements With Prizes License, it is not permitted to charge more than $5 (approx.)
US$0.6) for any one chance to win a prize.

Under a Trade Promotion Competition License, all advertising for the competition must quote the relevant license number and the results of the competition must be published in a Chinese and English newspaper 10 days after the judging or drawing of the prize(s). The position remains the same for an instant-win game where prize winners are able to claim their prizes on the spot. A cutting of the newspaper article must be forwarded to the Licensing Authority for its records. The Trade Descriptions Ordinance prohibits false or misleading trade description of goods and services, or claims in advertisements.

Under a Trade Promotion Competition License, changes cannot be made to the promotion once it has commenced (including the cancellation or change to the promotion period). If a promotion has not commenced, minor changes can be made, subject to approval by the Licensing Authority. Making changes costs $155 (approx. US$20) and only one change can be made.

Personal data involved during the promotion should be collected, handled and destroyed in accordance with the Personal Data (Privacy) Ordinance. For example, personal data collected from participants should not be used for purposes other than the promotion or transferred to a third party unless the participant's consent is obtained, or unless an exception under the laws apply.

Moreover, entire Hong Kong Identity Card numbers or entire dates of birth (ie year, month and day) should not be collected unless absolutely necessary. The prize winner's name should not be announced together with his/her Hong Kong Identity Card number, even if altered. Also, the prize winner's telephone number should not be published in full.

**TIMING**

*Is time required to ensure compliance (other than reviewing the terms and conditions)?*

For a Trade Promotion Competition License, the completed application forms, together with the supporting documents and publicity materials, should reach the Licensing Authority at least two calendar weeks before the commencement of the promotion. Applicants are advised to apply for a Trade Promotion Competition License well in advance if advertisements of the promotion are to be placed in the media.

For an Amusements With Prizes License, the completed application forms, together with the supporting documents, should reach the Licensing Authority at least three calendar weeks (for short-term licenses) or four weeks (for annual licenses) before the commencement of the promotion. An Amusements with Prizes License will only be issued after the Places of Public Entertainment License has been issued by the Food and Environmental Hygiene Department.

**TRANSLATIONS**

*Are the terms required to be translated by law?*

None required.

**PENALTIES FOR NON-COMPLIANCE**

*What are the penalties for non-compliance?*
Non-compliance with a condition of a license can result in a fine of $50,000 (approx. US$6,375) and imprisonment for 2 years.

Non-compliance will also be taken into consideration on any future application for a license.

In addition, the following penalties may be relevant under the Gambling Ordinance (note that this is not an exhaustive list):

- $5,000,000 (approx. US$637,500) and 2 years imprisonment on summary conviction or $5,000,000 (approx. US$637,500) and 7 years imprisonment on indictment, for a person who promotes, organizes, conducts or manages, or otherwise has control of, an unlawful lottery;
- $50,000 (approx. US$6,375) and imprisonment for 2 years for selling, disposing of or possessing with a view to selling, illegal lottery tickets; and
- $50,000 (approx. US$6,375) and imprisonment for 2 years for printing, publishing or writing tickets, lists of prizes, tips, hints, forecasts or announcements in relation to an illegal lottery.

The following penalties may be relevant under the Personal Data (Privacy) Ordinance (note that this is not an exhaustive list):

- Upon the occurrence of a breach of the data protection principles under the Personal Data (Privacy) Ordinance, the Office of the Privacy Commissioner for Personal Data of Hong Kong may issue an enforcement notice to direct the data user to remedy the contravention. Failure to comply with the enforcement notice is an offence and offenders may be liable for a maximum fine of $50,000 (approx. US$6,375) and imprisonment of 2 years;
- $500,000 (approx. US$63,750) and imprisonment of up to 3 years for using personal data in direct marketing without obtaining data subject's consent or providing personal data for use in direct marketing otherwise than for gain without data subject's consent; and
- $1,000,000 (approx. US$127,400) and imprisonment for up to 5 years for providing personal data for use in direct marketing for gain without data subject's consent.

The Hong Kong Privacy Commissioner for Personal Data has been active in enforcing the direct marketing regime since it came into force in April 2013, and we have already seen a prison sentence and a community service order handed down for offences in connection with the direct marketing regime.

The following penalties may be relevant under the Trade Descriptions Ordinance (note that this is not an exhaustive list):

- $100,000 (approx. US$12,740) and imprisonment for up to 2 years on summary conviction; or $500,000 (approx. US$63,750) and imprisonment for up to 5 years on indictment for applying a false trade description to goods or services.

The Trade Descriptions Ordinance is an important piece of law relating to consumer protection, and the Hong Kong Customs and Excise Department has taken rigorous enforcement actions against offenders.
How restrictive are the legal obligations applicable to prize promotions?

A Trade Promotion Competitions License or an Amusements With Prizes License is required, but the requirements that need to be fulfilled in order to obtain either one of them are not unduly onerous or restrictive.

REGULARITY OF SANCTIONS

How frequently does the regulator impose serious sanctions for non-compliance?

Fines and prison sentences are rarely imposed.

If the authorities in Hong Kong receive a compliant in relation to prize promotion activity, the Hong Kong police will begin an investigation. If the Hong Kong police are of the view that there is a breach of the laws, action will be brought against the relevant individual/entity.

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GOVERNING LAW

What are the main applicable governing laws or codes for prize promotions?

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<thead>
<tr>
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<tbody>
<tr>
<td>Act 34 of 1991 on Gambling Operations ('Gambling Act')</td>
<td>Law</td>
</tr>
<tr>
<td>Government Decree No. 183/2017. (VII. 5.) on the Gambling Supervisory Authority</td>
<td>Law</td>
</tr>
</tbody>
</table>

**Note:** Providing gambling services without a Hungarian gambling license is illegal and may lead to administrative and even criminal offense proceedings. Prize promotions in general do not constitute gambling under Hungarian gambling regulations. However, caution is needed if the characteristics of gambling come into play (especially if payment is required to participate in the prize promotion and if winning the prize depends on chance).

EXTRA-TERRITORIALITY

Do national regulators enforce rules against entities operating abroad?

Yes, but only if the services are considered as gambling services under the Gambling Act. The Gambling Supervisory Authority ('GSA') exercises its regulatory powers if (i) the gambling services covered by the Gambling Act are operated from the territory of Hungary, or (ii) the customer participates in such games in the territory of Hungary, or (iii) the service is aimed at customers living in the territory of Hungary, particularly when the service is made available in Hungarian, or if advertised in the territory of Hungary.

Accordingly, any enforcement risk against foreign operators seems rather low in the case of prize promotions, even if the prize promotion is regulated by the Hungarian Gambling Act (see regulations on prize draw below). At the same time prize promotions which are considered as gambling (contest of
chance) (e.g. poker games, casino games, etc), are heavily regulated and enforced by the Hungarian GSA, including through actions against operators established abroad.

The Hungarian Competition Authority and the Consumer Protection Authority may also enforce consumer protection rules against entities operating abroad if the breach in connection with the prize promotion affects consumers in Hungary.

SKILLS COMPETITIONS

*Can a prize promotion be run that is based on skill?*

Yes, prize promotions based on skill are allowed; however, if the following conditions are fulfilled it will still be considered as gambling and regulated by the Gambling Act:

- the player agreed to pay cash or any other form of consideration to participate in order to receive a cash prize or something of value in the event of a certain outcome or a future contingent event;
- winning or losing depends exclusively or to a material degree upon an element of chance.

Accordingly, if the skill element and the element of chance cannot be separated, it is most likely that such activity will be considered as gambling activity under the Gambling Act.

PRIZE DRAWS

*Can a prize promotion be run where there is an element of chance in the selection of the winner?*

Yes. However, if the conditions of gambling mentioned above are met, it might be considered as a gambling activity, which is unlawful. Under the Gambling Act, ‘prize draws’ shall be reported to the GSA in advance (but no license is required). Pursuant to the Gambling Act, a prize promotion will qualify as a ‘prize draw’ only if the following requirements are met:

- it is related to the purchase of goods or services;
- free of charge (there is no payment in addition to the usual market price of the product or service);
- the determination of the winner is conducted through the ‘public drawing’ of a ticket.

If these requirements are not met (e.g. participation is skill-based and not based on purchase of goods), the organizer has no obligation to notify the GSA and the provisions of the Gambling Act will not apply, unless the activity is considered as gambling activity, e.g. because participation is not free of charge. Cash prize is not possible in the case of prize draws.

SELECTION OF WINNERS

*Are there any requirements for the selection of winners and award of prizes?*

There are no specific requirements for prize promotions in general. However, in the case of prize draws, the same degree of publicity shall be awarded to the drawing process, the winning tickets and the prizes as that provided when advertising the ‘prize draw’. The GSA may conduct inspections. A notary public must be present at each drawing, unless the GSA prescribed otherwise in the
authorization. The organizer shall arrange for the presence of the notary public and shall bear the costs of the notary public.

In the case of prize promotions organized for consumers, it is also strongly recommended to set out the requirements of selecting the winners and awarding the prizes and the possible restrictions in a set of terms and conditions. The terms and conditions have to be transparent for participants before they enter the prize promotion.

**JUDGES**

*Are there any particular requirements in relation to judges or judging for skills competitions?*

No, there are no particular requirements in relation to judges (other than the presence of a notary public in the case of prize draws) or judging for skills competitions.

**PRIZES**

*Are there any restrictions on the prizes awarded?*

As mentioned, a cash prize cannot be awarded in the case of prize draws. Other than that, there are no particular restrictions on prizes awarded; however, in general prizes must be lawful to distribute (e.g. products which cannot be advertised cannot be awarded either, e.g. weapons, tobacco products etc.).

**REGISTRATION REQUIREMENTS AND FEES**

*Are there any registration requirements, or any fees/taxes payable?*

**Registration Requirements**

Prize promotions do not require any registration or permit in general. However, prize draws must be reported to the GSA for registration at least 10 days before publishing the prize draw.

**Fees / Taxes Payable**

There is a minor administrative fee for the registration of prize draws (approx. EUR 10 (approx. US$11). The organizer of the prize draw must also pay a so-called supervision fee, which is 0.001% of the value of the prize, but minimum of approx. EUR 15 (approx. US$17), maximum of approx. EUR 1,500 (approx. US$1,700).

The organizer of the prize promotion must pay personal income tax on the prize (if won by a private individual). If the prize is not taken up by the winner, the organizer must pay the value thereof as game tax.

**OTHER LOCAL REQUIREMENTS**

*Are there any other key local requirements?*

The key requirements for prize promotions addressed to the Hungarian market can be summarized as follows:
Prize promotions should:

- not fall under the Hungarian gambling regulations;
- not be organized/advertised if advertising is prohibited or restricted (e.g. tobacco products, alcohol, firearms/weapons/ammunitions);
- be clearly identifiable as such;
- not create the false impression that the prize is already won, which would constitute as an unfair commercial practice;
- respect the winner's privacy, for instance by publishing their names only in case of explicit consent;
- limit the use of participant's data only for this particular purpose (except where the participants have explicitly consented to the data being used for further purposes, e.g. email newsletters);
- provide easily accessible terms and conditions, which, themselves, shall ensure clear and unambiguous consumer information concerning inter alia:
  - the name and address of the organizer;
  - any qualifying requirements, including the category of persons entitled to take part or excluded;
  - how to participate, including possible costs of participating;
  - details of each prize and its value; possible follow-up costs (e.g. costs for picking up a car);
  - period of the promotion, especially the closing date;
  - how winners will be selected; and
  - where and when the names of the winners will be published.

**TIMING**

*Is time required to ensure compliance (other than reviewing the terms and conditions)?*

Prize draws must be reported to the GSA in advance.

**TRANSLATIONS**

*Are the terms required to be translated by law?*

Supporting terms and conditions should appear in Hungarian in order to be clear and unambiguous for participants in Hungary.
PENALTIES FOR NON-COMPLIANCE

What are the penalties for non-compliance?

In the case of infringement of the provisions of the Gambling Act in connection with prize draws, a fine within the range of approx. EUR 150 (approx. US$170) up to approx. EUR 1,500 (approx. US$1,700) may be imposed by GSA. If the provisions of the Gambling Act are otherwise infringed (e.g. conducting unlawful gambling activity), different amounts of fines can be imposed, depending on the type of infringement. The maximum fine (e.g. in the case of gambling activity without a license) is approx. EUR 310,000 (approx. US$347,000). Carrying out gambling activity without a license may involve criminal charges as well. Misleading consumers in connection with prize promotions may lead to consumer protection fines imposed by the Consumer Protection Authority or the Competition Authority.

Note: On 25 May 2018, the General Data Protection Regulation (GDPR) of the European Union came into force, which substantially increased the administrative fines for data protection breaches with fines of up to € 20,000,000 (approx. US$22.4m) or 4% of the total worldwide turnover of the infringer from its preceding business year.

RESTRICTIVENESS OF REGULATIONS

How restrictive are the legal obligations applicable to prize promotions?

The rules in Hungary allow for the organization of prize promotions quite easily without formal requirements (except for prize draws). Having said this, it should be taken into account that certain prize promotion mechanisms are prohibited in Hungary and therefore cannot be organized. Also, GDPR has introduced various obligations around processing personal data which have significant application to prize promotions (e.g. use of submissions including personal data, winner publicity, etc.).

REGULARITY OF SANCTIONS

How frequently does the regulator impose serious sanctions for non-compliance?

The GSA does not impose serious fines frequently in connection with prize promotions. The GSA is more active in connection with unlawful gambling activities carried out in Hungary.

KEY CONTACTS

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## GOVERNING LAW

**What are the main applicable governing laws or codes for prize promotions?**

<table>
<thead>
<tr>
<th>Name</th>
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<tr>
<td>Public Gambling Act, 1867 along with the relevant state legislations (a 'Key Prize Legislation')</td>
<td>Law</td>
</tr>
<tr>
<td>Lotteries (Regulation) Act, 1998 and the Lottery (Regulation) Rules, 2010 (a 'Key Prize Legislation')</td>
<td>Law</td>
</tr>
<tr>
<td>Indian Penal Code, 1860</td>
<td>Law</td>
</tr>
<tr>
<td>Prize Chits and Money Circulation Schemes (Banning) Act, 1978 (a 'Key Prize Legislation')</td>
<td>Law</td>
</tr>
<tr>
<td>Prize Competitions Act, 1955 (a 'Key Prize Legislation')</td>
<td>Law</td>
</tr>
<tr>
<td>Foreign Exchange Management Act, 1999, read with the Foreign Exchange Management (Current Account Transactions) Rules, 2000, and the Master Direction on Other Remittance Facilities, 2016</td>
<td>Law</td>
</tr>
<tr>
<td>Information Technology Act, 2000 read with</td>
<td>Law</td>
</tr>
</tbody>
</table>
the relevant rules, more particularly the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Information) Rules, 2011

| Consumer Protection Act, 1986 | Law |
| Consumer Protection Bill, 2018 | Bill (as at date of publication this bill has been passed by the lower house of the Indian parliament and shall become law, pursuant to the upper house of the Indian parliament passing it, followed by the receipt of Presidential assent. Upon enactment, it will repeal the Consumer Protection Act, 1986) |
| Advertising Standard Council of India Code | Code |
| Telecom Regulatory Authority of India Act, 1997 read with Telecom Commercial Communications Customer Preference Regulations, 2010 | Law |

**EXTRA-TERRITORIALITY**

*Do national regulators enforce rules against entities operating abroad?*

The Key Prize Legislations do not have an extra-territorial application and prize promotions which are purely operated online and outside India do not fall within the jurisdiction of the relevant regulators of Key Prize Legislations in India.

However, if prize promotions are advertised to customers in India and a significant nexus is established in India, then regulators may enforce the relevant laws (including Key Prize Legislations) against the promoters of such prize promotions.

The Indian Penal Code, 1860 and Information Technology Act, 2000 have extraterritorial applicability and in the event that sponsors of prize promotions are held to be in violation of these laws, the regulator is empowered to prosecute for offences committed outside India. The Indian regulators also have the power to block foreign websites which violate Indian laws.

**SKILLS COMPETITIONS**

*Can a prize promotion be run that is based on skill?*

Yes, but ensure:

- That the winner is determined predominantly on the basis of his or her skill and not chance; and
- That the terms are notified to the entrant before entry into the competition.
Competitions where success depends on a substantial degree of skill i.e. one in which success depends principally upon the superior knowledge, training, attention, experience and adroitness of the player, are permitted under Indian law. This being said, it may be noted that a prize promotion which is predominantly skill based would be constituted as a game of skill despite there being an element of chance. Such prize promotions would be permitted under Indian law.

**PRIZE DRAWS**

*Can a prize promotion be run where there is an element of chance in the selection of the winner?*

If a competition is determined predominantly on the basis of chance, then it is unlawful if participants pay to enter or to claim/receive a prize. However, a prize promotion which is skill based and only has an element of chance may not be illegal per se.

**SELECTION OF WINNERS**

*Are there any requirements for the selection of winners and award of prizes?*

There are no specific regulations around selection of winners and award of prizes in a competition, however, as a good practice measure, promoters must ensure that prize competitions are conducted under proper supervision, adequate resources are available to administer them, enough time is allowed for each stage of the competition and the process of selection of winners is fair and independent.

Further, the Advertising Standard Council of India Code requires:

- That advertisements inviting the public to take part in lotteries or prize competitions permitted under law or which hold out the prospect of gifts shall state clearly all material conditions as to enable the consumer to obtain a true and fair view of their prospects in such activities;

- Advertisers to make adequate provisions for the judging of such competitions, announcement of the results and the fair distribution of prizes or gifts according to the advertised terms and conditions within a reasonable period of time; and

- That with regard to the announcement of results, an advertiser’s responsibility is discharged adequately if the advertiser publicizes the main results in the media used to announce the competition as far as is practicable and advises the individual winners by post.

**JUDGES**

*Are there any particular requirements in relation to judges or judging for skills competitions?*

There are no specific regulations in relation to judges or judging for skills competitions. However, for the sake of good practice the panel of judges must be independent, competent, with set standards/criterion for judgment. Further, the criteria and mechanism for judging entries must be made known before, or at time of, entry.

**PRIZES**

*Are there any restrictions on the prizes awarded?*
The Prize Competition Act prohibits ‘prize competition(s)’ (i.e. crossword prize competitions, missing-word prize competitions or picture prize competitions, or any puzzle based upon the building up, arrangement, combination or permutation, of letters, words or figures) in which the total value of the prize, whether in cash or otherwise, offered in any month exceeds Rs 1,000 (approx. US$14) and the number of entries for such prize competition exceeds Rs 2,000 (approx. US$28).

Other than as mentioned above, there are no specific regulations in relation to prizes for competitions. However, for the sake of good practice, prizes awarded must be as described in their marketing communications, or reasonably equivalent to that description. Participants in instant-win promotions must get their winnings at once or must know immediately what they have won and how to claim without delay, unreasonable costs or administrative barriers.

REGISTRATION REQUIREMENTS AND FEES

Are there any registration requirements, or any fees/taxes payable?

Registration Requirements

Prize Competition Act, 1955 requires a person who promotes or conducts any ‘prize competition’ (as defined above) to obtain a license wherein the total value of the prize(s) to be offered in any month does not exceed Rs 1,000 (approx. US$14). The promoters of such prize competitions are also required to keep accounts and submit the same to the licensing authority at regular intervals determined by the applicable laws.

Fees / Taxes Payable

Depending on the State in India where the license is obtained, a nominal amount will need to be paid as a license fee. In relation to tax obligations, a promoter of a prize competition (irrespective of residency) is liable to withhold tax at a certain percentage of the prize money paid to an Indian resident, should the value of such prize money exceed a pre-determined threshold.

OTHER LOCAL REQUIREMENTS

Are there any other key local requirements?

- Promoters must ensure that the participants are above 18 years of age. In case of minors (ie below 18 years), the legal guardian must also be a party to all agreements on behalf of the minor.

- Further, based on the nature of the prize promotions and remittance of money in/out of India, there may be implications from the perspective of Indian foreign exchange laws which may be required to be examined on a case to case basis. A person resident in India is restricted from dealing in foreign exchange for the purpose of making remittance of lottery winnings, securing prize money/awards, purchase of tickets and/ or otherwise participating in lotteries and sweepstakes. These restrictions also apply to lottery-like schemes existing under different names such as money circulation schemes etc.

- If the data collected by the promoter falls within the scope of ‘sensitive personal information’ (as defined below), the promoter should include specific and express consent of the participant for
PRIZE PROMOTIONS AROUND THE WORLD

collecting such data and for onwards sharing (if so proposed).

- As per the applicable data protection law in India, sensitive personal data or information includes personally identifiable information relating to:
  - Passwords;
  - Financial information such as bank account or credit card or debit card or other payment instrument details;
  - Physical, physiological and mental health condition;
  - Sexual orientation;
  - Medical records and history; and
  - Biometric information of a person.

- In case the participant is required to purchase a certain product which entitles the participant to enter into a lucky draw in relation to that product, it should be ensured that:
  - The product indicates the date of closure of the offer;
  - All 'material conditions' are disclosed;
  - If there are any conditions that apply to the lucky draw, ensure that the words 'conditions apply' appear in bold and such conditions are made available to the participant on request;
  - If a prize is being offered by draw of lots for participants who purchase a particular product, ensure that the prize does not reflect an increase in the price of the product; and
  - The prize that is offered does not cause any loss or injury to the participant whether by eliminating or restricting competition or otherwise.

- The Consumer Protection Bill, 2018 proposes permitting the conduct of certain prescribed contests, lotteries, games of chance or skill, in the context of promoting, directly or indirectly, the sale, use or supply of any product or any business interest. It is proposed that such contests, once prescribed under the relevant rules (that may be notified by the Central government), will be exempted from being classified as 'unfair trade practices'.

- Persons carrying on activities for playing games of chance for cash or payments in kind are "reporting entities" under the Prevention of Money Laundering Act, 2002 (read with the Prevention of Money Laundering (Maintenance of Records) Rules, 2005), and are required to maintain records of all transactions including a record of all cash transactions of the value of more than Rs 1,000,000 (approx US$14,200) or its equivalent in foreign currency, all series of cash transactions connected to each other of individual value less than Rs 1,000,000 (approx US$14,200) or its equivalent in foreign currency where such series of transactions have taken place within a month, and the monthly aggregate exceeds an amount of Rs 1,000,000 (approx US$14,200) or its equivalent in foreign currency.
TIMING

Is time required to ensure compliance (other than reviewing the terms and conditions)?

No, although time should be allowed to deal with data protection issues (eg ensuring an appropriate privacy policy is in place and including appropriate tick box functionality for consents).

TRANSLATIONS

Are the terms required to be translated by law?

None required. However, the preferred approach in India is to have the terms and conditions translated into English.

PENALTIES FOR NON-COMPLIANCE

What are the penalties for non-compliance?

The majority of the offences under the Key Prize Legislations are punishable with a fine of up to Rs 1,000 (approx. US$14) or a prison term of two years, or with both.

A violation of the relevant provisions of the Indian Penal Code, 1860, is punishable for a term which may extend to six months and/or a fine amounting to Rs 1,000 (approx. US$14).

Under the Consumer Protection Act, 1986, a person is liable for punishment under the applicable provisions, with imprisonment for a term ranging between one month to three years, and/or a fine ranging between Rs 2,000 (approx. US$28) to Rs 10,000 (approx. US$140), or with both. However, the Consumer Protection Bill, 2018 has proposed enhanced penalties, with imprisonment for a term up to six months and/or a fine up to Rs 2,000,000 (approx. US$28,400), in case of failure to comply with any direction of the central authority proposed to be established thereunder. In case of failure to comply with any order made by the existing consumer protection forums (i.e. district commission, state commission and national commission), a person is liable for punishment under the applicable provisions, with imprisonment for a term ranging between one month to three years, or with a fine ranging between Rs 25,000 (approx. US$355) to Rs 100,000 (approx. US$1,400), or with both.

Under the Information and Technology Act, 2000, the maximum compensation/penalty payable to the person affected by a contravention is Rs 25,000 (approx. US$355).

RESTRICTIVENESS OF REGULATIONS

How restrictive are the legal obligations applicable to prize promotions?

There is no umbrella legislation in India which lays down detailed requirements in relation to a prize promotion. Prize promotions are generally allowed as long as they do not amount to gambling or a lottery, or an unfair trade practice under the applicable laws. There is no particular registration/licensing requirement, except in the case of a ‘prize competition’. Overall, the legal regime governing prize promotions in India is not particularly restrictive.
How frequently does the regulator impose serious sanctions for non-compliance?

It is not common for the relevant authorities to impose monetary fines or prison sentences. There have been very few cases in the past, where sanctions have been imposed within India.

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IRELAND

GOVERNING LAW

What are the main applicable governing laws or codes for prize promotions?

<table>
<thead>
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<td>Advertising Standards Authority for Ireland's 'Code of Standards for Advertising and Marketing Communications in Ireland' ('ASAI Code')</td>
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<tr>
<td>Gaming and Lotteries Acts 1956 to 2013 (Gaming and Lotteries Acts)</td>
<td>Law</td>
</tr>
<tr>
<td>Consumer Protection Act 2007 ('CPA')</td>
<td>Law</td>
</tr>
<tr>
<td>Unfair Terms in Consumer Contracts Regulations 1995 and 2000</td>
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</tr>
<tr>
<td>The Commission for Communications Regulation (ComReg) Code of Practice on Premium Rate Services</td>
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</tr>
<tr>
<td>European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011</td>
<td>Law</td>
</tr>
<tr>
<td>Data Protection Acts 1988 and 2018 ('Data Protection Acts')</td>
<td>Law</td>
</tr>
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</table>

EXTRA-TERRITORIALITY

Do national regulators enforce rules against entities operating abroad?
Ireland does not have a government appointed regulator for prize promotions. The restrictions and offences under the Gaming and Lotteries Acts apply to lotteries (and therefore some prize draws) operated in Ireland, which would include a prize draw being promoted in Ireland, and offers of participation in a prize draw being made to Irish-based entrants. Lotteries which are promoted and conducted wholly outside of Ireland are excluded/exempt from the statutory prohibition on lotteries.

The ASAI Code does not apply in relation to prize promotions which are published in foreign media (eg in a US newspaper).

If the promotion targets Irish consumers, but is promoted from a non-Irish website or in direct marketing from outside Ireland, then:

- If the promoter is based in a country which operates a cross-border complaint system that the ASAI considers suitable, the ASAI will leave it to the relevant authority in that other country. The ASAI is a member of the European Advertising Standards Alliance and considers most EU countries to operate suitable systems.

- If the promoter is not based in such a country, the ASAI will do what it can to take action, but in reality such action is likely to be limited and the ASAI is unlikely to prioritize such cases.

**SKILLS COMPETITIONS**

*Can a prize promotion be run that is based on skill?*

Yes, but ensure the winner is determined on the basis of skill not chance, particularly if the entrant pays to enter.

The skill element requires entrants to exercise skill or judgement or to display knowledge as part of requirements which either prevent a significant proportion of potential entrants from taking part or prevent a significant proportion of entrants from receiving a prize. (If this level of skill is not met, it could be categorized as a promotion judged on the basis of chance and as such if payment is required, this would be a lottery, giving rise to criminal liability if the appropriate permit or license is not obtained).

**Note:** Case law in Ireland provides the element of skill introduced into the promotion (ie the qualifying question) should be more than a mere 'colorable skill'. In practice this means the question should be one that requires a degree of knowledge/skill. Also, the element of skill should be introduced at the point of entry and not, for example, after the winner has been randomly selected.

**PRIZE DRAWS**

*Can a prize promotion be run where there is an element of chance in the selection of the winner?*

This is unlawful (potentially deemed an illegal lottery in the absence of a permit or license), unless participants do not pay to enter or to claim/receive prize. Where a prize draw involves payment/purchase of a product (thus not satisfying a free route to entry), Irish promoters often include an element of skill at the start of the entry mechanism (such as a qualifying question) intended to reduce the risk of the prize promotion being considered an unlawful lottery. There is no guarantee that such efforts would be successful. However, this is common practice in Ireland.
'Payment' is not defined in the Gaming and Lotteries Acts. In order to fall within the statutory definition of a lottery the prize draw must be 'for money or money’s worth'. Therefore, it is possible that an Irish court could conceivably consider the following to be a payment: where the only route of entry is a premium rate phone line; paying more than usual rates for delivery of the prize; paying to discover whether a prize has been won or to collect a prize; and a requirement to provide a large quantity of data, especially if the promoter intended to sell such data to third parties.

It should be noted that where a promotion is stated to be free to enter, but a substantial number of persons make a purchase then, generally speaking, the promotion may be unlawful. It was held in Flynn v Denieffe [1993] 2 IR 28 that the fact that not all participants made a purchase did not prevent a promotion from being a lottery where a substantial number of the participants did make a purchase.

Some lotteries requiring payment to enter may be lawfully run without a permit or license. However, this exemption is only available in respect of:

1. Private events (e.g. a workplace sweepstake);
2. Lotteries promoted as part of a dance, concert or other like events and the persons arranging the event derive no personal profit from the event or the lottery and the total value of the prize(s) in the lottery is limited to €31 (approx. US$35);
3. Lotteries promoted as part of a circus or other travelling show, on certain days;
4. Lotteries promoted not for profit and as part of a carnival, bazaar, sports meeting, local festival, exhibition or other like event on certain days; and
5. Lotteries promoted by the licensee of a licensed amusement hall or funfair.

Exemptions (3) to (5) are subject to additional requirements:

- The tickets are not sold outside the place or premises where the event is in progress;
- The tickets are sold only on the same day or night as the draw and announcement of results;
- The price of each ticket is not more than €0.08 (approx. US$0.09); and
- Neither taking part in nor the result of the lottery entitles the participant to take part in any other lottery or game or otherwise to receive or be eligible to compete for any money or money’s worth.

**SELECTION OF WINNERS**

*Are there any requirements for the selection of winners and award of prizes?*

There are no specific requirements under Irish law. The ASAI Code (which is binding only on ASAI members) includes requirements on the selection of winners and the award of prizes. These requirements include the following:

- Where a prize promotion involves any form of draw, promoters should ensure that tokens, tickets or numbers are allocated on a fair and random basis. An independent observer should supervise
the draw to ensure that individual entries enjoy equal chances.

- Unless otherwise stated in advance, prize-winners should receive their prizes no more than six weeks after the promotion has ended.

- Promoters should either publish, or make available on request, details of the name and county (i.e. state or region) of residence of prize-winners. Promoters should bear in mind the risk of theft or harassment that may arise if details given are sufficient to allow the address of a winner of a substantial prize to be identified.

**JUDGES**

*Are there any particular requirements in relation to judges or judging for skills competitions?*

There are no specific requirements under Irish law. The ASAI Code (which is binding only on ASAI members) includes requirements in respect of judges and the judging for skills competitions. These requirements include the following:

- If the selection of winning entries is open to subjective interpretation, an independent judge, or a panel including one member who is independent of the competition's promoters and intermediaries, should be appointed.

- Those appointed to act as judges should be competent to judge the subject matter of the competition. ASAI members are required to make available to the ASAI on request the identity of judges.

**PRIZES**

*Are there any restrictions on the prizes awarded?*

**Gaming and Lotteries Acts**

For a lottery operated under permit, the total value of the prizes (or prize if there is only one prize) should not exceed €5,000 (approx. US$5,600). For a lottery operated under license the total value of the prizes (or prize if there is only one prize) on any occasion must not exceed €30,000 (approx. US$33,600) and if more than one lottery is held in any week, the value of the prizes for that week must not exceed €30,000 (approx. US$33,600).

**ASAI Code**

The ASAI Code includes the following requirements:

- Entry conditions should set out a full and accurate description of the prizes.

- Promoters should ensure that promotional products meet satisfactory standards of safety, durability and performance in use. Literature accompanying promotional items should contain any necessary safety warnings.

- Phrases such as 'subject to availability' do not relieve promoters of the obligation to take all reasonable steps to avoid disappointing participants.
• Whilst not a restriction on an awarded prize, one should note that, according to the ASAI Code, a promoter should state in the promotion terms whether a cash alternative can be substituted for any prize. Also, if promoters are unable to meet demand for a promotional offer because of an unexpectedly high response, or some other unanticipated factor outside their control, products of a similar type and similar or greater quality and value, or a cash payment, should normally be substituted.

REGISTRATION REQUIREMENTS AND FEES

Are there any registration requirements, or any fees/taxes payable?

Registration Requirements

There is no requirement to register prize promotions.

Fees/Taxes payable

Gaming and Lotteries Acts: For a lottery operated under license, the statutory fee is €150 (approx. US$168). The promoter must make an application to the District Court for the lottery license, which involves further costs related to notifying the police, and legal fees. The application must show the charitable purpose of the lottery, and how the other restrictions applying to lotteries will be satisfied.

Regarding fees or taxes associated with prize promotions - in general, winnings from games with prizes, betting, lotteries or sweepstakes are not taxable in Ireland unless the winner is doing this as part of a trade or business (in which case, they would be taxable) or the prize winnings are derived by reason of their employment (in which case, they would be taxable and the employer would have a responsibility to account for the relevant tax through the PAYE system).

OTHER LOCAL REQUIREMENTS

Are there any other key local requirements?

The other key legal requirements generally relate to obligations under Irish consumer law and data protection and privacy laws. The ASAI Code includes a number of requirements that are not mandated by Irish law. However, as mentioned in the Extra-territoriality section, it is considered best practice in Ireland to follow the ASAI Code.

Under the CPA it is a prohibited commercial practice to:

• Operate, run or promote a competition or prize promotion without awarding the prizes described or reasonable equivalents; and

• To make a representation or create an impression that a consumer has won or will win a prize or other equivalent benefit, if:
  ○ There is no prize or equivalent benefit; or
  ○ In claiming the prize, the consumer has to make a payment or incur a loss.

The ASAI Code provides that:
• Complex rules should be avoided and promoters should not need to supplement conditions of entry with additional rules. If further rules cannot be avoided participants should be informed how to obtain them and in such an event, the rules should contain nothing that would have influenced a consumer against making a purchase or participating. Participants should always be able to retain or easily access entry instructions and rules.

• The closing date should be clearly stated in each advertisement, on each entry form and on the outer surface of any relevant pack, wrapper or label. This date should not be changed unless circumstances outside the reasonable control of the promoters make it unavoidable.

• When prize promotions are widely advertised, promoters should ensure that entry forms and any goods needed to establish proof of purchase are widely available.

• The terms and conditions in which a promotion is presented should be clear, complete and easy for the consumer to understand. The following points should be clearly explained:
  ○ How to participate and conditions and costs;
  ○ Promoter’s full name and business address in a form that can be retained or continually accessed by consumers;
  ○ Closing date for entry or the submission of claims for a prize should be prominently displayed;
  ○ Any proof or purchase requirements;
  ○ Any geographical or personal restrictions;
  ○ Any necessary permissions;
  ○ Any limits on the number of entries;
  ○ Any limit on the number of promotional products that an individual consumer or household may claim or win; and
  ○ Any other factor likely to influence consumers’ decisions or understanding about the promotion.

  **Note:** Marketing communications that include a promotion and are significantly limited by time or space should include as much information about significant terms and conditions as practicable and should direct consumers clearly to an easily accessible alternative source (e.g. website) where all terms and conditions of the promotion are prominently stated.

**TIMING**

*Is time required to ensure compliance (other than reviewing the terms and conditions)?*

No, although time should be allowed to deal with data protection issues (e.g. ensuring an appropriate
PRIZE PROMOTIONS AROUND THE WORLD

privacy policy is in place and including appropriate tick box functionality for consents). Where a promoter proposes to operate a prize draw which involves a payment or purchase of product and winners being selected randomly (i.e. “by chance”), the promoter should consider applying for a lottery licence, and allow 3 months for the licence application process, including making arrangements with a charity that will be associated with the lottery.

TRANSLATIONS

Are the terms required to be translated by law?

None required.

PENALTIES FOR NON-COMPLIANCE

What are the penalties for non-compliance?

The ASAI has limited sanctions. The ASAI Code is a non-statutory self-regulating code. The ASAI can publish case reports of the Complaints Committee. Promotions that breach the ASAI Code must be withdrawn or amended. If a member of the ASAI does not comply with an ASAI decision, that member may be subject to fines and/or suspension of ASAI membership. In practice, the ASAI does not issue fines.

Under the Gaming and Lotteries Acts a person who contravenes a provision of the Acts, for which a penalty is not specifically fixed, is guilty of an offence and on summary conviction is liable for a maximum fine of €127 (approx. US$142) and/or up to 3 months’ imprisonment. On conviction the Court may order the destruction of any documents relating to the lottery.

Under the CPA, if a trader is convicted of an offence, the court can require the trader to pay damages to a consumer who has suffered loss and can impose a fine or penalty on the trader. The maximum fine for a first offence is €3,000 (approx. US$3,360) on summary conviction.

For data breaches under GDPR, organizations can be fined up to €20 million (approx. US$22.4m) or 4% of annual worldwide turnover, whichever is higher. Fines imposed under the ePrivacy Regulations currently range from €5,000 (approx. US$5,600) on summary conviction to €250,000 (approx. US$280,000) for conviction on indictment.

RESTRICTIVENESS OF REGULATIONS

How restrictive are the legal obligations applicable to prize promotions?

The Gaming and Lotteries Acts are quite onerous, as most prize promotions operated in Ireland would likely be found to be unlawful if investigated. However, in practice, the Gaming and Lotteries Acts are rarely enforced against businesses that run prize promotions in Ireland. Frequently, where a prize promotion involves the purchase of a product (thus not satisfying a free route to entry), promoters include an element of skill into the entry mechanism (such as a qualifying question) intended to reduce the risk of the prize promotion being considered an unlawful lottery. There is no guarantee that such efforts would be successful. However, as said above, the prohibition on unlawful lotteries is rarely enforced in practice.

The ASAI Code is self-regulating. When a complaint is received by the ASAI, the complaint is
evaluated initially by the ASAI Executive. If the ASAI executive determines that the complaint falls within the ASAI Code and that there is a prima facie case for investigation, the advertiser/promoter is informed of the complaint and is invited to comment on the complaint, with reference to the ASAI Code, normally within 10 days. The ASAI Executive then investigates the complaint and produces a Recommendation to the ASAI Complaints Committee on whether the complaint should be upheld, which may include recommended courses of action. Details of a Complaint Committee’s decision may be published on the ASAI website, at the Complaint Committee’s discretion, containing details of the advertiser/promoter but excluding details about the consumer who made the complaint.

A marketing communication that contravenes the ASAI Code is required to be amended or withdrawn. The advertiser/promoter may also be required to recompense any consumers adversely affected by the contravening marketing communication.

Finally, GDPR has introduced various obligations around processing personal data which have significant application to prize promotions (eg. use of submissions including personal data, winner publicity, etc.).

**REGULARITY OF SANCTIONS**

*How frequently does the regulator impose serious sanctions for non-compliance?*

**Gaming and Lotteries Acts**

There is no appointed regulator. The Irish police force would investigate offenses. However, in practice breaches of the Gaming and Lotteries Acts are rarely investigated or enforced. Therefore, fines and prison sentences are very rare.

**ASAI**

When a complaint is investigated by the ASAI, a Case Report may be published with details of the complaint. Promotions that breach the ASAI Code must be withdrawn or amended. Further, the contravening advertiser/promoter may also be requested to compensate any consumers adversely affected by the advertisement or promotion. In addition to the above, if any member of the ASAI does not comply with an ASAI decision, it may be subject to penalties including fines and/or suspension of ASAI membership. However, in practice, the ASAI does not issue fines.
KEY CONTACTS

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GOVERNING LAW

What are the main applicable governing laws or codes for prize promotions?

<table>
<thead>
<tr>
<th>Name</th>
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<tbody>
<tr>
<td>Decree of the President of the Republic of 26 October 2001 No. 430 (the 'DPR')</td>
<td>Law</td>
</tr>
<tr>
<td>Bulletin Circular of the Ministry of Productive Activities (now Ministry of Economic Development) 28 March 2002, No. 1 (the &quot;Circular&quot;).</td>
<td>Law</td>
</tr>
</tbody>
</table>

With regard to the advertisement of the prize promotions:

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<tr>
<td>Legislative Decree of 6 September 2005 No. 206 (the 'Consumer Code')</td>
<td>Code</td>
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<tr>
<td>Legislative Decree 2 August 2007 No. 145 (Misleading Advertising)</td>
<td>Law</td>
</tr>
<tr>
<td>Legislative Decree 2 August 2007 No. 146 (Commercial practices)</td>
<td>Law</td>
</tr>
<tr>
<td>Commercial Communication Code of the Advertisement Self-Regulatory Authority (the 'IAP Code')</td>
<td>Code</td>
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With regard to the processing of personal data:
**PRIZE PROMOTIONS AROUND THE WORLD**

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<tr>
<td>Regulation (EU) 2016/679 on protection of natural persons with regard to the processing of personal data and on the free movement of such data (the &quot;GDPR&quot;)</td>
<td>Law</td>
</tr>
<tr>
<td>Legislative Decree of 30 June 2003 No. 196 and subsequent amendments (the &quot;Privacy Code&quot;) with regard to the processing of personal data</td>
<td>Code</td>
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</table>

**EXTRA-TERRITORIALITY**

*Do national regulators enforce rules against entities operating abroad?*

The DPR applies to prize promotions aimed at sponsoring the knowledge of the promoter’s products and services within the Italian territory, both in the case of promotions directed to consumers and in the case of promotions addressed to other subjects (such as professionals, employees, retailers or mediators). Provided that a prize promotion is not addressed to Italy, national regulators would not enforce the DPR against entities operating abroad. However, the assessment on whether a promotion can be considered to be addressed to Italy shall be evaluated on a case by case basis.

Should the prize promotion be addressed to Italy, there are two different scenarios:

- If the company is established outside of Italy in one of the EU Member States, the laws of that State shall apply instead of the DPR and the Circular and companies should comply only with Italian general consumer law (e.g. the Consumers Code and the Legislative Decree no. 70 of 9 April 2003 and subsequent amendments, on e-commerce); while

- If a company is established in a non-EU Country, the DPR and the Circular shall apply. In this scenario, the promoter established outside of the Italian territory can run a prize promotion, but would be required by law to appoint a fiscal representative in Italy or ask for a direct identification VAT number from the Italian Tax Authority (subject to certain conditions provided by the applicable fiscal laws) in order to comply with all the formalities as per the DPR. In such case, national regulators would be entitled to enforce the rules against the foreign promoter through the representative located in Italy.

**SKILLS COMPETITIONS**

*Can a prize promotion be run that is based on skill?*

Yes, but it is necessary to ensure that:

- Participants are not required to pay any contribution.

‘Payment’ is interpreted to mean any kind of contribution/entry fee save for the price for the purchase of the promoted product/service
PRIZE PROMOTIONS AROUND THE WORLD

and

- The stringent formalities required by the DPR are complied with.

Unless a promotion falls under one of the exceptions provided by the DPR, it is not possible to run multi-jurisdictional promotions; any activity related to the prize promotion must be carried out in Italy and also the server used for the promotion must be located within the Italian territory.

The exceptions provided by the DPR include:

- Promotions aimed at spreading artistic or scientific works where the prize is due as remuneration for the work done;
- Promotions run by TV channels where the prizes are offered directly to the audience watching the show, unless the operation intends to promote products belonging to enterprises other than TV channels;
- Promotions where the prize consists of:
  - Discounts on the same products/services (or products/services of the ‘same kind’) as those purchased on a non-discount basis; or
  - A discount on different products, provided that such discount is not aimed at encouraging the purchase of the discounted product.
- Promotions under which the prizes, further to a purchase, consist of vouchers to be used in a subsequent purchase within the same point of sale or in any other point of sale of the same brand;
- Promotions where prizes have a very low value (such as small gadgets, flags, calendars etc.);
- Promotions where the prizes are granted to schools, hospitals or similar and have social or charity purposes.

In the above mentioned cases, the rules of the DPR do not apply. However, these exceptions are interpreted quite narrowly by the national regulator and therefore a case by case assessment is necessary.

PRIZE DRAWS

Can a prize promotion be run where there is an element of chance in the selection of the winner?

Same restrictions that apply for skills competitions (see Skills competitions section) also apply to prize draws (both called Concorsi a premio).

SELECTION OF WINNERS

Are there any requirements for the selection of winners and award of prizes?

For Skills Competitions and Prize Draws, the winner must be selected either in the presence of an
Italian Notary or an Officer of the Chamber of Commerce. In the case where the selection of winners is undertaken electronically, the results generated shall also be certified by an expert.

The Italian Notary or the Officer of the Chamber of Commerce present to the Skill Competition and Prize Draws shall draft the official minutes of assignment of the prizes and of closure of the promotion once the prizes are delivered to the winners. Prize winners should receive their prizes within 180 days of the closure of the promotion.

Nevertheless, the presence of a Notary / Officer shall not be required where the prizes are awarded shortly after the consumers enter the promotion, by way of automated or electronic systems (such as "Instant Win" or "Scratch and Win" etc.) which, by their very nature and with regard to the timing and methods of the execution, entail the exclusion of the Notary / Officer.

In any case, in multiphase prize promotions, the presence of the Notary / Officer can be restricted to the semi-final and final phases.

JUDGES

Are there any particular requirements in relation to judges or judging for skills competitions?

No, there are no particular requirements in relation to the judges or judging for skills competitions. However, it is highly advisable for the terms and conditions of the competition to be as clear as possible, providing a clear overview of both the criteria for participation in the promotion and the mechanic of the judging process.

PRIZES

Are there any restrictions on the prizes awarded?

A definition of prize can be inferred from the DPR, which states that prize can be goods, services, discounts, and shall have economic value. Cash prizes cannot be offered, but discounts and golden coins can be awarded.

With regard to prizes, the DPR also requires the promoter to clearly indicate to the participants in the skill competition / prize promotion the value of the prize.

REGISTRATION REQUIREMENTS AND FEES

Are there any registration requirements, or any fees/taxes payable?

Registration Requirements

The terms and conditions must be filed with the Ministry of Economic Development at least 15 days before the beginning of the prize promotion.

Fees/Taxes payable

In case of Skills Competitions and Prize Draws arranged by any entity established outside the Italian territory, it shall appoint a so-called ‘fiscal representative’ (i.e. either a person or entity resident in Italy) for tax purposes or, if the entity is based within the EU or in a country which has reached a specific
international agreement with Italy, a direct identification VAT number may be requested from the Italian Tax Authority.

Organizers must post a guarantee equal to 100% of the value of prizes offered.

Organizers cannot deduct VAT on the prizes of promotions and shall pay a tax equal to 25% of the value of the prizes awarded.

**OTHER LOCAL REQUIREMENTS**

*Are there any other key local requirements?*

Terms and conditions must contain all the information required by the DPR.

The organizer shall also post a bank guarantee (with an expiration of at least 1 year from the conclusion of the prize draw) equal to the whole value of the prizes to be awarded to the benefit of the Ministry of Economic Development.

Both documents, as mentioned in the **Timing** section, must be filed with the Italian Ministry of the Economic Development at least 15 days prior to the beginning of the prize promotion.

It is worth noting that very stringent formalities need to be adopted prior to and during the course of both skills competitions and prize draws.

**TIMING**

*Is time required to ensure compliance (other than reviewing the terms and conditions)?*

The terms and conditions and the bank guarantee equal to the aggregate value of the prizes shall be filed with the Ministry of Economic Development at least 15 days prior to the commencement of the Skills Competition/Prize Draw through an online procedure.

**TRANSLATIONS**

*Are the terms required to be translated by law?*

Terms and conditions must be provided to participants in Italian.

**PENALTIES FOR NON-COMPLIANCE**

*What are the penalties for non-compliance?*

In the event of late delivery of the documentation to the Ministry of Economic Development promoters are subject to fines of between € 2,065.83 (approx. US$2,300) up to € 10,329.14 (approx. US$11,570).

In case of performance of prize promotions according to a mechanic different from the one outlined in the terms and conditions or notified to the Ministry of the Economic Development, fines of between € 1,032.91(approx. US$1,150) and € 5,164.57 (approx. US$5,785) are applicable.

In the event of promotions contravening the requirements of the DPR, the applicable sanctions shall be
between €1,032.91 (approx. US$1,150) and €2,582.28 (approx. US$2,900). This sanction is doubled if the prize promotion is carried out after the prohibition issued by the authorities. Also, if the promotion is qualified as illegal gambling, fines of between €50,000.00 (approx. US$56,000) up to €500,000.00 (approx. US$560,000) are applicable.

Finally, there is the possibility that the personal data processing aspects of the promotion could breach GDPR, which has maximum fines of up to the higher of (i) €20 million (approx. US$22.4m), or (ii) 4% of the promoter’s worldwide annual revenue.

**RESTRICTIVENESS OF REGULATIONS**

*How restrictive are the legal obligations applicable to prize promotions?*

The DPR provisions are quite detailed and restrictive. More in particular it is important to point out that international / multi-jurisdictional promotions and competitions are not generally allowed under Italian law (see Skills competitions section). Finally, GDPR has introduced various obligations around processing personal data which have significant application to prize promotions (e.g., use of submissions including personal data, winner publicity, etc.).

**REGULARITY OF SANCTIONS**

*How frequently does the regulator impose serious sanctions for non-compliance?*

Fines are frequently imposed if reported by individuals through the dedicated hot line.

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JAPAN

GOVERNING LAW

What are the main applicable governing laws or codes for prize promotions?

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<td>Law</td>
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<tr>
<td>Penal Code (Act No. 45 of 1907), Chapter XXIII. Crimes Related to Gambling and Lotteries (the 'Penal Code')</td>
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EXTRA-TERRITORIALITY

Do national regulators enforce rules against entities operating abroad?

The AAUPMR does not apply in relation to prize promotions which are published in foreign media (eg in a US newspaper) and target non-Japanese consumers.

If the promotion is operated outside of Japan but targets Japanese consumers, for example by promoting through a Japanese language website or specifying that Japanese consumers are eligible for the prize promotion, the AAUPMR will likely apply; as long as the prize is offered as a means of encouraging Japanese consumers to purchase goods or services supplied by the promoter or any other business.

However, the powers of the Consumer Affairs Agency (CAA), a relevant authority of the AAUPMR, enables it to enforce the AAUPM against offshore promoters. However, such cases are likely to be limited and are not usually prioritized by the CCA.

The restrictions on gambling and lotteries under the Penal Code will not apply to offshore promoters.

SKILLS COMPETITIONS
Can a prize promotion be run that is based on skill?

Yes, skills competitions where winners are determined ‘through superiority or correctness in a particular performance’ are allowed. The AAUPMR guidelines, dated 28 June 2012, provide the following examples of permitted methods of determining winners:

- Soliciting predictions about matters that are not generally known at the time of application (e.g. the top ten news stories of the year) and determining winners through the superiority or correctness of responses;
- Soliciting catch-phrases, photographs, ideas for improving products and the like, and determining winners based on superiority;
- Soliciting answers to puzzles, quizzes and the like and determining winners by the correctness of those answers; and
- Determining superiority by contests such as bowling or fishing, performance, sports or other areas (excluding sales contests, exhibition contests, and other methods of determining winners by superiority on the basis of transaction volume or other transaction figures).

PRIZE DRAWS

Can a prize promotion be run where there is an element of chance in the selection of the winner?

Under the AAUPMR and the Notification on Premium Offers by Lotteries or Prize Competition (the Japan Fair Trade Commission’s Notice No.3 of 1977) and Guidelines for the Interpretation of the Notification on Premium Offers by Lotteries or Prize Competition (Japan Fair Trade Commission’s Secretary General Notice No.4 of 1977) (collectively the ‘Notification’), prize draws are generally permitted. For the purposes of this regulation, prize draws will generally be considered to be in one of the following two categories:

- ‘Closed’ prize competitions, which require purchase of products/services to participate in the prize draw; or
- ‘Open’ prize competitions, which do not require such purchase.

Only ‘Closed’ prize competitions are regulated under the AAUPMR and the Notification.

The AAUPMR and relevant notifications regulate the maximum single prize value and maximum total value of all prizes.

On the other hand, ‘Open’ prize competitions are not regulated under the AAUPMR and the Notification.

SELECTION OF WINNERS

Are there any requirements for the selection of winners and award of prizes?

The methods for selection of winners and the requirements for awarding prizes in prize promotions are not regulated under the AAUPMR or any other relevant guidelines or notices. Methods can be determined at the discretion of the retailer/promoter. However, if a certain selection method was made
public but the actual selection was conducted using a different method, it could be a violation of the AAUPMR's prohibition against misrepresentation.

**JUDGES**

*Are there any particular requirements in relation to judges or judging for skills competitions?*

This is not regulated under the AAUPMR or any other relevant guidelines or notices. Methods can be determined at the discretion of the retailer/promoter.

**PRIZES**

*Are there any restrictions on the prizes awarded?*

The AAUPMR provides that when an award is provided by way of a contest, game, lottery or sweepstake and is related to the promotion of product sales (‘buy this product, receive an entry into the sweepstake’), the maximum value of such an award may not exceed 20 times the Transaction Amount (as defined below), and in no case may exceed ¥100,000 (approx. US$913).

The total value of all awards provided may not exceed 2% of the total sales forecast of the product being promoted during the term of the game, contest, lottery, or sweepstake.

When the game, quiz or lottery is run jointly with other sellers in the same region, the maximum value of each award may be up to ¥300,000 (approx. US$2,740) regardless of the Transaction Amount, and the total value of awards given may not exceed 3% of the sellers’ total sales prospects.

The AAUPMR also provides that when a reward is provided to all customers (for example, all customers who visit a store) and not by way of a contest, game, lottery or sweepstake, the maximum value of such a reward may not exceed 20% of the Transaction Amount (if the Transaction Amount is less than ¥1,000 (approx. US$9), the value of premium must be ¥200 (approx. US$1.80) or less).

The interpretation of ‘Transaction Amount’ differs depending on the circumstances:

- When the award provided to purchasers relates to the value of purchased product’s purchase price, the product purchase price is the Transaction Amount;

- When the awards are provided to purchasers regardless of purchase price, the Transaction Amount is generally considered to be ¥100 (approx. US$1); and

- When the awards are provided even if a product is not purchased but still in promotion of such purchase, such as a requirement for the individual to come to the store, the Transaction Amount will be considered to be ¥100 (approx. US$1) or the cost of the least expensive good in the store, whichever is greater.

Where there is no connection with promoting a particular transaction, a game, contest, lottery or quiz provided to the general public (for example, online or by newspaper or magazine) is an ‘Open’ prize competition. The distribution of prizes in ‘Open’ prize competitions is not regulated by the AAUPMR and so there is no maximum value on the prizes to be awarded.

**REGISTRATION REQUIREMENTS AND FEES**
Are there any registration requirements, or any fees/taxes payable?

Registration Requirements

There are no requirements for prize award promotion operators to register.

Fees / Taxes Payable

No fees need to be paid to an authority to run a promotion. Operating a prize promotion is in itself not taxable, although the prize winners must pay income tax on the value of the prize they receive. On the other hand, the cost of the prizes awarded under a promotion can be deducted from the gross income of such promoters.

OTHER LOCAL REQUIREMENTS

Are there any other key local requirements?

Currently, gaming is generally banned in Japan with a few limited exceptions with respect to certain sports, for example, betting on horseracing, speedboat racing, bicycle racing or motorcycle racing. There are also a few government sanctioned lotteries and pachinko (a combination of a slot machine and vertical pinball machine) which are popularly accepted. Casino gaming (including online gaming) is strictly prohibited in Japan, although there have been recent political pushes toward legalization of casinos.

TIMING

Is time required to ensure compliance (other than reviewing the terms and conditions)?

No, although time should be allowed to deal with data protection issues (eg ensuring an appropriate privacy policy is in place and including appropriate tick box functionality for consents).

TRANSLATIONS

Are the terms required to be translated by law?

None required. However, as general Japanese consumers may not fully understand the terms in English or any other foreign languages, it is recommended that the terms be translated into Japanese.

PENALTIES FOR NON-COMPLIANCE

What are the penalties for non-compliance?

The CAA will investigate the activities of a retailer / promoter that it suspects is violating the AAUPMR. The CAA will give that retailer / promoter the opportunity to offer evidence in its favour and / or take measures to end the practices that the CAA views as violations. If a retailer/promoter refuses to cooperate with the CAA or provides false information to the CAA upon such investigation, the responsible individual of the retailer/promoter is punishable by up to one year’s imprisonment or a criminal fine of up to ¥3,000,000 (approx. US$27,400) and the company employing the individual may be made subject to a fine of the same amount. If the CAA is not satisfied by the evidence and / or actions of the retailer it may issue a formal cease-and-desist order (CDO) to end the offending practice.
Issuance of and compliance with a CDO is an involved process requiring the participation of the retailer / promoter. The enforcement hearings are often drawn out, involving multiple meetings with regulators and submissions of drafts of improvement plans.

CDOs are publicly published and can be damaging to the reputation of the retailer found in breach.

Violation of a CDO is punishable by up to two years imprisonment or a criminal fine of up to ¥3,000,000 (approx. US$27,400) for the responsible individual. In addition to the above sanctions on the individual, the company where employing the individual may be made subject to a fine of up to ¥300,000,000 (approx. US$2,739,000). However, fines and prison sentences are rarely imposed.

RESTRICTIVENESS OF REGULATIONS

*How restrictive are the legal obligations applicable to prize promotions?*

The AAUPMR rules set out quite detailed requirements with respect to the maximum single prize value and maximum total value of all prizes, but are based on common sense and are not unduly onerous (there are no registration or other formality requirements, and most prize promotion mechanics are allowed so long as it is not a lottery).

REGULARITY OF SANCTIONS

*How frequently does the regulator impose serious sanctions for non-compliance?*

The CAA does not issue CDOs very often, and fines and prison sentences are rarely imposed.

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GOVERNING LAW

What are the main applicable governing laws or codes for prize promotions?

<table>
<thead>
<tr>
<th>Name</th>
<th>Law or Code?</th>
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<tbody>
<tr>
<td>Law of 20 April 1977 on the operation of games of chance and betting in connection with sporting events, as amended (“1977 Law”)</td>
<td>Law</td>
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<tr>
<td>Luxembourg Criminal Code (Art. 302)</td>
<td>Code</td>
</tr>
<tr>
<td>Regulation (EU) 2016/679 of April 27, 2016 on the protection of natural persons with regard to the processing of personal data (GDPR)</td>
<td>Law</td>
</tr>
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</table>

**Note:** The 1977 Law provides that the operation of games of chance is prohibited, except for prize promotions referred to under article 21 of the 2002 Law (i.e. "free lotteries, contests and raffles exclusively for commercial propaganda purposes"). However, the 2002 Law was repealed on 23 December 2016 (see below). Therefore, a strict construction of the 1977 Law could mean that prize promotions are now prohibited in Luxembourg. Nevertheless, this does not seem to be the case, as many prize promotions have been (and continue to be) organized since 2016.
Note: The 2002 Law, which provided for the conditions to be fulfilled for the purpose of organizing prize promotions, was repealed by the Law of 23 December 2016 on sale and sidewalk sales and misleading and comparative advertising. The relevant provisions of the 2002 Law were never replaced. Its principles continue to be applied by certain players on the Luxembourg market as good practice, as no other legal sources are available on this subject. However, there is no certainty that it will be applied and enforced as such.

EXTRA-TERRITORIALITY

Do national regulators enforce rules against entities operating abroad?

Yes, as the respective rules are criminally sanctioned. However, there seem to be quite low levels of enforcement relating to simple prize promotions (free lotteries, raffles etc.).

Actual 'games of chance' (such as casino games) are heavily regulated and the regulation is enforced in Luxembourg, including through actions against operators established abroad.

It is uncertain whether such conditions remain applicable given the current status of the law (see Governing law). A number of operators on the Luxembourg market nonetheless continue to apply the principles of the previously applicable law as good practice.

SKILLS COMPETITIONS

Can a prize promotion be run that is based on skill?

Yes, as long as it is ensured that the winner is selected on the basis of his/her physical or intellectual skills only, and not (even partly) on chance.

Please note that under the previously applicable 2002 Law, if the prize promotion was based on the combination of the skills of the participants and luck (such as a game where participants must complete a crossword puzzle game and then a prize draw is made between all the participants who correctly completed the crossword puzzle), then it was only authorized when all of the conditions of the 2002 Law were met (see below).

It is uncertain whether such conditions remain applicable given the current status of the law (see Governing law). A number of operators on the Luxembourg market nonetheless continue to apply the principles of the previously applicable law as good practice.

PRIZE DRAWS

Can a prize promotion be run where there is an element of chance in the selection of the winner?

Yes, under the previous law (under which the exception in the 2002 Law applied), when the following conditions were fulfilled: (i) the organizer had to establish terms and conditions for the participation in such prize promotion, which had to be registered with a bailiff; (ii) the terms and conditions about the prize were not misleading; (iii) the participation form had to be separate from any purchase order for a
good or service; (iv) the draw was not to be subject to any consideration of any kind, or any obligation to purchase; and finally (v) the organizer who gave the impression that the customer had won a prize, had to provide such prize to the consumer.

*It is uncertain whether such conditions remain applicable given the current status of the law (see Governing law). A number of operators on the Luxembourg market nonetheless continue to apply the principles of the previously applicable law as good practice.*

Actual games of chance such as slot machines, sports bets, and casinos are highly regulated, and under certain circumstances, prohibited, in Luxembourg.

**SELECTION OF WINNERS**

*Are there any requirements for the selection of winners and award of prizes?*

Yes, under the previously applicable 2002 Law. Participation in a draw, whatever the terms and conditions, could not be subject to any financial compensation of any kind whatsoever, nor to any purchase obligation. Moreover, the conditions for the awarding of the prizes were to be transparent for participants.

*It is uncertain whether such conditions remain applicable given the current status of the law (see Governing law). A number of operators on the Luxembourg market nonetheless continue to apply the principles of the previously applicable law as good practice.*

**JUDGES**

*Are there any particular requirements in relation to judges or judging for skills competitions?*

No, under the previous applicable law.

*It is uncertain whether such conditions remain applicable given the current status of the law (see Governing law). A number of operators on the Luxembourg market nonetheless continue to apply the principles of the previously applicable law as good practice.*

**PRIZES**

*Are there any restrictions on the prizes awarded?*

No, not under the previously applicable law. However, anything contrary to public order or the distribution of which is prohibited or regulated (e.g. tobacco, drugs…) should not be awarded as prizes.

*It is uncertain whether such conditions remain applicable given the current status of the law (see Governing law). A number of operators on the Luxembourg market nonetheless continue to apply the principles of the previously applicable law as good practice.*

**REGISTRATION REQUIREMENTS AND FEES**

*Are there any registration requirements, or any fees/taxes payable?*
REGISTRATION REQUIREMENTS

Yes, under the previously applicable law. The organizer of a prize promotion had an obligation to establish, in advance of any advertising message pertaining to the prize promotion, some terms specifying the conditions and the course of such commercial operation. Those terms and a copy of the documents to be provided to the relevant consumers had to be filed with a bailiff who ensured their lawfulness. The full text of the terms and conditions was to be sent free of charge by the organizer to any person who requested them.

It is uncertain whether such conditions remain applicable given the current status of the law (see Governing law). A number of operators on the Luxembourg market nonetheless continue to apply the principles of the previously applicable law as good practice.

FEES/TAXES PAYABLE

Yes, if the organizer decides to apply the principles of the previously applicable law and to file the terms of the prize promotion with a bailiff.

The bailiff's fees are usually rather low.

OTHER LOCAL REQUIREMENTS

Are there any other key local requirements?

Yes, under the previously applicable law. First, documents advertising the prize promotion were neither to cause confusion of any kind in the mind of the participants nor mislead about the number and value of prizes or the conditions of their allocation. Then, the entry form had to be separated from the purchase order for the associated good or the service (if any). Finally, an advertiser who, through the design or presentation of the communication advertising the prize promotion, gave the impression that the consumer had won a prize, had an obligation to provide such prize to the consumer.

It is uncertain whether such conditions remain applicable given the current status of the law (see Governing law). A number of operators on the Luxembourg market nonetheless continue to apply the principles of the previously applicable law as good practice.

TIMING

Is time required to ensure compliance (other than reviewing the terms and conditions)?

Yes, if the organizer decides to apply the principles of the previously applicable 2002 Law, time should be allowed to file the terms and conditions with a bailiff, which may take a few hours or up to a couple of business days.

It is uncertain whether such conditions remain applicable given the current status of the law (see Governing law). A number of operators on the Luxembourg market nonetheless continue to apply the principles of the previously applicable law as good practice.

Furthermore, time should also be allowed if the organizer has not yet made the appropriate steps towards becoming compliant with the GDPR requirements as regards the management of the personal data collected and processed in connection with promotional operations, including, without limitation,
the creation and maintenance of a record of data processing activities, appropriate information notices provided to data subjects, and formal processes implemented in order to enable the latter to exercise their rights (i.e. access, rectification and erasure, data portability, objection, restriction of processing, the right to digital legacy).

Where the processing of personal data in the context of promotional operations is likely to result in high risks to the rights and freedoms of natural persons (e.g. where such data is used to profile participants), the organizer must also proceed with a Personal Data Impact Assessment.

In Luxembourg, since the entry into force of the GDPR on May 25, 2018, the general principle is that each processing purpose for which personal data is processed must be evidenced with a record of data processing activities. Therefore, it is not a requirement to make a record entry for each promotion, but to have one record entry encompassing the management of the personal data collected and processed in the course of such operations (provided that means of processing and data processed are similar). If personal data is transferred outside of the European Economic Area, it is necessary to ensure that the recipient is located in a country recognized by the European Commission as ensuring an adequate level of personal data protection, or that a proper transfer mechanism is implemented (e.g. binding corporate rules, European Commission model clauses).

In addition, the organizer may need to allow time to implement ‘Privacy by Design’ and ‘Privacy by Default’ principles to any further processing of personal data in the context of promotional operations (i.e. ensure that appropriate technical and organizational measures are implemented to meet the requirements of the GDPR and that, by default, only the personal data that is necessary for the purposes of promotional operations is collected and processed).

TRANSLATIONS

Are the terms required to be translated by law?

No. There is no requirement as such. However, it is generally advisable to have the terms translated in one of the three official languages of Luxembourg, namely French, German or Luxembourgish.

PENALTIES FOR NON-COMPLIANCE

What are the penalties for non-compliance?

- In the case of unlawful operation of games of chance:
  - For individuals: fines from 251€ to 25,000€ (approx. US$285 to US$28,400) and/or imprisonment from 8 days to 6 months;
  - For companies: fines from 502€ to 50,000€ (approx. US$570 to US$57,000).
- In the case of having knowingly tolerated games giving rise to excessive stakes or bets on a regular basis in premises accessible to the general public; or having made an unauthorized gaming establishment known by ways of notices, announcements, posters or any other means of publication; or having knowingly received bets or distributed winnings on a regular basis in premises accessible to the general public without prior authorization; or, for the purpose of betting, having sold or offered for sale information on the chances of success of competitors involved in a sporting event:
  - For individuals: fines from 251€ to 15,000€ (approx. US$285 to US$17,000) and/or imprisonment from 8 days to 1 month;
  - For companies: fines from 502€ to 30,000€ (approx. US$570 to US$34,000).
These penalties can be doubled in the case of:

- repeat offence within five years of a conviction under the same legal provision; or
- the offence being committed against a person under the age of 21.

In any of the above cases, perpetrators may also be sentenced to the loss of some of their civil rights (e.g. right to vote, right to hold a public position, etc.).

- In the case of installation in public places of any cash dispensers, consumer tokens and, in general, any device whose operation is based on skills or chance and which is intended to provide a gain or consumption against some kind of financial compensation:
  - For individuals: fines from 251€ to 15,000€ (approx. US$285 to US$17,000) and/or imprisonment from 8 days to 6 months;
  - For companies: fines from 502€ to 30,000€ (approx. US$570 to US$34,000).

In the case of prohibited lotteries:

- For organizers, administrators, agents or employees:
  - For individuals: fines from 500€ to 30,000€ (approx. US$570 to US$34,000) and/or imprisonment from 8 days to 3 months;
  - For companies: fines from 1,000€ to 60,000€ (approx. US$1,100 to US$68,000).

Finally, there is the possibility that the personal data processing aspects of the promotion could breach GDPR, which has maximum fines of up to the higher of:

- €20 million (approx. US $22.7 million); or
- 4% of the promoter’s worldwide annual revenue.

It is uncertain whether such conditions remain applicable given the current status of the law (see Governing law). A number of operators on the Luxembourg market nonetheless continue to apply the principles of the previously applicable law as good practice.

RESTRICTIVENESS OF REGULATIONS

How restrictive are the legal obligations applicable to prize promotions?

Other than the potential requirement to register with a bailiff, the level of restrictiveness is not high. However, GDPR has introduced various obligations around processing personal data which have significant application to prize promotions (e.g. use of submissions including personal data, winner publicity, etc.).

It is uncertain whether such conditions remain applicable given the current status of the law (see Governing law). A number of operators on the Luxembourg market nonetheless continue to apply the principles of the previously applicable law as good practice.

REGULARITY OF SANCTIONS

How frequently does the regulator impose serious sanctions for non-compliance?

We are not aware of any relevant published case law on this subject matter. There seems to be low levels of enforcement regarding lotteries and prize promotions. The risk of enforcement is higher for
actual games of chance (e.g. casino games).

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## Governing Law

*What are the main applicable governing laws or codes for prize promotions?*

<table>
<thead>
<tr>
<th>Name</th>
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<tbody>
<tr>
<td>Federal Civil Code ('Civil Code')</td>
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<td>[Código Civil Federal]</td>
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<td>Published on the Official Gazette on August 31st, 1928</td>
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<td>[Código Penal Federal]</td>
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<td>Federal Law for Gaming and Lotteries ('Gaming and Lotteries Law')</td>
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<td>[Ley Federal de Juegos y Sorteos]</td>
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<tr>
<td>Published in the Official Gazette on December 31st 1947</td>
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<td>Regulations for the Federal Law of Gaming and Lotteries ('Gaming and Lotteries Regulations')</td>
<td>Regulation</td>
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<td>[Reglamento de la Ley Federal de Juegos y Sorteos]</td>
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<tr>
<td>Published in the Official Gazette on September 17th 2004</td>
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<td>Published in the Official Gazette on December 11th 2013</td>
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<td>Federal Law for the Protection of the Consumer (‘Consumer Law’) [Ley Federal de Protección al Consumidor]</td>
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<tr>
<td>Regulations for Promotions and Offers (‘Promotions and Offers Rules’) [Reglamento sobre Promociones y Ofertas]</td>
<td>Regulation</td>
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<tr>
<td>Published in the Official Gazette on September 26th, 1990</td>
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<tr>
<td>Internal Regulations for the Ministry of Interior (‘Ministry Regulations’) [Reglamento Interior de la Secretaría de Gobernación]</td>
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<td>Published in the Official Gazette on April 2th, 2013</td>
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</table>
EXTRA-TERRITORIALITY

Do national regulators enforce rules against entities operating abroad?

The Consumer Law is the main body of legislation that regulates prize promotions. However, it only applies for operations within Mexico.

Pursuant to s. III; Art. 12 of the Gaming and Lotteries Law, Mexican entities or individuals located in Mexico, should not participate in the sale or distribution of lottery tickets (ie prize draws) or gambling that takes place abroad without the required authorization from the Ministry of Interior. Failure to obtain such authorization may carry a fine between MXN$ 500 (approx. US$26) to MXN$ 10,000 (approx. US$522) and imprisonment between 3 months to 3 years.

SKILLS COMPETITIONS

Can a prize promotion be run that is based on skill?

There is no existing regulation applicable for skill competitions.

PRIZE DRAWS

Can a prize promotion be run where there is an element of chance in the selection of the winner?

The Gaming and Lotteries Law prohibits games of chance and gambling (art. 1). However, limited types of games that involve a certain degree of chance are allowed (Art. 2), such as chess, domino, dice, races (by human, vehicle and animal),and any type of prize draw. The responsible authority to regulate these activities and grant licences is the Ministry of Interior (Art. 7 of the Gaming and Lotteries Law and Art. 16 of the Ministry Regulations).

Businesses that offer any of the authorized games must have a license from the Ministry of Interior. Further, every prize draw has to obtain a registration from the Ministry of Interior (General Office for Gaming and Lotteries (‘GOG’: Dirección General de Juegos y Sorteos)). The only exception by law is prize draws organized by the government through the national lottery organization named Lotería Nacional.

SELECTION OF WINNERS

Are there any requirements for the selection of winners and award of prizes?
Alongside other requirements, such as the requirement to obtain an authorization from the GOG, the applicant must provide:

- A guarantee equal to the value of the prize(s);
- Details relating to the procedure for selection of participants, draw operation, selection and publication of winners;
- Ticket sample;
- Identity of the ticket supplier (only applicable for instant draws);
- Valuation of the goods to be given as prizes;
- The structure of the promotion e.g. selection procedure and draw operation etc. for different prizes; and
- Payment of government duties.

The GOG performs random reviews of the licenses it has granted to confirm they were performed in accordance with the procedure indicated in the application and the Gaming and Lotteries Law. In some cases a representative from the GOG attends the winner selection event and prize giving.

**JUDGES**

*Are there any particular requirements in relation to judges or judging for skills competitions?*

There is no regulation relating to judges and judging in skill competitions.

**PRIZES**

*Are there any restrictions on the prizes awarded?*

There is no applicable law enacted that limits the amount or types of prizes. However, they cannot be illegal products or regulated products without their respective authorization/license.

**REGISTRATION REQUIREMENTS AND FEES**

*Are there any registration requirements, or any fees/taxes payable?*

It is necessary to have either a registration or authorization from the Ministry of Interior through the GOG for any of the limited authorized games that involve chance and prize draws as discussed above.

In addition, there are certain government duties to be paid, such as participation on earnings by the government, fees for inspections and registration of the prize draw, etc.

As an example, a government duty of MXN$ 1,695.80 (approx. US$88) is to be paid for each of the inspections to be carried out by the GOG (i.e. inspection prior to the issuance of the authorization or the delivery of the prize to the winner).
Further, if the prize is not collected by the winner, the organizer needs to deposit such unclaimed prize, either physically or its value in cash, before the GOG.

The Income Tax Law provides that Income Tax may be withheld from the prize winner and be payable by the prize promotion organisers for the income generated to the prize winner. This only applies for prize draws organized in Mexico. The percentage is 1% over the total amount to be distributed among the winning tickets in states where there is no income tax for prize draws or such tax is not higher than 6%. However, in the states where such state tax is higher than 6%, the federal tax increases to 21%. The tax should be withheld by the party making the payment, and it is considered as a final tax, which must be remitted to the Mexican Tax Authorities. In cases where a corporation or a non-profit organization receives this type of income, they may be relieved from a withholding tax; but should report it separately (Art. 138).

Notwithstanding the above, if an entity or individual intends, exclusively, to conduct a promotion, it is only required to notify or obtain an authorization before the Consumer Attorney-General (‘Profeco’) if such notification or authorization is required by any Compulsory Official Standard or could potentially harm the consumer (Art. 47 Consumer Law). A promotion is a prize draw involving a product or service provided by the promoter.

**OTHER LOCAL REQUIREMENTS**

*Are there any other key local requirements?*

The entity or person doing a prize draw must include in the communication of the same (e.g. official rules) to potential entrants the following information (Nom 028):

- Authorization number granted by the Ministry of Interior;
- Number of entry tickets issued;
- Total number of prizes;
- Mechanism to obtain the entry ticket;
- Mechanism to know the winner, place and date where the prize draw is going to occur;
- Communication means and dates when the winner is going to be announced and the prize giving;
- Term and place to collect the prize;
- Contact numbers and schedules for general information and enquires.

The entity or person operating a promotion must include in the communication of the same (e.g. official rules) to potential entrants the following information (Nom 028):

- Name and address of the promoter;
- Goods or services subject to the promotion;
- Incentive offered in the promotion;
Terms and conditions of the promotion;

Geographical coverage;

Establishments where the promotion is applicable (if any);

Restrictions (if any); and

Guarantees offered to such promotion.

Any amendment to the terms and conditions must be delivered by the same means of the initial offer. It is not advisable and we do not recommend changing the terms and conditions once the initial offer has been published. The authority responsible for the surveillance of the terms and conditions of promotions is Profeco.

Profeco has the authority to issue sanctions against individuals or entities that do not comply with the Consumer Law and it focuses its attention to misleading, wrongful, fraudulent, unlawful promotions or advertisements (i.e. prize draw publicity). Therefore, great care is advised in content selection for the advertising of any type of prize draw.

TIMING

Is time required to ensure compliance (other than reviewing the terms and conditions)?

Yes, where a licence/registration is required, time is required to apply in some cases.

For instance, in accordance with the NOM 028 if an entity issues promotions of collectable items by means of draws or contests it shall provide information about the promotions to Profeco 3 days prior to the starting date of such promotions.

TRANSLATIONS

Are the terms required to be translated by law?

There is no specific requirement to have the promotions or prize draws terms and conditions written in Spanish.

However, please note that the Consumer Law indicates that the promotional material of products must be written in Spanish (Art. 34).

PENALTIES FOR NON-COMPLIANCE

What are the penalties for non-compliance?

The Gaming and Lotteries Law, establishes a penalty of imprisonment between 3 months to 3 years and a fine between MXN$500 (approx. US$26) and MXN$10,000 (approx. US$522) to any Mexican entity or individual that participates in the sale or circulation of lottery tickets or gambling that takes place abroad without the required authorization from the Ministry of Interior (Art. 12).
Further, the Gaming and Lotteries Law provides for 1 month up to 2 years imprisonment and a fine between MXN$100 (approx. US$5) to MXN$5,000 (approx. US$261) for people that knowingly lease a property to carry out illegal gambling or lotteries without the authorization from the Ministry of Interior.

The Ministry of interior has the ability to close down any entity offering any type of gambling, chance game or betting (illegally or without due authorization) (Art. 8 of the Gaming and Lotteries Law).

The Consumer Law via Profeco indicates different amounts for fines depending on the type of breach. However note that they can be as low as MXN$236.54 (approx. US$12) and high as MXN$7,948,063.22 (approx. US$415,340).

The Criminal Code provides that the same penalties as fraud shall be applicable when a person keeps the prizes or money due to a prize draw instead of transferring the same to the winner (Art. 387, s.XI). The sentence for fraud can be between 3 days to 12 years of imprisonment and fines ranging from MXN$883.20 (approx. US$46 to MXN$10,603.2 (approx. US$554) (depending on the damage value; calculated on minimum wages) (Art. 386).

RESTRICTIVENESS OF REGULATIONS

How restrictive are the legal obligations applicable to prize promotions?

For prize draws, there is a requirement to obtain a licence/ registration (see Prize draws section), and there are also some quite specific requirements as to what must be included in terms and conditions (see Other local requirements).

REGULARITY OF SANCTIONS

How frequently does the regulator impose serious sanctions for non-compliance?

Profeco is likely to use some of its powers if a prize promotion does not comply at least with the general requirements indicated in the Other local requirements section, such as:

- To instruct the offeror to stop the promotions;
- To instruct the correction of the promotional content;
- To close down the operator; and
- Impose any other sanction applicable by law (arts. 35 and 128bis of the Consumer Law).

Fines are common. However, prison sentences are rare.

Profeco and the Ministry of Interior through the GOG will initiate an investigation upon receiving a complaint from any consumer. However, it is common for Profeco to realize random reviews in commercial establishments.
PRIZE PROMOTIONS AROUND THE WORLD

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**GOVERNING LAW**

*What are the main applicable governing laws or codes for prize promotions?*

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<thead>
<tr>
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<tr>
<td>The Dutch Games of Chance Act (Wet op de Kansspelen)</td>
<td>Law</td>
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<tr>
<td>Code of Conduct for Promotional Games of Chance. (Gedragscode Promotionele Kansspelen) ('Code of Conduct')</td>
<td>Code</td>
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<tr>
<td>Advertising Code for Games of Chance, offered by Licensees, by virtue of the Games of Chance Act (Reclamecode voor kansspelen die worden aangeboden door vergunninghouders ingevolge de Wet op de Kansspelen) ('Advertising Code for Games of Chance')</td>
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<td>General Data Protection Regulation (Algemene Verordening Gegevensbescherming) ('GDPR')</td>
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<tr>
<td>GDPR Implementation Act (Uitvoeringswet Algemene Verordening Gegevensbescherming) ('UAVG')</td>
<td>Law</td>
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<tr>
<td>Telecommunications Act (Telecommunicatiwet)</td>
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</tbody>
</table>
EXTRA-TERRITORIALITY

*Do national regulators enforce rules against entities operating abroad?*

The Code of Conduct can be seen as an exception to the Games of Chance Act. As a general rule, games of chance are prohibited in the Netherlands and prize promotions are allowed only when certain criteria have been met. If the criteria have not been met, the Dutch regulator enforces rules, including against entities operating abroad where such entities target the Dutch market. Relevant factors for assessing whether or not the Dutch market is targeted are: using a .nl website, use of Dutch language and the use of specific Dutch payment systems (e.g. iDeal).

In addition, if the prize promotion violates the Advertising Code for Games of Chance, the Advertising Code Committee (ACC) may ask for assistance from other advertising committees abroad to act against the infringer (the ACC is a member of the European Advertising Standards Alliance and considers most EU countries to operate suitable systems).

Finally, in instances where privacy/direct marketing rules are violated, it is unlikely that the applicable regulators will start legal action against foreign entities based outside of The Netherlands.

SKILLS COMPETITIONS

*Can a prize promotion be run that is based on skill?*

Yes, purely skill based competitions are allowed, but ensure the winner is picked on the basis of skill and not chance.

Examples of what constitutes an element of skill include: drawing a picture, answering a riddle or answering certain types of questions.

PRIZE DRAWS

*Can a prize promotion be run where there is an element of chance in the selection of the winner?*

Subject to compliance with other requirements (see Other local requirements section), advertisers are allowed to organize a promotional game of chance where the entrant wins a free gift(s) (e.g. prize draw, sweepstake).

In instances where the total value of prizes (or a prize if there is only one prize) to be won is equal to or exceeds € 4,500 (approx. US$5,000) but does not exceed € 100,000 (approx. US$112,000), a prize draw may be organized once per year per product, service, brands or company, provided that:

- Participants do not pay to enter;
- That terms and conditions are in accordance with the Code of Conduct; and
- The marketing and terms and conditions are not misleading, incomplete or give rise to false expectations.

Also, rules apply regarding the amount of actual draws for each promotion i.e. the number of occasions per year when winners can be selected.
In instances where the total value of prizes (or a prize if there is only one prize) to be won is below €4,500 per year, there is no limit to the amount of prize draws that may be organized (although rules apply regarding the organization and marketing of the prize draw).

Prize draws where the total value of prizes (or a prize if there is only one prize) exceed €100,000 (approx. US$) are not allowed.

**SELECTION OF WINNERS**

*Are there any requirements for the selection of winners and award of prizes?*

Selection of the winners(s) of prizes or free gifts from participants shall take place in an impartial manner. This can take place in several manners, for example through a notary, bailiff, independent person or through a computer process.

The results of the drawing have to be communicated within 3 months of the closing date of the promotion.

**JUDGES**

*Are there any particular requirements in relation to judges or judging for skills competitions?*

The conditions for awarding the prizes must be transparent for participants and the award of such prizes must be conducted in an impartial manner.

**PRIZES**

*Are there any restrictions on the prizes awarded?*

For prize draws, the total maximum value of prizes to be won (or a prize if there is only one prize awarded) should not exceed the amount of €100,000 (approx. US$112,000) per year.

There is no maximum amount for skill-based games.

**REGISTRATION REQUIREMENTS AND FEES**

*Are there any registration requirements, or any fees/taxes payable?*

**Registration Requirements**

No registration requirements apply.

**Fees/Taxes payable**

No registration fees apply.

Gaming tax is 30.1% and can be paid by either the promoter or the prize winner.

For prizes under €449 (approx. US$500), no taxes have to be paid by the promoter or the prize winner.
OTHER LOCAL REQUIREMENTS

Are there any other key local requirements?

For prize draws:

- The prize value (whether for one prize or several prizes combined) must not exceed €100,000 in value per year

- Maximum of one game of chance in relation to any product, service or organization per year, with a maximum of 20 drawings, i.e. a maximum of 20 occasions per year when winners can be selected which means that a maximum of 20 winners can be picked for the one game of chance.

Note: Small games of chance with a maximum value of prize(s) of €4,500 (approx. US$5,000) can be organized as often as the promoter wishes.

- The provider shall impose on minors that parental consent should be obtained; and

- The provider shall ensure there is a complaints procedure and shall provide the address or phone number where complaints can be lodged.

TIMING

Is time required to ensure compliance (other than reviewing the terms and conditions)?

No.

TRANSLATIONS

Are the terms required to be translated by law?

Not required (but recommended in Dutch).

PENALTIES FOR NON-COMPLIANCE

What are the penalties for non-compliance?

The Gaming Authority (Kansspelautoriteit, ‘KSA’) may impose administrative fines of up to €830,000 (approx. US$930,000) or 10% of the annual turnover of the year preceding the year in which the violation was committed for offering illegal games of chance.

In instances where the violation is considered an economic offence (i.e. if it is established that the violation was wilfully committed), the violation may be punished by imprisonment not exceeding two years.

In practice, fines between € 100,000 (approx. US$112,000) and € 500,000 (approx. US$560,000) on gambling providers, their directors and gambling software suppliers have been imposed by the KSA.
Furthermore, the Advertising Code Committee may issue a 'recommendation' for violations of the Advertising Code for Games of Chance, which means that the violator is recommended to discontinue the promotion in the form in which it is currently being or has been advertised.

Finally, there is the possibility that the personal data processing aspects of the promotion could breach GDPR, which has maximum fines of up to the higher of:

- €20 million (approx. US$22.4m); or
- 4% of the promoter’s worldwide annual revenue.

**RESTRICTIVENESS OF REGULATIONS**

*How restrictive are the legal obligations applicable to prize promotions?*

Prize promotions are generally accepted in the Netherlands, provided that they are in compliance with the Code of Conduct. The steps necessary to avoid not falling into the category of ‘promotional game of chance’ under the Code of Conduct are (while important) not very restrictive. However, GDPR has introduced various obligations around processing personal data which have significant application to prize promotions (e.g. use of submissions including personal data, winner publicity, etc.).

**REGULARITY OF SANCTIONS**

*How frequently does the regulator impose serious sanctions for non-compliance?*

Fines and prison sentences are rarely imposed (unless not compliant with the Games of Chance Act or Code of Conduct).

If promotions are not compliant, for example the total value of prizes to be won exceeds the amount of €100,000 (approx. US$112,000), the KSA might become involved but this is relatively rare.
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NEW ZEALAND

GOVERNING LAW

What are the main applicable governing laws or codes for prize promotions?

<table>
<thead>
<tr>
<th>Name</th>
<th>Law or Code?</th>
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</thead>
<tbody>
<tr>
<td>Gambling Act 2003 ('Gambling Act')</td>
<td>Law</td>
</tr>
<tr>
<td>Fair Trading Act 1986 ('Fair trading Act')</td>
<td>Law</td>
</tr>
<tr>
<td>Privacy Act 1993</td>
<td>Law</td>
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</tbody>
</table>

EXTRA-TERRITORIALITY

Do national regulators enforce rules against entities operating abroad?

If any element of gambling is organized or conducted in or from New Zealand, it must comply with the Gambling Act.

The Gambling Act bans the advertisement or promotion in New Zealand of an overseas-based gambling activity (including prize promotions which meet the definition of gambling).

Otherwise, it is not illegal for someone in New Zealand to participate in gambling over the internet if that website is not in New Zealand.

SKILLS COMPETITIONS

Can a prize promotion be run that is based on skill?

Yes, but the winner must be determined only on the basis of skill and not chance, particularly if the entrant pays to enter (including buying a product in order to be eligible to enter).

If a prize promotion requires no purchase or consideration to enter, i.e. simply a skill question, the Fair Trading Act would apply. The main prohibitions under the Fair Trading Act are the prohibitions on misleading and deceptive conduct and false, misleading or unsubstantiated representations.
If the outcome is partly based on skill and partly based on chance (for example a skill question, with the correct answers going into a draw) a prize promotion might be considered as an authorized gambling activity under the Gambling Act if it meets the requirements of a 'sales promotion scheme'. The requirements are listed below:

- Participation in the prize promotion requires purchase of the goods or services being promoted for a price not exceeding the usual retail price.
- The entrant is not required to pay direct or indirect consideration to enter the promotion (other than purchasing the relevant goods or services).
- The date or period over which the outcome of the promotion will be determined is clear to the entrant at the time and place of sale.
- The promotion is run by the creator, distributor or vendor of goods or services to promote those goods or services.
- The promotion does not involve a gaming machine nor a restricted or prohibited prize.

**PRIZE DRAWS**

*Can a prize promotion be run where there is an element of chance in the selection of the winner?*

A sweepstake is considered a lottery under the Gambling Act and as such will be permitted as a prize promotion if it meets the criteria of a 'sales promotion scheme' (defined in section regarding skill based competitions). Otherwise, the gambling will normally be unlawful unless the proceeds are applied or distributed for 'authorised purposes' which include a charitable purpose, a non-commercial purpose which is beneficial to the community, race meetings under the Racing Act 2003 or an electioneering purpose. Also, a license may be required from the Department of Internal Affairs, depending on the total value of the prizes and the turnover of the gambling.

Where a product purchase is not required and no other entry fee is paid to enter a prize draw, a license or permit is not required. This is because the entrant is not 'paying or staking consideration seeking to win money' and as such it does not amount to gambling. However, the Fair Trading Act would continue to apply (as above).

**SELECTION OF WINNERS**

*Are there any requirements for the selection of winners and award of prizes?*

Prize promotions that are run as 'sales promotion schemes' do not generally have specific requirements regarding the selection of winners and award of prizes.

Where a sales promotion scheme meets the definition of 'remote interactive gambling', as defined in the Gambling Act, including any aspect of on-line entry, the outcome of the gambling must be determined by way of a lottery i.e. among other things, the draw must take place after all the participants have entered (note daily draws are permitted).

**JUDGES**
Are there any particular requirements in relation to judges or judging for skills competitions?

Competitions that are entirely skilled based have no requirements for judges or judging.

PRIZES

Are there any restrictions on the prizes awarded?

Where a prize promotion amounts to gambling, the prize being offered must not be prohibited under the Gambling Act. It is illegal to offer the following as prizes for a prize promotion:

- Firearms or explosives;
- Restricted weapons or air guns;
- Any form of liquor and alcohol;
- Tobacco products;
- Commercial sexual services;
- An object more than 50 years old that relates to Māori culture, history or society, and was brought into New Zealand by Māori people; and
- Vouchers or entitlements to any of the above.

REGISTRATION REQUIREMENTS AND FEES

Are there any registration requirements, or any fees/taxes payable?

Provided a prize promotion is undertaken as a ‘sales promotion scheme’ it will not require a license, regardless of the value of the prizes offered.

OTHER LOCAL REQUIREMENTS

Are there any other key local requirements?

If a prize promotion falls within the definition of gambling, it is critical that that the promotion fits within the definition of a ‘sales promotion scheme’ in the Gambling Act so that it is an authorized gambling activity for the purposes of the Gambling Act.

Note that the retail value of non-cash prizes must be disclosed to the customer prior to entry into the competition.

If a competition or promotion amounts to gambling but is not a ‘sales promotion scheme’, it is likely to be considered as either an illegal gambling activity, or another form of gambling where a license may be required.

The net proceeds of a gambling activity are required to be used for ‘authorized purposes’ (essentially, charitable purposes or purposes which benefit the community) so it is generally not feasible to obtain a
license.

Under the Consumer Guarantees Act 1993, any good or service provided by the promoter of goods and services must be reasonably fit for purpose. It is an offence under the Fair Trading Act to offer a prize having no intention to deliver it as offered. The Fair Trading Act also prohibits misleading and deceptive conduct and making false, misleading and unsubstantiated representations.

For any personal information collected in connection with a prize promotion or competition, the Privacy Act 1993 requires that entrants are aware of:

- The fact that the information is being collected;
- The purpose for which it is being collected;
- The intended recipients of the information; and
- The name and address of the agency that is collecting the information and the agency that will hold the information.

TIMING

Is time required to ensure compliance (other than reviewing the terms and conditions)?

No.

TRANSLATIONS

Are the terms required to be translated by law?

None required.

PENALTIES FOR NON-COMPLIANCE

What are the penalties for non-compliance?

The Gambling Act provides for penalties for anybody who participates in unauthorized gambling (i.e. both promoters and participants).

Fines can be imposed of up to NZ$50,000 (approx. US$33,000) for organizations and up to NZ$20,000 (approx. US$13,000) for individuals. This includes anybody participating in remote interactive gambling and anybody who conducts the gambling.

Individuals involved in promoting unauthorized gambling may also face imprisonment for a maximum of one year.

The Gambling Act carries a fine of up to NZ$10,000 (approx. US$6,500) for advertising overseas gambling.

RESTRICTIVENESS OF REGULATIONS
**How restrictive are the legal obligations applicable to prize promotions?**

The Gambling Act has limited compliance requirements for sales promotion schemes in New Zealand. There is no restriction on turnover or on the value of prizes awarded, and no license is required.

The key restriction is on ‘remote interactive gambling’ where, as noted, the prize winners must be chosen by way of a lottery.

**REGULARITY OF SANCTIONS**

**How frequently does the regulator impose serious sanctions for non-compliance?**

The Department of Internal Affairs (DIA) will investigate alleged breaches of the Gambling Act.

Cases are relatively rare as New Zealand generally has a reasonable level of compliance among corporates and unlawful gambling is not a usual part of New Zealand society. We are aware of competitors making complaints to the regulatory body in respect of prize competitions so it is important that compliance is built into planning of prize promotions. Finally, we note that the DIA operates a leniency and co-operation policy in relation to gambling enforcement.
PRIZE PROMOTIONS AROUND THE WORLD

NGERIA

Last modified 15 May 2019

GOVERNING LAW

What are the main applicable governing laws or codes for prize promotions?

<table>
<thead>
<tr>
<th>Name</th>
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<tbody>
<tr>
<td>National Lottery Act 2005</td>
<td>Law</td>
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<tr>
<td>Advertising Practitioners (Registration) Act</td>
<td>Law</td>
</tr>
<tr>
<td>Cap A7 Laws of the Federal Republic of Nigeria, 2004</td>
<td></td>
</tr>
<tr>
<td>National Lottery Regulations 2007</td>
<td>Code</td>
</tr>
<tr>
<td>Nigerian Code of Advertising Practice &amp; Sales Promotion</td>
<td>Code</td>
</tr>
<tr>
<td>Nigerian Communication Guidelines on Advertisements and Promotions</td>
<td>Code</td>
</tr>
</tbody>
</table>

EXTRA-TERRITORIALITY

Do national regulators enforce rules against entities operating abroad?

National laws and regulations are enforceable against all persons, whether corporate or natural, firm, agency, company or any other corporate entity registered as advertising practitioners, including all persons that engage in advertising practice for gain and all organisations, corporate bodies and individuals who use advertising services, whether of indigenous or foreign origin, in so far as they offer advertising services directed at the Nigerian advertising market or are sponsored by a company doing business in Nigeria.

SKILLS COMPETITIONS

Can a prize promotion be run that is based on skill?
According to the definition of lottery in Section 57 of the National Lottery Act, prize promotions can be run based on skill.

**PRIZE DRAWS**

*Can a prize promotion be run where there is an element of chance in the selection of the winner?*

Yes. Prize promotions with an element of chance fall within the scope of the definition of lottery under Section 57 of the National Lottery Act.

**SELECTION OF WINNERS**

*Are there any requirements for the selection of winners and award of prizes?*

A promoter is required to use best endeavours to find and make payment to all prize winners. The detailed terms for selection of winners (which demonstrate best endeavours) are in practice set out in the terms and conditions of the promotion.

**JUDGES**

*Are there any particular requirements in relation to judges or judging for skills competitions?*

Promotions must specify, before or at the time of entry, the criteria for judging entries. If the selection of winning entries is open to subjective interpretation, an independent judge, or a panel including one member who is independent of the competition’s promoters and intermediaries, shall be appointed. Those appointed to act as judges shall be competent to judge the subject matter of the competition. The full names of the judges shall be available on request.

**PRIZES**

*Are there any restrictions on the prizes awarded?*

- Promoters shall award prizes as described in their advertising or reasonable equivalents.
- Prize draws must be awarded in accordance with the laws of chance and under the supervision of an independent observer.
- Participants in instant win promotions shall get their winnings at once or shall know immediately what they have won and how to claim without delay, unreasonable costs or administrative barriers. Instant win tokens or numbers shall be awarded on a fair and random basis and verification shall take the form of an independently audited statement that all prizes have been distributed, or made available for distribution in that manner.

**REGISTRATION REQUIREMENTS AND FEES**

*Are there any registration requirements, or any fees/taxes payable?*

Registration Requirements
Promotions are generally registered in Nigeria. Requirements include the details of the promotion, duration and related information.

Fees/Taxes payable

Prize promotion expenses are deductible when computing the taxable profits of the promoter or the licensee. Also, Value Added Tax on the cash payments does not arise, as Value Added tax would have been included in the qualifying charges such as the ticket costs.

OTHER LOCAL REQUIREMENTS

Are there any other key local requirements?

- The following must be specified before or at the time of entry:
  - Geographical, personal or technological restrictions such as location, age or the need to have access to the Internet.
  - Any requirement to obtain permission to enter from an adult or employer.
  - If relevant, ownership of copyright in entries.
  - Any intention to use winners in post – event publicity.

- Prize promotions and promotions addressed to children always need a closing date (some others do not e.g. competitions that refer to a special offer).

- Advertisers announcing reader promotions on the front page or cover shall ensure that consumers know whether they will be expected to buy subsequent editions of the publication. Major conditions that might reasonably influence consumers significantly in their decision to buy the publication shall appear on the front page or cover.

TIMING

Is time required to ensure compliance (other than reviewing the terms and conditions)?

No additional time is required.

TRANSLATIONS

Are the terms required to be translated by law?

No requirements under the law.

PENALTIES FOR NON-COMPLIANCE

What are the penalties for non-compliance?

The National Lotteries Act establishes penalties of fines of a minimum of N100,000 (approx. US$275)
for corporate bodies, and N20,000 (approx. US$55) for each director, manager and officer of such corporate bodies or imprisonment for a term or both. The Code of Advertising Practice establishes a cash penalty of a minimum of N500,000 (approx. US$1,380) for media houses, agencies and advertisers.

RESTRICTIVENESS OF REGULATIONS

*How restrictive are the legal obligations applicable to prize promotions?*

The legal obligations applicable to prize promotions in Nigeria are not particularly restrictive. Rather, they are tailored towards promoting high ethical standards in the advertising industry.

REGULARITY OF SANCTIONS

*How frequently does the regulator impose serious sanctions for non-compliance?*

The Code is tightly enforced and sanctions (by way of reprimands, warnings, fines and reduction in scope of licenses) are imposed as needed against persons and corporate entities that violate the Code.

KEY CONTACTS

<table>
<thead>
<tr>
<th>Otu-Ekong Ukoyen</th>
</tr>
</thead>
<tbody>
<tr>
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</tr>
<tr>
<td>Olajide Oyewole LLP</td>
</tr>
<tr>
<td><a href="mailto:oeukoyen@olajideoyewole.com">oeukoyen@olajideoyewole.com</a></td>
</tr>
<tr>
<td>T: +23412793670</td>
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</tbody>
</table>
## NORWAY

**GOVERNING LAW**

*What are the main applicable governing laws or codes for prize promotions?*

<table>
<thead>
<tr>
<th>Name</th>
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</thead>
<tbody>
<tr>
<td>The Lottery Act of 24 February 1995 no. 11 ('LA')</td>
<td>Law</td>
</tr>
<tr>
<td>The Marketing Control Act of 9 January 2009 no. 2 ('MCA')</td>
<td>Law</td>
</tr>
<tr>
<td>Act of 4 December 1992 no. 127 relating to broadcasting ('The Broadcasting Act')</td>
<td>Law</td>
</tr>
<tr>
<td>Act of 15 June 2018 no. 38 relating to the processing of personal data ('Personal Data Act')</td>
<td>Law</td>
</tr>
<tr>
<td>The Gambling Act of 28 August 1992 no. 103 ('Gambling Act')</td>
<td>Law</td>
</tr>
<tr>
<td>The Horse Gambling Act of 1 July 1927 no. 3 ('Horse Gambling Act')</td>
<td>Law</td>
</tr>
<tr>
<td>Regulation on prohibition of payment services for gambling of 19 February 2010 no. 184 (&quot;Payment Regulation&quot;)</td>
<td>Law</td>
</tr>
</tbody>
</table>

## EXTRA-TERRITORIALITY
Do national regulators enforce rules against entities operating abroad?

Where online lotteries/gambling services are marketed by unlicensed operators to Norwegians then the Norwegian law will apply.

The MCA applies to marketing that is directed towards Norwegian consumers or companies. This is based on a holistic evaluation, but indicators of direct marketing would be advertising in Norwegian language, use of Norwegian currency, and to what extent the company is willing to enter into contracts with Norwegians. The MCA also applies to acts and terms and conditions that take effect abroad, as long as they are also unlawful pursuant to the legislation of the country in which they take effect.

In Norway only two state-owned companies are licensed to provide gambling and sports betting, where a prize is won after providing a stake (i.e. payment). Foreign companies may not offer or market unlicensed betting operators in Norway. It is not however illegal for Norwegians to play on these services, it is only the foreign company that is liable. Foreign companies are legally circumventing these restrictions by advertising to Norwegians on foreign TV channels where they comply with local laws, advertising through bloggers/celebrities, and foreign websites. The lottery authority has since 2016 enforced the laws more strictly against marketing carried out in Norway by for example bloggers or sports personalities. Furthermore, the lottery authority has since summer 2018 approached Apple to demand that they remove gambling apps from the Norwegian app stores, as the inclusion of gambling apps was considered to constitute facilitation of illegal gambling in Norway.

The Payment Services Regulation prevents third parties such as banks or third party payment service providers from allowing Norwegian citizens to pay for or receive profits from unlicensed gambling through their payment services. The Lottery Authority has become stricter in its enforcement of the Payment Services Regulation.

The Lottery Authority and the Norwegian government have raised concern over whether "loot boxes" which are common in online games are to be regulated as a form of gambling, and potentially banned. Such ban would likely have an effect on those offering both app games and console games to the Norwegian market. The government has received reports on loot boxes which they are evaluating to see if there is a need for regulation.

Politicians in the Norwegian parliament have discussed over many years whether Norway should move away from a state controlled gambling monopoly and use a license model instead, like Denmark and Sweden. The government has requested several reports which are evaluating whether changes should be made to the system and related laws, and an updated draft gambling act is expected in autumn 2019.

Companies can provide and market lotteries (for example raffles and bingo) for a stake where profits are going to a humanitarian or social cause, but only where they have obtained a license to do so.

SKILLS COMPETITIONS

Can a prize promotion be run that is based on skill?

Yes, but ensure:

- The winner is picked on the basis of skill not chance; and
- Terms and conditions are clear and easily accessible to consumers.
**PRIZE DRAWS**

*Can a prize promotion be run where there is an element of chance in the selection of the winner?*

Unlawful (potentially deemed an illegal lottery in the absence of a license), unless participants do not pay to enter or to claim/receive a prize.

Any payment of 2 NOK (approx. US$0.20) or above will be deemed to be payment.

Sweepstakes related to horse racing and sports competitions are regulated by different laws. With horse racing, certain licenses are required, while gambling on sporting competitions is in principle not allowed. All other types of sweepstakes where a stake is to be paid would be considered a lottery, and would require a license to be legal.

Game of poker where a stake is paid is considered to be an unlawful lottery, with the exception of two circumstances:

- Where poker is played privately, between acquaintances, with maximum 10 participants and the total stake per player is not more than NOK 1,000 (approx. US$114);
- National championships in poker that are licensed through the lottery authority.

**SELECTION OF WINNERS**

*Are there any requirements for the selection of winners and award of prizes?*

For lotteries with annual turnover over 200,000 NOK (approx. US$23,000) the following rules apply.

In general, the lottery authority or those who it appoints must pick the prize winner where this is determined after the draw (i.e. raffle type lotteries).

The rules regarding the prizes are slightly different based on whether the promoter is an organization/charity, or a contractor performing lottery functions on behalf of such organizations/charities. Such contractors require authorization from the lottery authority.

**Organization / charity lotteries**

For lotteries (excluding gambling) where the prize winner is chosen before the draw (i.e. scratch cards), or after the draw, then the following rules apply:

- The main prize cannot be more than 2 Million NOK (approx. US$229,000);
- The prizes in total must be a value of at least 25% of the total allowed turnover;
- 20% of turnover of the lottery after allowed deductions shall go to the humanitarian cause or charity;
- The company must provide a guarantee or security for the prize money;
Licenses will not be provided for lotteries with interactive draws (draws upon demand - similar to gambling).

Contractor performed lotteries where contractor is responsible for choosing the prize winner

For lotteries (excluding gambling) where the prize winner is chosen before the draw (i.e. scratch cards), or after the draw, then the following rules apply:

- The main prize cannot be more than 2 Million NOK (approx. US$229,000);
- The prizes in total must be a value of at least 25% of the total allowed turnover;
- 50% of the turnover of the lottery after allowed deductions shall go to the humanitarian cause or charity;
- The contractor must provide a guarantee or security for the prize money.

For lotteries with annual turnover below 200,000 NOK (approx. US$23,000)

The regulations are not as strict for smaller lotteries with a turnover below 200,000 NOK (approx. US$23,000). For smaller lotteries the lots must be traditional and paper based, and they cannot include scratch cards.

For free competitions

For free competitions, promoters must ensure that they do not market the competition incorrectly. Therefore, if there are certain rules that apply or products that are offered, then these rules must be clearly set out and the products must be available to win.

JUDGES

Are there any particular requirements in relation to judges or judging for skills competitions?

There are no specific legal requirements, however, the company must follow any rules that they have set for the competition, and be able to prove they have followed these rules. This follows general contract and marketing law. This implies also that the judges must be independent when judging a competition.

PRIZES

Are there any restrictions on the prizes awarded?

The use of live animals, alcoholic beverages or tobacco as prizes is prohibited.

The prize cannot be cash if the annual turnover of the lottery is below 200,000 NOK (approx. US$23,000), however this does not apply in relation to scratch cards and bingo. Gift cards can be used as prizes as long as they cannot be exchanged for cash.

Otherwise, prizes awarded must be as described in a company’s marketing communications.
REGISTRATION REQUIREMENTS AND FEES

Are there any registration requirements, or any fees/taxes payable?

Registration Requirements

No registration requirements apply to prize promotions (i.e. skills competitions or prize draws), other than to the extent they are lotteries for which a licence is required.

Fees/Taxes payable

It is the winner who may be subject to taxes. There are three categories in relation to prize promotions:

1. Income / prizes that are not taxable regardless of their value (i.e. bingo, certain registered lotteries, horse racing)

2. Income / prizes with a value of less than 10,000 NOK (approx. US$1,140) are not taxable (i.e. competitions, skills competitions when not related to winner’s work/education, other lotteries);

3. Fully taxable income/prizes (i.e skills competitions won when closely related to the winner’s work or education).

Where the prize is taxable, it is taxable in its entirety.

OTHER LOCAL REQUIREMENTS

Are there any other key local requirements?

Promoters must be careful with having terms and conditions that provide that contestants can be cold-called by the company or its partner, or that their details can be shared with other companies. Where this is an intention, it must be clearly stated and the marketing of the competition must not be misleading in this regard. There must also be specific consent provided for receiving such marketing communications.

TIMING

Is time required to ensure compliance (other than reviewing the terms and conditions)?

No for prize promotions (i.e. skills competitions or prize draws).

Where a license is necessary i.e. for lotteries, then time must be factored for the lottery authority’s case handling time. For smaller lotteries, a notification must be sent at least 14 days prior to the lottery being held.

TRANSLATIONS

Are the terms required to be translated by law?

None required.
PENALTIES FOR NON-COMPLIANCE

What are the penalties for non-compliance?

For the below penalties, the penalty is per breach.

LA: Applicable to lotteries:

Maximum fine: No maximum

Average fine: 10,000 – 100,000 NOK* (approx. US$1,140 – US$11,500)

Prison sentences: Maximum sentence of 3 years where gross negligence or wilful misconduct. A case relating to pyramid schemes led to prison sentences of 2.5 years and 1 year 9 months.

* This is dependent on the type of breach.

MCA (averages 2013 - 2016, 14 cases): applicable to prize promotions and lotteries:

Maximum fine: None. Actual highest fine currently is 1.5 Million NOK (approx. US$172,000).

Average fine total: 202,000 NOK (approx. US$23,100)

Personal fines average: 120,000 NOK (approx. US$13,734)

Fines to companies average: 250,000 NOK (approx. US$28,600)

Prison sentences: Not known to have been used in the last few years. Max available by law is 6 months imprisonment.

The government has suggested amendments to the MCA in order to give the consumer protection authority more power with regards to enforcing compliance and issuing fines.

Data Privacy

Finally, there is the possibility that the personal data processing aspects of the promotion could breach GDPR, which has maximum fines of up to the higher of:

- €20 million (approx. US$22.4m); or
- 4% of the promoter’s worldwide annual revenue.

In 2018 the first fine issued under the new GDPR system was set at 1,5 MNOK (approx. US$ 172,000).

Broadcasting Act

Maximum fine: 2 MNOK (approx. US$229,000)

Average fine: Fine set based on how many have viewed the ad.
Prison sentence: Max six months in accordance with law.

RESTRICTIVENESS OF REGULATIONS

*How restrictive are the legal obligations applicable to prize promotions?*

The rules relating to prize promotion regulation are not very extensive, and although fines can be extreme, as long as no payment is received for prize promotions, then the applicable rules are generally common sense and not unduly onerous. However, GDPR has introduced various obligations around processing personal data which have significant application to prize promotions (e.g. use of submissions including personal data, winner publicity, etc.). Lotteries, where a stake is paid out, require licenses which are more onerous to obtain.

REGULARITY OF SANCTIONS

*How frequently does the regulator impose serious sanctions for non-compliance?*

Prison sentences are rarely imposed, but fines can be applied. There is currently a strong focus on data protection, and recent amendments to the MCA have made it easier to fine companies immediately upon breach of the law.

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**POLAND**

Last modified 14 January 2019

**GOVERNING LAW**

*What are the main applicable governing laws or codes for prize promotions?*

<table>
<thead>
<tr>
<th>Name</th>
<th>Law or Code?</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Code of Ethics in Advertising of the Advertising Council (Rada Reklamy)</td>
<td>Code</td>
</tr>
<tr>
<td>The Code of Ethics in Direct Marketing of the Polish Marketing Association - SMB (Polskie Stowarzyszenie Marketingu - SMB)</td>
<td>Code</td>
</tr>
<tr>
<td>The Civil Code of 23 April 1964 (Journal of Laws 2018, item 1025 as amended)</td>
<td>Law</td>
</tr>
<tr>
<td>The Gambling Act of 19 November 2009 (Journal of Laws 2018, item 165)</td>
<td>Law</td>
</tr>
<tr>
<td>The Consumer Rights Act of 30 May 2014 (Journal of Laws 2017, item 683, as amended)</td>
<td>Law</td>
</tr>
<tr>
<td>Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation or GDPR)</td>
<td>Law</td>
</tr>
</tbody>
</table>
EXTRA-TERRITORIALITY

Do national regulators enforce rules against entities operating abroad?

Under Polish law, regulation of prize promotions is very limited. The Polish Civil Code states only that a person that has promised a reward for the performance of a particular act by a public announcement to an unspecified number of people is obliged to keep the promise. There are no other specific legal regulations regarding prize promotions (unless the promotion is considered to be a lottery or other game set forth in the Gambling Act in which case additional obligations apply).

However, consumer law and data protection law should be taken into consideration. Moreover, if the prize promotion is operated online, the Act on Rendering Services by Electronic Means should also be also taken into consideration.

In relation to prize promotions which are operated online and outside the Polish jurisdiction, the Polish Act on Rendering Services by Electronic Means should not generally apply. According to the relevant provision of this regulation, the provision of electronic services is subject to the law of the member state of the European Union in which the service provider is a resident. However, there are some exceptions to this general rule: for example, irrespective of the location of the service providers, when a prize promotion is directed to Polish consumers, then the Polish consumer law determined in separate legal acts applies. Therefore, the terms and conditions of the prize promotion must be in line with the Polish Act on Consumer Rights and the Polish Civil Code's provisions regarding business to consumer relations.

Furthermore, the GDPR applies to the terms and conditions of the prize promotion if the data controller of the participants’ data is an entity located in the EU. The entities based outside the EU will also be obliged to comply with the GDPR if the processing activities relate to the offering of goods or services to individuals in the EU.

SKILLS COMPETITIONS

Can a prize promotion be run that is based on skill?

Yes, under the following circumstances:

- The winner must be chosen on the basis of skills (i.e. the best work or act), and not on the basis of chance. If the conditions for winning have been fulfilled by several persons independently, each of them shall be entitled to a full prize, unless only one prize has been promised. If only one prize has been promised, the first person who comes forward to claim the prize shall receive it; and where several persons come forward at the same time – the person who first fulfilled the conditions for winning. Additionally, a public promise of a prize for the best work or for the best act is ineffective if it does not specify the period in which the prize may be claimed. The above rules stem from the provisions of the Polish Civil Code.

Even if a promotion contains elements of skill but the final result is determined on the basis of chance, this would likely be considered a lottery and official approval (by public authority) would be required. Elements of chance are acceptable as long as they are not decisive as to the final decision about the winner (e.g. it is acceptable that at the first stage of the promotion a limited number of participants are chosen by a draw if the final results regarding the winner are based on skill).
• Terms of the prize promotion should be notified to the participants prior to their participation in the promotion.

PRIZE DRAWS

*Can a prize promotion be run where there is an element of chance in the selection of the winner?*

Not without a permit. Namely, if a prize promotion includes an element of chance in the selection of the winner, it may be considered to be a lottery or a promotion lottery, which requires obtaining an official permit under the Gambling Act.

Under Polish law, a game will be deemed to be a lottery where the outcome is significantly dependent on chance (the main condition), the prize is either cash or a physical prize (there is no legal definition of a physical prize under the Polish law, however a prize is considered to be physical if it is neither cash nor its equivalent (e.g. gift certificates, vouchers etc.); thus, for instance physical prizes are cars, books, trips etc.), and participants purchase goods, services or another game ticket to enter the lottery.

SELECTION OF WINNERS

*Are there any requirements for the selection of winners and award of prizes?*

There are no specific legal requirements for the selection of winners and the award of prizes.

However, the entity organizing the contest must determine the rules for selecting winners and awarding prizes. For skills competitions, the terms should also include the criteria for assessing the participants’ skills.

JUDGES

*Are there any particular requirements in relation to judges or judging for skills competitions?*

There are no particular requirements in relation to judges or judging in skills competitions. The evaluation of whether and which work or act deserves the reward is made at the competition organiser's discretion unless the T&C's of the competition (the "reward promise" under the Polish Civil Code) stipulate otherwise. The criteria and mechanism for judging must be notified to the participants before they enter the promotion.

PRIZES

*Are there any restrictions on the prizes awarded?*

There are no specific legal restrictions on the prizes awarded, unless - based on general regulations - economic circulation of a particular item/service is excluded or restricted. In addition, the terms of the prize promotion should determine the amount, value and type of the prize, as well as information on whether it is possible to receive a cash equivalent of the prize instead of the prize itself.

REGISTRATION REQUIREMENTS AND FEES

*Are there any registration requirements, or any fees/taxes payable?*
Registration Requirements

There is no requirement to register prize promotions. In case of promotion lotteries, the organizer is obliged to obtain a permit, subject to a payment.

Fees/Taxes payable

The tax consequences must be determined on a case by case basis, as different types of the prize promotions are subject to different tax consequences - especially if a given prize promotion is considered to be a 'premium sales program'. Taking into account that in many cases also the intermediary companies are engaged in organizing prize promotions, determining the tax aspects of such promotions is a very complex issue. At the same time, tax consequences shall be determined not only from the perspective of the company organizing the promotion, but also from the perspective of the individual receiving a prize – as some prizes are subject to Personal Income Tax Law (and the company giving away the prize may be considered as a tax remitter).

From the perspective of a company organizing the prize promotions – the following aspects of the transaction shall be taken into account:

- Whether the cost of the promotion can be considered as a tax deductible cost (in most cases – yes, they can);
- Whether the input VAT on expenses incurred in relation to promotion can be deducted from the output VAT;
- The prize obtained by a given individual is subject to personal income tax or is exempted from taxation, and consequently, whether the company organizing the game is responsible for withholding tax (and in practice) economically paying any tax.

The above issues, especially the one related to Personal Income Tax, must be verified before organizing the prize programme – as, in practice, the tax issue may influence the prize amount. In Poland, if a prize is not covered by the exemption from Personal Income Tax (i.e. for a specific prize programme, the prizes of value lower than approx. EUR 470 are exempted from PIT), the company organizing the prize promotion usually gives additional prizes in cash to cover the Personal Income Tax).

OTHER LOCAL REQUIREMENTS

Are there any other key local requirements?

The promoter is obliged to respect the terms of the prize promotion notified to the participants. These terms cannot be, generally, changed during the promotion.

The promoter’s name and address must be notified to the participants.

There are also some restrictions regarding prize promotions in other legal acts, e.g. it is forbidden to organize prize promotions conditional on the purchase of tobacco products.

TIMING

Is time required to ensure compliance (other than reviewing the terms and conditions)?
There are no special requirements in this regard.

**TRANSLATIONS**

*Are the terms required to be translated by law?*

Yes.

The terms and conditions and other documents needed to enter the prize promotion must be translated to Polish when the prize promotion is directed to consumers.

**PENALTIES FOR NON-COMPLIANCE**

*What are the penalties for non-compliance?*

If the prize promotion is considered to be a lottery, the party that organizes it without a permit must pay a penalty equal to 5 times the amount of a permit fee, which equals in total 50% value of the prize pool. In addition to the penalties imposed on the entity organizing the lottery, the Gambling Act provides for sanctions for individuals holding managerial positions – the relevant authority (head of the customs and tax office) may impose a fine up to approximately EUR 23,000.00 (approx. US$25,800) for organizing gambling games (including lotteries) without a concession, permit or required registration. Furthermore, under the Fiscal Penal Code, running or organizing a lottery contrary to the law or a permit is subject to a fine (maximum fine = approximately EUR 1,636,363.6 (approx. US$1,833,000) – according to the current regulations and fine amounts applicable in 2019).

Finally, there is the possibility that the personal data processing aspects of the promotion could breach GDPR, which has maximum fines of up to the higher of:

- €20 million (approx. US$22.4m); or
- 4% of the promoter’s worldwide annual revenue

**RESTRICTIVENESS OF REGULATIONS**

*How restrictive are the legal obligations applicable to prize promotions?*

Under Polish law there are a limited number of restrictions and formal requirements regarding the organizing of prize promotions. Therefore, most prize promotion mechanics are allowed (provided the promotion is not considered as a lottery or another gambling game regulated in the Gambling Act). However, GDPR has introduced various obligations around processing personal data which have significant application to prize promotions (e.g. use of submissions including personal data, winner publicity, etc.).

**REGULARITY OF SANCTIONS**

*How frequently does the regulator impose serious sanctions for non-compliance?*

No information publicly available.
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### GOVERNING LAW

**What are the main applicable governing laws or codes for prize promotions?**

<table>
<thead>
<tr>
<th>Name</th>
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</tr>
</thead>
<tbody>
<tr>
<td><em>Game Law (Decree-Law no 422/89, 2, December as amended)</em></td>
<td>Decree-Law*</td>
</tr>
<tr>
<td><em>The Gambling Law is the main regulation on prize promotions. The remaining regulations correspond to general rules applicable to related aspects.</em></td>
<td><em>In general terms, the difference between Decree-Law and Law is that within the scope of the 'Decree-Law' the legislative process operates via the government and in the scope of 'Law', the legislative process operates via the Parliament</em></td>
</tr>
<tr>
<td>Consumer Act (Law no. 24/96, 31 July as amended)</td>
<td>Law</td>
</tr>
<tr>
<td>General Data Protection Regulation (&quot;GDPR&quot;) (a draft proposal of law for the implementation of GDPR is at the Parliament for discussion)</td>
<td>Regulation</td>
</tr>
<tr>
<td>Data Protection Law (Law no. 67/98, 26, October as amended), which in accordance with Data Protection Authority position, remains in force to the extent it is not in contradiction with GDPR</td>
<td>Law</td>
</tr>
<tr>
<td>Privacy and Electronic Communications Law (Law no. 41/2004, 18, August as amended)</td>
<td>Law</td>
</tr>
<tr>
<td>Advertising Code (Decree-Law no. 330/90, 23, October as amended)</td>
<td>Decree-Law</td>
</tr>
</tbody>
</table>
Note: The right to provide State Social Games (e.g. lotteries) offline and online is an exclusive right of Santa Casa da Misericordia and no third entities may provide such games in Portugal. Furthermore, the right to provide ‘fortune games’ (casino games, bingo, sports betting, etc.) online and offline follow a specific and very restrictive legal framework which is not included in this advice as it is outside the scope of guidance on prize promotions. Also, sales with price reduction (discounts) are outside the scope of the present guide.

EXTRA-TERRITORIALITY

Do national regulators enforce rules against entities operating abroad?

Yes, if the prize promotion is addressed to Portuguese consumers and/or is opened to participation in or from Portugal. There are several elements which may indicate that a prize promotion is addressed to Portuguese consumers (e.g. terms and conditions in Portuguese language, online prize promotion made available on a website under a domain name .pt (or even if on an international domain name, but the website is written in Portuguese), advertising in Portugal or in channels addressed to Portugal, etc).

In any case, if the prize promotion is opened to participants from Portugal, it is likely that Regulators apply/enforce rules against entities operating abroad.

SKILLS COMPETITIONS

Can a prize promotion be run that is based on skill?

Yes, but ensure:

- That neither the eligibility, the mechanics of the skill competition nor the selection of the winners depends on chance (even if combined with skill);

- That no skill competitions are run where the entrant has to use machines or other devices and in which the result depends exclusively on the skill of the player but that may result in payment (as a prize) of money, chips or other goods with economic value (even if of small value);

- Clear terms and conditions (including full information on the skill competition) shall be provided to the participants for acceptance prior to the beginning of the competition.

PRIZE DRAWS

Can a prize promotion be run where there is an element of chance in the selection of the winner?

Yes but depends on prior authorization from local competent authority. Please note that Prize Draws are considered to be games similar to fortune games which depend on chance or on chance combined with skill and, therefore, they are subject to specific legal requirements:
• It must not be performed by entities with profitable purposes except as a means to promote and advertise products or services provided by such entities;

• The participant may not incur any expenses other than post or telecommunication expenses (with no value added, whatsoever), or expenses higher than the cost of the product or service that the contestant is intended to claim;

• It cannot be similar to or use themes from fortune games (such as poker, fruits, roulette, dice, bingo, numbered lotteries, etc);

• Worldwide prize draws are not accepted for authorization by the competent authority (only local prize draws).

Please note that Game Law (applicable to contests/competitions depending on luck/chance or luck/chance combined with skill) was recently amended and one of the relevant amendments was the transfer of competences to authorize such contests/competitions from SGMAI (Secretaria Geral do Ministério da Administração Interna) to the (i) President of Municipality (in case the contest/competition is limited to the territorial area of a specific municipality); or (ii) President of Municipality of the residence or headquarters of the entity promoting the competition/contest (when it is not limited to the territorial area of one municipality).

In general terms, the amendments entered into force on 1st, January, 2019. However, from a formal standpoint, the transfer of competences may be refused by the Municipality, in which case SGMAI will, in principle, remain competent for such purposes. The competence to authorize prize draws shall be assessed on a case by case basis.

Note as above in the Governing law section, the regulation of games of fortune and state-run social games (such as state lotteries), as well as sales with price reductions (discounts), are beyond the scope of this guidance.

SELECTION OF WINNERS

Are there any requirements for the selection of winners and award of prizes?

Prize draws

In the scope of SGMAI procedure, the selection of the winners must be observed by a representative of the General-Secretary of Ministry of Internal Affairs or, where the selection is carried out using a computer program, such program must be provided to the General-Secretary of Ministry of Internal Affairs with a request for authorization for the intended means of selection. Among other aspects, the promoters must publish the day of the winner selection and the day to claim the prize in the same media as used to advertise the competition and the prizes must be claimed within 90 days after the selection of the winners.

However, depending on the competent Authority, which shall be assessed on a case by case basis, authorizing the prize draw, the rules may be different, as the recent amendments grant to the President of Municipality the authority to establish the conditions which shall be complied with for a prize draw for which the transfer of competences has been accepted.

Skill competitions
PRIZE PROMOTIONS AROUND THE WORLD

If the selection of winning entries is open to subjective interpretation, an independent judge, or a panel, should be appointed. Those appointed to act as judges should be competent to judge the subject matter of the competition. The full names of judges should be made available on request.

JUDGES

Are there any particular requirements in relation to judges or judging for skills competitions?

Skill competitions, where the selection of winning entries is open to subjective interpretation, should be judged by an independent judge, or a panel. Those appointed to act as judges should be competent to judge the subject matter of the competition. The full names of judges should be made available on request.

PRIZES

Are there any restrictions on the prizes awarded?

For prize draws, prizes must be goods or services with economic value, not cash, and cannot be substituted with cash.

Without prejudice to what is mentioned in the Skills Competitions section, for skill competitions, prizes may in principle be granted in cash; however, the authorities are not entirely consistent on this point.

Furthermore, please note that there may be specific regulations prohibiting the award of certain goods as prizes (for example tobacco products, weapons etc).

REGISTRATION REQUIREMENTS AND FEES

Are there any registration requirements, or any fees/taxes payable?

Registration Requirements

For prize draws – filing of a prior authorization request with the competent Authority (to be assessed on a case by case basis) is required.

Fees/Taxes payable

For prize draws – when filing the prior authorization request with the competent Authority, the payment of an official fee of €500 (approx. US$560) is required.

Regarding taxation issues, all prizes to be delivered are subject to Stamp Duty at a 45% rate. The tax is due at the moment the prize is granted to the beneficiary and the amount of the tax must be paid by the entity granting the prize by the 20th of the month after the month in which the prize is granted.

In case SGMAI is the competent Authority (to be assessed on a case by case basis), within 8 days after the end of the 90 day period (such 90 day period starting from the date of selection of the winners), the promoter must present evidence to the General-Secretary of Ministry of Internal Affairs that the tax due has been paid.

OTHER LOCAL REQUIREMENTS
Are there any other key local requirements?

All of the details of a prize competition must be disclosed in the respective Terms and Conditions and an indication of the prizes, their value and contact details of the promoter and all relevant dates of the promotion must be included. The procedural rules and regulations must be accessible for consultation, at all times during the promotion.

All promotional materials regarding the prize draw and the Terms and Conditions should have a specific reference to the authorization number granted by the General Secretary of Ministry of Internal Affairs.

General Advertising rules are fully applicable to prize draws and skill competitions which means that advertising must abide by all principles set out in the Advertising Code (Decree Law no 390/90, October, 23 as amended by Law 8/2011, April, 11). In particular, the advertising of the promotion must refer to all its main conditions and may not mislead the consumer.

Data Protection provisions are fully applicable to prize draws and skill competitions, which means that any marketing lists must comply with data protection laws and Regulations..

TIMING

Is time required to ensure compliance (other than reviewing the terms and conditions)?

Yes.

For prize draws: in case SGMAI is the competent Authority (to be assessed on a case by case basis), the authorization request and the terms and conditions shall be submitted, at least 15 days before the prize promotion starts to provide sufficient time for authorization to be considered and granted.

Terms and conditions of the prize draw must be made available to the participants before the beginning of the promotion and, if possible, expressly accepted by the participants.

Regarding skill competitions, terms and conditions of the skill competition must be made available to the participants before the beginning of the promotion and, if possible, expressly accepted by the participants.

Furthermore, the timings should provide sufficient time for compliance with data protection requirements prior to the beginning of the prize draw or skill competition (eg. ensuring an appropriate privacy policy is in place and including appropriate tick box functionality for consents).

TRANSLATIONS

Are the terms required to be translated by law?

Yes, translation into Portuguese is required.

PENALTIES FOR NON-COMPLIANCE

What are the penalties for non-compliance?
Breaching the applicable provisions in connection with prize promotions and skill competitions can be sanctioned as an infringement to the Game Law, being considered as administrative offense punished with fines from €250 (approx. US$280) up to €2500 (approx. US$2,800) per breach (if the offender is a natural person) or from €2,500 (approx. US$2,800) up to €24,940.00 (approx. US$28,000) per breach (if the offender is a legal person). Ancillary penalties may also be imposed (e.g. the equipment used and any monies obtained may be seized, a ban on performing activities in the establishment for a period of up to 6 months may be applicable).

The failure to comply with data protections and privacy legal requirements and formalities may result in civil, criminal and administrative liability. At this stage there is still no law implementing GDPR in Portugal. In accordance with the last draft proposal of law made available (not yet approved and still in discussion in the Parliament), crimes may be punished with imprisonment up to 4 years (or daily fines for periods up to 480 days (the court determines an amount to be paid per day and the number of days for which the agent shall be punished), and administrative offenses may be punished with fines up to €20 000 000 (approx. US$22.4m) or up to 4% of the total worldwide annual turnover of the preceding financial year, whichever is higher. Failure to comply with the rules on sending direct marketing communications is punished as an administrative offense with fines up to €5,000,000 (approx. US$5.56m) per infringement. Ancillary penalties may also be imposed.

Furthermore and depending on the conduct, it may be considered as a breach of general consumer provisions, including the Consumer Protection Act, Unfair Commercial Practices, Advertising Code, etc.

In general terms, unfair commercial practices and misleading advertising may generate civil and administrative liability and may be sanctioned with fines up to €3,740.98 (approx. US$4,200) per infringement (if the offender is a natural person) or up to €44,891.81 (approx. US$50,300) per infringement (if the offender is a legal person).

Ancillary penalties may also be imposed.

RESTRICTIVENESS OF REGULATIONS

How restrictive are the legal obligations applicable to prize promotions?

The legal framework applicable to prize draws is restrictive. There are several legal requirements and formalities, notably prior authorization from the competent authority as well as obligations to present additional documents after the prize draw has been conducted, to the competent authority (e.g. evidence of the delivery of the prizes and the payment of applicable taxes).

The mechanic of the prize draw is, in general terms, allowed as long as it does not fall within the scope of 'fortune games' (e.g. bingo, casino games, sports betting, etc) or within the concept of 'State Social Games' (e.g. lotteries).

Finally, GDPR has introduced various obligations around processing personal data which have significant application to prize promotions (e.g. use of submissions including personal data, winner publicity, etc.).

REGULARITY OF SANCTIONS

How frequently does the regulator impose serious sanctions for non-compliance?

Fines may be imposed and the amount will depend on the circumstances.
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ROMANIA

GOVERNING LAW

What are the main applicable governing laws or codes for prize promotions?

<table>
<thead>
<tr>
<th>Name</th>
<th>Law or Code?</th>
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<tbody>
<tr>
<td>Government Ordinance no. 99/2000 regarding the marketing of products and services (‘GO 99/2000’)</td>
<td>Government Ordinance</td>
</tr>
<tr>
<td>Government Ordinance no. 21/1992 on consumer protection</td>
<td>Government Ordinance</td>
</tr>
<tr>
<td>Law no. 148/2000 on advertising</td>
<td>Law</td>
</tr>
<tr>
<td>Law no. 158/2008 on misleading and comparative advertising</td>
<td>Law</td>
</tr>
<tr>
<td>Law no. 363/2007 on the fight against unfair commercial practices of traders in their relationship with consumers and the harmonization of regulations with European consumer protection legislation</td>
<td>Law</td>
</tr>
<tr>
<td>Government Emergency Ordinance no. 77/2009 on the organization and exploitation of games of chance</td>
<td>Government Emergency Ordinance</td>
</tr>
<tr>
<td>General Data Protection Regulation</td>
<td>European Regulation</td>
</tr>
</tbody>
</table>

EXTRA-TERRITORIALITY

Do national regulators enforce rules against entities operating abroad?
GO 99/2000 applies to all commercial activities and services performed in Romania, irrespective of whether the organizer is a foreign entity or not.

The GO 99/2000 does not provide a distinction between prize promotions operated by a Romanian entity on the Romanian territory and prize promotions operated purely online outside of Romania, whether targeting Romanian consumers or simply allowing them to participate.

However, should Art. 6 of Rome 1 EU Regulation providing for the law governing contracts concluded between a consumer and a professional become applicable, Romanian consumers are protected by provisions included in national legislation which cannot be overwritten by the provisions of the promotion rules.

**SKILLS COMPETITIONS**

*Can a prize promotion be run that is based on skill?*

Yes, but the organizer must ensure that the winner is selected based on their skills, knowledge and intelligence as demonstrated by their performance or entry.

**PRIZE DRAWS**

*Can a prize promotion be run where there is an element of chance in the selection of the winner?*

A prize draw may be conducted if the participants do not have to make direct or indirect payment to enter the competition. (An example of an indirect payment is where an additional payment is required on top of the price of a product/service that is required to be purchased as condition of entry into the competition or an inflated price is charged for the good or service).

Expenses incurred by participants in respect of postal services as well as normal telephone costs are allowed.

A consumer competition could also be considered a game of chance and, thus, fall under the provisions of the gambling legislation if:

- Material prizes, generally monetary, are awarded following a public offer of potential winnings by the organizer and acceptance of this offer by the participant;
- A direct or indirect payment of a participation fee is required other than the normal cost of purchasing a good or service; and
- Winnings are awarded on the basis of game rules through a random selection of the results of the events to which the game relates, regardless of how these results are achieved.

If this is the case, the organizer must obtain certain authorizations and licenses.

**SELECTION OF WINNERS**

*Are there any requirements for the selection of winners and award of prizes?*

Selection of the winners shall be based on a draw (for prize draw) or on the participants’ performance
(for skill competition).

The name of the winners and their prizes must be made public by the organizer of the prize promotion. However, GO 99/2000 does not impose a specific means for the publication of the winners’ names and prizes granted, and thus, the organizer may choose the means of publication at its convenience.

JUDGES

Are there any particular requirements in relation to judges or judging for skills competitions?

There are no particular requirements in relation to judges or judging for skills competitions.

PRIZES

Are there any restrictions on the prizes awarded?

The organizer must ensure that prizes granted correspond with the descriptions indicated in the competitions rules, marketing presentations or other similar documents. Otherwise, advertising communications may be considered as misleading, for example:

- Where the advertising suggests to the addressee that he/she has won the prize, although the draw has not yet occurred
- Where the advertising suggests to the addressee that he/she won an important prize, when in reality the prize has a minimum or nominal value

The legal framework requires compliance with strict rules when advertising alcoholic drinks, tobacco, guns, weapons etc.; advertising for medicines issued with no medical prescription falls within the remit of the National Medicine Agency.

REGISTRATION REQUIREMENTS AND FEES

Are there any registration requirements, or any fees/taxes payable?

Registration Requirements

No registration requirements apply to prize promotions.

In terms of whether the organizer of a promotion should apply for tax registration in Romania - the position is unclear because the law is not straightforward as regards the nature of revenue obtained by individuals participating in promotions, which is relevant for tax registration purposes.

If the revenues qualifies as 1) a prize, then registration is required. However if the revenue qualifies as (2) revenue from abroad, no registration requirements exist. In the meantime, the safest approach would be for the organizer granting the prize to apply for tax registration in Romania.

Fees/Taxes payable

According to the provisions of the Romanian Fiscal code, income from prizes obtained by a Romanian individual from a non-resident entity may be classified either as an income from a prize or as an income received from abroad. We are not aware of the approach of the tax authorities in Romania as regards
the classification of the income received by a Romanian individual in such cases.

In our opinion, the safest approach for the payer of the income / entity granting the prize would be for the income paid to be considered as income from prizes, in which case the payer of the income has the obligation to withhold, declare and pay the relevant income tax towards the Romanian state budget; therefore a tax registration process should be followed in this respect, while the taxes / fee registration due are immaterial.

Nevertheless, if the income is classified as income received from abroad, the non-resident entity has no obligation in respect of income tax due in Romania, such obligation falls under the liability of the individual obtaining the income.

OTHER LOCAL REQUIREMENTS

Are there any other key local requirements?

When organizing a prize promotion, the following rules must be complied with:

- The adverts must mention:
  - The nature, the number and the commercial value of the prizes and that the competition rules are available free of charge to any applicant;
  - The competition rules must be authenticated by a public notary; and
  - Mention the obligation of the promoter to publicly present the name of the winners and their prizes.

Representatives from the National Consumer Protection Authority, Ministry of Economy, and Ministry of Internal Affairs may request a copy of the competition rules, as well as a copy of the advertising materials. Organizers must hand over the required documentation within 5 days of the request date.

TIMING

Is time required to ensure compliance (other than reviewing the terms and conditions)?

No, although time should be allowed to deal with data protection issues (e.g. ensuring an appropriate privacy notice is in place).

TRANSLATIONS

Are the terms required to be translated by law?

GO 99/2000 does not clearly provide for the competition rules to be translated in Romanian. However, it is advised because of the requirement to get competition rules authenticated and to comply with consumer protection legislation which requires full and correct information to be provided to consumers.

PENALTIES FOR NON-COMPLIANCE

What are the penalties for non-compliance?
Under GO 99/2000, the non-compliance with the legal provisions might constitute a misdemeanor punishable by a fine which varies from RON 1,000 (approx. US$235) up to 5,000 RON (approx. US$1175), depending on the breach. Finally, there is the possibility that the personal data processing aspects of the promotion could breach GDPR, which has maximum fines of up to the higher of:

- €20 million; or
- 4% of the promoter’s worldwide annual revenue.

**RESTRICTIVENESS OF REGULATIONS**

*How restrictive are the legal obligations applicable to prize promotions?*

GO 99/2000 set out general requirements which are not unduly onerous for the organizer. However, GDPR has introduced various obligations around processing personal data which have significant application to prize promotions (eg. use of submissions including personal data, winner publicity, etc.).

**REGULARITY OF SANCTIONS**

*How frequently does the regulator impose serious sanctions for non-compliance?*

No information has been released by the Romanian competent authority, and therefore no information can be provided.
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RUSSIA

GOVERNING LAW

What are the main applicable governing laws or codes for prize promotions?

<table>
<thead>
<tr>
<th>Name</th>
<th>Law or Code?</th>
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<tbody>
<tr>
<td>Russian Federal Law on Lotteries (dated November 11, 2013 No. 138-FZ)</td>
<td>Law</td>
</tr>
</tbody>
</table>

EXTRA-TERRITORIALITY

Do national regulators enforce rules against entities operating abroad?

The Code and Law do not contain specific rules on prize promotions offered abroad. As a general rule, promotions offered to Russian parties from abroad will be subject to the same treatment as those offered in Russia (in part of any mandatory Russian rules constituting ‘public order’). Theoretically, the only sanction which can be applied to foreign prize promotions, run online and violating Russian ‘public order’, is the blocking of the website through which the violating promotion is run. In practice, we have not heard of practical precedents of such enforcement.

SKILLS COMPETITIONS

Can a prize promotion be run that is based on skill?

Yes, this is permitted and specifically regulated under the Code. The main requirements set out in the Code are:

- The competition must be directed to the achievement of socially amenable purposes;
- The announcement of the competition must contain, at least, the essence of the task, criteria and procedure of assessment of results, place, term and order of delivery of results, amount and type...
of award, order and terms of announcement of the competition's results;

- The competition organizer may modify or cancel the competition only within the first half of the set term of delivery and must make the announcement in the same way as the initial announcement. The organizer must reimburse the expenses incurred by participants before such cancellation or modification.

PRIZE DRAWS

Can a prize promotion be run where there is an element of chance in the selection of the winner?

Yes. In this case, the promotion will fall under the definition of 'lottery' (which is regulated differently and separately from skills-based competitions). The main requirements set out in the Code and in the Law are:

- A lottery conducted in Russia must adhere to certain formal requirements and must be registered as such;
- The terms of the lottery must contain the timeframes of conducting the lottery, order of determining the award and its amount and other formal requirements;
- If the timing for payment of the award is not indicated, the award must be paid out not later than 10 days commencing on the date of determination of the results of the lottery (general rule). In case of non-payment the participants may claim the redress of damages in full amount from the organizer.

The refusal to conduct the lottery in the pre-agreed term will give the participants the right to demand the pay out of damages (only real damages, not lost profit).

SELECTION OF WINNERS

Are there any requirements for the selection of winners and award of prizes?

In relation to skills competitions, the process of selection of winners and requirements for awarding prizes is determined by the organizer but must be clearly described in the announcement of the competition.

In relation to lotteries, the order of determining the award and its amount must be defined by the organizer and clearly communicated to participants.

JUDGES

Are there any particular requirements in relation to judges or judging for skills competitions?

There are no legal requirements in relation to judges or judging for skills competitions. This is entirely determined by the organizer. However, the criteria and procedure of assessment of results must be announced by the organizer of the competition.

PRIZES
Are there any restrictions on the prizes awarded?

There are no specific restrictions on prizes to be awarded. However, goods which are generally restricted to the public by law, such as weapons and narcotic substances, cannot be offered as an award.

REGISTRATION REQUIREMENTS AND FEES

Are there any registration requirements, or any fees/taxes payable?

Registration Requirements

There are no specific requirements for skill competitions. However, lotteries are subject to the heavy regulatory regime. This means the operator of the lottery (i.e. the entity running the lottery) must agree to a contract with the Ministry of Finance or Ministry of Sports (‘organizers of the lottery’) on the basis of a preliminary held state tender.

Fees / Taxes Payable

For lotteries, a state fee of 10% is payable to the state budget.

OTHER LOCAL REQUIREMENTS

Are there any other key local requirements?

In relation to lotteries the Law contains certain requirements. For example, there are requirements regarding mandatory state inspections of equipment used by organizers in the running of a lottery. Additionally, every operator of a lottery must order and undergo an annual mandatory audit of its activities in relation to accounting aspects.

TIMING

Is time required to ensure compliance (other than reviewing the terms and conditions)?

No.

TRANSLATIONS

Are the terms required to be translated by law?

While there is no express legal requirement for the terms to be translated into Russian, having such translation in place is highly advisable. The organizer may face various issues and even potential legal disputes relating to consumers misunderstanding of the terms if it is not translated into Russian.

PENALTIES FOR NON-COMPLIANCE

What are the penalties for non-compliance?

Aside from the civil damage awards (in the case of any breach of the rules), there may be
administrative (or even criminal) sanctions applied to an organizer.

The average sanction is an administrative fine of 200,000 Russian Rubles (approx. US$3,086). The maximum sanction for gross violations is 3 years imprisonment (applicable to officers of legal entities), but it is not likely to transpire in practice.

RESTRICTIVENESS OF REGULATIONS

How restrictive are the legal obligations applicable to prize promotions?

The skill-based prize promotions are generally subject to soft/mild legal treatment and the applicable legal regulations are not restrictive or onerous.

However, lotteries are subject to a very restrictive and heavily regulated regime (ie mandatory conclusion of a contract with the state authority under the tender procedure, state duties, annual audit, prohibition of lotteries on the Internet).

REGULARITY OF SANCTIONS

How frequently does the regulator impose serious sanctions for non-compliance?

Rarely imposed for skill-based competitions.

Fines are imposed more often for violations in relation to lotteries.

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SAUDI ARABIA

GOVERNING LAW

What are the main applicable governing laws or codes for prize promotions?

<table>
<thead>
<tr>
<th>Name</th>
<th>Law or Code?</th>
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<tbody>
<tr>
<td>The Anti-Commercial Fraud Law and Regulations ('ACFR')</td>
<td>Law</td>
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</table>

EXTRA-TERRITORIALITY

Do national regulators enforce rules against entities operating abroad?

The ACFR does not expressly distinguish between prize promotions operated outside or within Saudi Arabia. This will depend upon the specific circumstances of the promotion/competition, the nexus with persons resident in Saudi Arabia and whether any activities can be deemed to be being executed in Saudi Arabia.

SKILLS COMPETITIONS

Can a prize promotion be run that is based on skill?

Yes, the introduction of an element of skill in a prize promotion is not prohibited under the ACFR. An application explaining the elements of the prize promotion must be submitted to the competent authorities in Saudi Arabia in order to obtain a license for conducting and/or advertising the promotion (please refer to Registration requirements for further information).

PRIZE DRAWS

Can a prize promotion be run where there is an element of chance in the selection of the winner?

Yes, the ACFR does not expressly prohibit prize draws where there is an element of chance in the selection of the winner. However, there are a number of requirements and restrictions under the ACFR that must be complied with in relation to any prize promotions/competitions. For example, there is a
requirement that, amongst others, purchasing (a ticket, product or anything else) must not be set as a condition for participation.

**SELECTION OF WINNERS**

*Are there any requirements for the selection of winners and award of prizes?*

There are various requirements under the ACFR related to the selection of winners and award of prizes. For example, amongst others:

- It is not permitted under the ACFR for certain 'connected' persons to participate in the prize promotion (including the beneficiary of the licence to hold the prize promotion, children, spouse, parents and/or employees), and
- The ACFR requires that prizes must be given to winners within seven days from the date of sorting the results

**JUDGES**

*Are there any particular requirements in relation to judges or judging for skills competitions?*

No, the ACFR does not stipulate any requirements in relation to judges or judging specifically for skills competitions (eg a minimum number of judges, independence, qualifications, etc). The competent authorities will likely, as part of granting a licence for undertaking the competition, require details of the criteria and mechanism for judging entries.

**PRIZES**

*Are there any restrictions on the prizes awarded?*

The competition, including prizes, must not violate the principles of Shari’a and customs in Saudi Arabia. For example, the consumption of alcohol is forbidden under Shari’a, and a prize such as the supply of wine would not be permitted. As part of the licence application process for a promotion/competition, the competent authorities will require details of the prizes to be awarded.

**REGISTRATION REQUIREMENTS AND FEES**

*Are there any registration requirements, or any fees/taxes payable?*

**Registration Requirements**

The ACFR provides, amongst other things, that commercial entities may not conduct or advertise a promotion/competition unless it has first obtained a license from the Director-General of the Anti-Commerce Fraud Department or the competent branch of the Ministry of Commerce and Investment (in practice, via the Chamber of Commerce).

**Fees / Taxes Payable**

The ACFR does not stipulate the license fees for a license an application. This should be confirmed with the competent authorities before at the time of making any application.
Any tax implications in relation to prize promotions should be confirmed directly with specialist tax advisors.

**OTHER LOCAL REQUIREMENTS**

*Are there any other key local requirements?*

There are a number of requirements and restrictions under the ACFR, and relevant authorities may also stipulate additional requirements that may apply as part of the granting of a license.

**TIMING**

*Is time required to ensure compliance (other than reviewing the terms and conditions)?*

The ACFR provides that the application for a license must be reviewed within seven days from the date of its submission, and in the instance where the conditions are deemed to be satisfied, the license is to be issued. If the application is rejected, the applicant is required under the ACFR to be notified of the rejection, with reasons for the rejection, within 10 days from the date of submission of the application.

However, in our experience these types of processes with the authorities are not always straightforward and may involve multiple submissions which can take considerably longer than the guidelines stipulated by the law. This does not include the time required to prepare and execute the necessary submissions for a license application, and any additional requirements that may subsequently be required by the competent authorities.

Therefore, it is advisable that preparations for any application are initiated as soon as possible (preferably months) in advance of the proposed promotion / competition. We would be able to advise on the likely process, requirements, documents and timings depending upon the specific promotion / competition envisaged.

**TRANSLATIONS**

*Are the terms required to be translated by law?*

The ACFR does not stipulate that the terms of the promotion/competition must be in Arabic. We usually recommend that dual-language terms and conditions (Arabic and English) are provided.

Submissions to the competent authorities for a license are also to be submitted in Arabic, and in any event such authorities may require that the terms and conditions of the promotion/competition include an Arabic translation.

**PENALTIES FOR NON-COMPLIANCE**

*What are the penalties for non-compliance?*

The ACFR Regulations provide that, where a commercial contest is launched without the appropriate license, the following penalties shall be applicable:

- A fine of up to SAR 50,000 (approx. US$13,328); or
• Imprisonment of up to six months; or

• Both of these penalties

In addition, there are a number of other penalties for violations of the ACFR that are more generally applicable, including a prohibition of sale and/or withdrawal and/or disposal of violating products, shop closures, travel bans, deportation of expats with no return, investigations by government authority officers and the public prosecutor, and publication of violations in the local newspaper.

The ACFR Regulations further provides that, the seller, whoever the product is distributed to on its behalf, managers of companies, cooperatives and establishments as well as the shops shall be liable for all violations of the ACFR, and each shall be subject to the penalties prescribed for violators. If any of them proves that the violation occurred due to reasons beyond its control, the penalty may be inflicted solely on the violator.

RESTRICTIVENESS OF REGULATIONS

*How restrictive are the legal obligations applicable to prize promotions?*

There is generally no system of precedent in Saudi Arabia, and government officials/authorities have a broad discretion when considering matters on a case by case basis. The law is drafted in general and non-prescriptive terms, and this places greater emphasis on consultation with the competent authorities to confirm current local practice (which can differ from to time), and also the specific particulars of any proposed promotion/competition. These factors, coupled with the requirement under the ACFR to obtain a license before undertaking and/or advertising a promotion/competition, means that this is not necessarily a straightforward process relative to some other jurisdictions.

REGULARITY OF SANCTIONS

*How frequently does the regulator impose serious sanctions for non-compliance?*

There are reports of competent authorities implementing the provisions of the ACFR, and imposing penalties on a number of companies for violation of its promotion/competition requirements. However, full details of such cases are not published, and in any event specific details of all cases are not publicly available.

More generally, it is important to note that competent authorities are becoming increasingly active in ensuring that local laws are complied with and actively encouraging consumers to report violating promotions/competitions.
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SINGAPORE

GOVERNING LAW

What are the main applicable governing laws or codes for prize promotions?

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<tr>
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<tr>
<td>Common Gaming Houses Act (Cap. 49) ('CGHA')</td>
<td>Law</td>
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<tr>
<td>Common Gaming Houses (Exemption) Notification</td>
<td>Subsidiary Legislation (Notification)</td>
</tr>
<tr>
<td>Remote Gambling Act 2014 ('RGA')</td>
<td>Law</td>
</tr>
<tr>
<td>Remote Gambling (Exempt Persons) Order 2015</td>
<td>Subsidiary Legislation</td>
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<tr>
<td>Private Lotteries Act (Cap. 250) ('PLA')</td>
<td>Law</td>
</tr>
<tr>
<td>Betting and Sweepstakes Duties Act ('BSDA')</td>
<td>Law</td>
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<tr>
<td>Personal Data Protection Act 2012 (No. 26 of 2012) ('PDPA')</td>
<td>Law</td>
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</tbody>
</table>

EXTRA-TERRITORIALITY

Do national regulators enforce rules against entities operating abroad?

Yes. Even if they operate purely online and outside Singapore, entities conducting prize promotions with a Singapore-customer link and which qualify as a 'remote gambling service' must comply with the provisions of the RGA.

For the purposes of the RGA, a remote gambling service has a Singapore-customer link if any of the
customers are physically present in Singapore.

'Remote gambling service' under the RGA is defined broadly to cover services including the following:

- Conducting a public lottery;
- Supply of any public lottery tickets;
- Negotiating, placing, making, receiving or accepting of bets; or
- A game of chance where the game is played for money or money's worth (as defined below), and a customer of the service agrees to give money or money's worth (as defined below) to play or enter the game.

where such services are provided via the use of remote communication, such as the internet, telephone, television, radio or any other kind of electronic or other technology for facilitating communication.

For the purposes of the RGA, 'public lottery' means any game, method, device, scheme or competition whereby money or money's worth (as defined below) is distributed or allotted in any manner depending upon or to be determined by chance or lot, and to which the public have access or may have access to (regardless of whether it is held, drawn, exercised or managed within or outside Singapore). Every lottery is treated as a public lottery until the contrary is proved, and a 'game of chance' includes a game that involves both an element of chance and an element of skill, or a game that is presented as involving an element of chance.

For the purposes of the RGA, 'money's worth' means anything recognized as equivalent to money and includes virtual credits, virtual coins, virtual tokens, virtual objects or any similar thing that is purchased within or as part of, or in relation to a game of chance.

Publishing a remote gambling advertisement and promoting remote gambling are also offences within the RGA. The provisions of the RGA are broadly drafted and the offence of advertising remote gambling includes the publishing of any writing or visual image that promotes a domain name or uniform resource locator (URL) relating to a particular remote gambling service. A person may be considered to have published a remote gambling service advertisement if the person includes the advertisement, or something that contains the advertisement, online or in any way that renders the advertisement accessible from the Internet.

Enforcement of the RGA works in two main ways. Firstly, the Singapore Police Force collaborate with its foreign counterparts to provide and share evidence of unlawful remote gambling activities, with a view to prosecuting the offenders. This includes the possibility of extradition to Singapore under applicable treaties and the arrest and possible subsequent imprisonment of the offenders if they are found guilty. Secondly, the Singapore Police Force will take into account any complaints or feedback received from the public. For more information on enforcement please refer to the section on Penalties.

Websites that provide unauthorized remote gambling services which are or may be used by individuals in Singapore to gamble, or contain a remote gambling service advertisement, will be blocked. The Ministry of Home Affairs (MHA) can also block financial transactions or payments made in relation to participation in any unlawful remote gambling activity.

**SKILLS COMPETITIONS**
**Can a prize promotion be run that is based on skill?**

Yes, a prize promotion based on skill can be run in Singapore so long as it amounts to a 'game of skill' (as explained below) and does not fall within the ambit of the CGHA and the RGA.

The CGHA defines a 'game' as being a game of chance or of a combination of chance and skill for a money or money's worth, and 'lottery' as any game, method, device, scheme or competition whereby money or money's worth is distributed or allotted in any manner depending upon or to be determined by chance or lot, whether the same is held, drawn exercised or managed within or outside of Singapore. 'Public lottery' means a lottery to which the public or any class of the public have access or may have access to, and every lottery shall, until the contrary is proved, be deemed to be a public lottery. Please refer to the Extra-territoriality section for the definition of 'game of chance' in the RGA.

As of yet there is no published case law in Singapore discussing these definitions. However, traditionally, games of chance or of a combination of chance and skill include for example lotteries, wagers and casino-style games such as roulette, while games of skill include for example, chess and checkers. Therefore, it could be assumed that in order for a game to be categorized as a game of skill, the element of chance would need to play little or no part in determining the outcome.

Additionally, the definition of 'game of chance' in the RGA is similar to the definition used in the UK's Gambling Act 2005, and there has been case law in the UK (R v Kelly [2008] EWCA Crim 137) explaining that 'games of combined skill and chance' shall be treated as games of chance without qualification, except in circumstances where the element of chance was so insignificant as not to matter.

**PRIZE DRAWS**

**Can a prize promotion be run where there is an element of chance in the selection of the winner?**

On the assumption that such a prize promotion falls within the definition of 'public lottery' as defined in the RGA (please refer to the Skills competition section) and / or the CGHA then such a prize promotion is unlawful. However, it would be allowed if it qualified under one of the prescribed statutory exemptions.

Under the Remote Gambling (Exempt Persons) Order 2015, the following remote gambling services are exempt subject to certain conditions:

- Public lotteries conducted by a business organization to promote the sale of products and services (other than a gambling service) sold or supplied by that business organization in the course of business in Singapore ('Customer Lotteries'). The business organization must not charge a fee to enter the lottery, except a reasonable fee for the value of the product or service where sold or supplied.

- Lotteries promoted by charities, institutions of public character ('Non-commercial Organization Lotteries') or full members or associate members of the National Council of Social Service.

- Public lotteries incidental to events such as fairs, dinners, sporting or athletic events or other similar events taking place in Singapore that may be attended by members of the public ('Incidental Lotteries'). The organizers of the event must not charge a fee to enter the lottery, except any reasonable fees for attending the connected event.
Under the Common Gaming Houses (Exemption) Notifications, the following public lotteries are exempt subject to certain conditions:

- Public lotteries conducted by a business organization for the purposes of promoting the sale of any product or service are exempt from the CGHA (‘Sale Lotteries’); and

- Lotteries promoted by certain charities, institutions of public character and full members or associate members of the National Council of Social Service.

Private lotteries, which are lotteries in which tickets or chances are confined for sale only to members of a society which is established for purposes not connected with gaming, wagering or lotteries and such number of guests of each member as the Minister for Home Affairs may prescribe by regulations, are governed by the PLA. Under the PLA, private lotteries are prohibited unless a permit is granted.

Besides this, any person or organization running sweepstakes in Singapore may apply to the MHA to get an exemption under the CGHA or the RGA.

**SELECTION OF WINNERS**

*Are there any requirements for the selection of winners and award of prizes?*

We are not aware of any requirements in relation to the selection of winners and the award of prizes in the context of ‘prize draws’.

In the context of certain exempt public lotteries such as Customer Lotteries and Non-commercial Organization Lotteries, it is a requirement that these lotteries do not include a ‘Roll-over’. A ‘Roll-over’ is an arrangement whereby if a prize is not allocated or claimed in one lottery, the value of the prizes available for allocation in another lottery increases.

When an exemption to conduct a draw is granted to an organization by the MHA, pursuant to the general exemptions available within either the RGA or the CGHA, then such exemption is subject to certain conditions that the MHA may impose, including:

- The methodology of the promotion, the details of the prizes to be distributed, their manner of distribution and where the winners are determined solely or partly by a draw, the time, date and place of the draw must be disclosed in print material, copies of which must be freely available to all participants.

- Each draw must be conducted in public or, if conducted in private by means of a computerized system, be witnessed and audited by a public accountant who is not in the employment of the organization.

Generally, in respect of permits granted under the PLA, the permit officer may in granting any permit impose conditions such as:

- The amount and number of prizes to be offered;

- The number of tickets or chances to be offered for sale in such lottery and the prices and denominations of such tickets or chances;

- The persons by whom, the manner in which, and the places at which, the tickets or chances may
be sold or distributed and the persons or classes of persons to whom the tickets or chances may be sold or distributed; and

- The time, place and manner in which the winners of prizes will be determined.

**JUDGES**

*Are there any particular requirements in relation to judges or judging for skills competitions?*

There are no such statutory requirements.

**PRIZES**

*Are there any restrictions on the prizes awarded?*

Please refer to the section on Selection of winners.

**REGISTRATION REQUIREMENTS AND FEES**

*Are there any registration requirements, or any fees/taxes payable?*

**Registration Requirements**

The operation of prize draws in Singapore is generally prohibited unless they fall under one of the statutory exceptions or the organizations apply for an exemption with the MHA to carry out certain prize promotion activities.

Under the RGA, a person can apply for a certificate of exemption that would authorize it to provide a Singapore-based remote gambling service with a Singapore-customer link where:

- The service is provided in the course of carrying on a business in Singapore
- The central management and control of the service is in Singapore
- Any relevant internet content is hosted in Singapore

**Fees / Taxes Payable**

We are not aware of applicable taxes pursuant to the RGA as remote gambling is currently prohibited under the RGA unless a certificate of exemption has been granted.

The CGHA and the PLA do not expressly set out eligibility criteria for a grant of an exemption from the prohibitions set out in the CGHA, or a permit pursuant to the PLA. The exemptions and permits are granted on a case-by-case basis.

Under the PLA, the promoter of a private lottery is required to pay a duty of 30% on the total amount raised from any private lottery, unless it is conducted using a fruit machine (slot/poker machine) and a duty of 9.5% on the total amount wagered by players of each fruit machine in order to play it (without any deduction of winnings paid out).

Pursuant to the CGHA, there are no duties levied on prize promotions, provided that the prize
promotion excludes the placing of bets, or the promotion of sweepstakes, on the result of a horserace or other race, regardless of whether the race takes place in Singapore or elsewhere.

**OTHER LOCAL REQUIREMENTS**

*Are there any other key local requirements?*

Apart from compliance with applicable gambling legislation as set out in the foregoing responses, there are generally no key local requirements for the operation of prize promotions per se. However, it would be prudent for organizations that run prize promotions to be aware of Singapore data protection laws which they are likely to be bound by. In this regard, such organizations must observe and comply with the requirements under the PDPA when collecting data for the purpose of administering and managing any prize draws, competitions, promotional offers and other marketing activities.

The PDPA governs the collection, use and disclosure of personal data by all private organizations. Promoters must:

- Inform participants on the purposes for collection, use and disclosure of their personal data on or before collecting the personal data;

- Ensure that consent has been obtained from participants before collecting, using or disclosure of the personal data; and

- Keep personal data in their possession secure from unauthorized access, modification, disclosure, use, collection or copying (either in hardcopy or electronic form).

As a general rule, organizations may wish to note that they should avoid collecting, retaining or disclosing more personal data than is necessary to fulfil the relevant purpose. Further, it should be noted that due to the issuance of Advisory Guidelines on the PDPA for National Registration Identity Card (‘NRIC’) and Other National Identification Numbers by the Personal Data Protection Commission on 31 August 2018, organisations will be prohibited from collecting, using or disclosing NRIC numbers, or making copies of identity cards of their customers or potential customers, from 1 September 2019. Those that have collected NRIC numbers or other identity card numbers are encouraged to assess if they need to retain these numbers, and if not, are suggested to dispose of them responsibly and in compliance with the PDPA.

Additionally, organizations operating prize promotions may also be bound by local consumer protection laws, such as the Unfair Contract Terms Act.

**TIMING**

*Is time required to ensure compliance (other than reviewing the terms and conditions)?*

For organizations running prize promotions that qualify under any of the exemptions in the Remote Gambling (Exempt Persons) Order 2015 (as discussed in the section regarding competitions based on chance) there is a standard condition that at least 4 weeks before any advertisement giving publicity to, or otherwise promoting or that is intended to promote, the lottery is published, certain details must be given to the Head of the Specialized Crime Policy Branch, Criminal Investigation Department, of the Singapore Police Force. These details include the name and address of the business organization...
providing a remote gambling service for individuals to participate in the customer lottery, the arrangements for the lottery and the prizes and manner of their allocation, together with copies of the communications given to or to be given to the customers or to the general public.

In respect of exempt prize promotions under the Common Gaming Houses (Exemption) Notifications (as discussed in the Prize draws section), the following details must be disclosed on printed publicity material:

- The methodology of the promotion;
- The details of the prizes to be distributed and their manner of distribution; and
- If the winners are determined solely or partly by a draw, the time, date and place of the draw.

Copies of the above information must be freely available to all participants and 2 copies must be sent to the Head, Gambling Suppression Branch, Criminal Investigation Department, by AR registered post (a postal service which provides proof of receipt) at least 4 weeks prior to the launch of the promotion.

Importantly please note that applying to the MHA for a permit or exemption to carry out a prize promotion can be a time-consuming process depending on the type of permit or exemption being applied for. According to the Singapore Police Force website, the normal processing time for an application for a private lotteries permit is approximately 2 months from the receipt of the application and the necessary supporting documents. General applications for exemptions under the RGA and the CGHA may take up to approximately 1 month to process. For a certificate of exemption under the RGA (referenced above in question 8), the Ministry of Home Affairs has stated that it would generally take between 9 to 12 months to evaluate and assess such applications.

Furthermore, please allow for additional time as specific conditions may be imposed on the organization on the granting of a permit to run the prize promotion.

TRANSLATIONS

*Are the terms required to be translated by law?*

None required.

**PENALTIES FOR NON-COMPLIANCE**

*What are the penalties for non-compliance?*

Offences under the CHGA are punishable by fines ranging from S$5,000 (approx. US$3,650) to S$200,000 (approx. US$146,000), and imprisonment for a term of up to 5 years (depending on the breach and the party committing it). In sentencing, the court will have regard to the scale of the gaming activities and the amount of the tickets involved. The penalty given depends on a case by case basis taking into account the facts of each case.

The provision of an unlawful remote gambling service, including the provision of an overseas remote gambling service with a Singapore-customer link, in violation of the RGA, is punishable by fines of up to S$500,000 (approx. US$365,000), or imprisonment for a term of up to 7 years or both (depending on the breach and the party committing it). As the RGA is a relatively new piece of legislation in Singapore, there is limited examples and precedence on enforcement.
For breach of the PDPA, the Personal Data Protection Commission (PDPC) may issue administrative fines of up to S$1,000,000 (approx. US$730,000) for violations. The PDPA also imposes criminal sanctions, including fines of up to S$100,000 (approx. US$73,000) and 12 months imprisonment. In calculating a financial penalty, the PDPC has a non-exhaustive list of aggravating and mitigating factors that it may consider.

This includes but is not limited to:

- Failing to comply with a previous warning or direction from the PDPC;
- A failure of the organization to actively resolve the matter with the individual in an effective and prompt manner; and
- Intentional, repeated and/or ongoing breaches of the PDPA by an organization. This would include situations where the organization knew, or ought reasonably to have known, of the risk of a breach, or breach of the PDPA but continued with its operations without taking measures to minimize the risk or remedy the breach.

RESTRICTIVENESS OF REGULATIONS

*How restrictive are the legal obligations applicable to prize promotions?*

The rules under the applicable prize promotion regulations are detailed though not unduly onerous. There are no formal registration requirements unless a specific exemption is being sought. Exempt prize promotions, including lotteries, are permitted as long as the conditions set out in the relevant statutes have been met.

REGULARITY OF SANCTIONS

*How frequently does the regulator impose serious sanctions for non-compliance?*

According to the MHA website, since the RGA came into operation on 2 February 2015, several hundred websites which provide remote gambling services have been blocked. In addition, financial institutions and financial service providers have been directed to block credit card and other payment transactions related to remote gambling.

It is expected that the Singapore Police Force will continue to take enforcement action against those who provide illegal gambling services from both remote and land-based sources.
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Note: DLA Piper is a foreign law firm registered in Singapore and is not licensed to practice the law of the jurisdiction, and therefore works in conjunction with local law firms on Singapore law matters.
GOVERNING LAW

What are the main applicable governing laws or codes for prize promotions?

<table>
<thead>
<tr>
<th>Name</th>
<th>Law or Code?</th>
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</thead>
<tbody>
<tr>
<td>Monopoly Regulation and Fair Trade Law ('FTL')</td>
<td>Code</td>
</tr>
<tr>
<td>Guidelines for Review of Unfair Trade Practices</td>
<td>Law</td>
</tr>
<tr>
<td>Act on Special Cases Concerning Regulation and Punishment of Speculative Acts ('Act on Speculative Acts')</td>
<td>Code</td>
</tr>
</tbody>
</table>

**Note:** The above constitute generally applicable rules. Some industries have additional, industry-specific regulations concerning prize promotions (gaming, pharmaceuticals, media, etc).

EXTRA-TERRITORIALITY

Do national regulators enforce rules against entities operating abroad?

Article 2-2 of the FTL imposes extraterritorial jurisdiction for acts that occur overseas but have an effect on the Korean domestic market (i.e. Korean customers). The Korean Supreme Court has stated that the 'effect on the Korean market' must be limited to cases where there is a direct, considerable, and reasonably foreseeable effect on the Korean market. The Supreme Court added that such determination should be based on a comprehensive and case-by-case review of various factors, including the substance and intent of the conduct, the characteristics of the services or goods at issue, the transaction structure and how it affects the Korean market, etc.

Most discussions concerning the extraterritorial application of the FTL are in the context of cartel
enforcement. While we are not aware of any specific precedent in the context of prize promotions, we believe it would be possible for prize promotions originating overseas, targeting Korean customers, to be subject to enforcement under the FTL and other applicable regulations.

**SKILLS COMPETITIONS**

*Can a prize promotion be run that is based on skill?*

There are no particular regulations concerning skill-based prize promotions, and such promotions would be regulated under the general provisions regarding unfair trade practices pursuant to the FTL. Such promotions would be permissible if the prizes are not improper or excessive (based on business norms) and as long as the terms and conditions of the promotion are accurately specified and advertised.

**PRIZE DRAWS**

*Can a prize promotion be run where there is an element of chance in the selection of the winner?*

The Act on Speculative Acts prohibits 'obtaining goods or benefits from several people and using chance-based methods to determine win/loss to give such people profit or loss.' A person must obtain approval from the district police to engage in 'speculative acts' such as lotteries, sweepstakes, lucky draws, and giveaways.

However, it is unclear whether this requirement applies to a contest in which the contest sponsor does not directly collect commission or fees from the contest itself, but rather receives an indirect benefit, such as publicity. As far as we are aware, there has been no judicial or administrative precedent that addresses whether deriving indirect benefits or profit would render promotional activities a speculative activity.

**SELECTION OF WINNERS**

*Are there any requirements for the selection of winners and award of prizes?*

There are no regulations concerning the selection of winners and award of prizes. However, it could be an issue if the process of selection or award of prizes were particularly unfair, or if the terms and conditions were not accurately specified and advertised.

**JUDGES**

*Are there any particular requirements in relation to judges or judging for skills competitions?*

There are no regulations concerning judges and judging for skills competitions.

**PRIZES**

*Are there any restrictions on the prizes awarded?*

Prizes must not be improper or excessive (based on business norms) and the substance of the prize must be accurately specified and advertised.
Previously there was a regulation that limited the maximum value of gifts or prizes provided to customers through sweepstakes or contests as an ancillary product to the main transaction, but that rule has been abolished as of July 1, 2016.

**REGISTRATION REQUIREMENTS AND FEES**

*Are there any registration requirements, or any fees/taxes payable?*

**Registration Requirements**

In terms of registration requirements, as discussed above in the section on prize draws, any business involving 'speculative acts' must be approved in advance by the district police. However, it is unclear whether this requirement applies to a contest in which the contest sponsor does not directly collect commission or fees from the contest itself, but rather receives an indirect benefit, such as publicity.

**Fees / Taxes Payable**

There are no fees payable.

In terms of taxes, a prize is considered 'other income', and subject to personal income tax and local income surtax. Where the value of a prize exceeds ₩50,000 (approx. US$42) the prize-giver is required to withhold 22% of the prize amount for tax purposes. When a Korean company (or foreign company's Korean affiliate) engages in prizes to promote sales, the value of the prizes is deductible as expenses incidental to sales for corporate income tax purposes.

**OTHER LOCAL REQUIREMENTS**

*Are there any other key local requirements?*

No requirements, other than those identified in other sections.

**TIMING**

*Is time required to ensure compliance (other than reviewing the terms and conditions)?*

No, unless prior approval is required for businesses involving 'speculative acts' (refer to section on Prize draws).

**TRANSLATIONS**

*Are the terms required to be translated by law?*

None required.

**PENALTIES FOR NON-COMPLIANCE**

*What are the penalties for non-compliance?*

Potential penalties are as follows:
• A Korea Fair Trade Commission (KFTC) corrective order

• An administrative fine of up to 2% of relevant revenues, or up to ₩500 million (approx. US$420,000)

• Up to three years’ imprisonment or a criminal fine of up to ₩200 million (approx. US$168,000)

Further, if the substance of the prizes were not accurately specified/advertised, then this could constitute a violation of the Fair Labelling and Advertisement Act, with potential sanctions of up to two years’ imprisonment and criminal fines of up to ₩150 million (approx. US$126,000).

However, it is worth noting that all of the KFTC enforcement actions involving prize promotions in the past ten years (the public records for which are accessible on the KFTC website) have been subject only to a corrective order without any fines or criminal referral.

RESTRICTIVENESS OF REGULATIONS

*How restrictive are the legal obligations applicable to prize promotions?*

As discussed in the section on restrictions on prizes, there are no limits on prizes as of July 1, 2016. Therefore, the only restrictions on prize promotions are based on the general regulations of the FTL. Given these changes in relation to prize promotion-related regulations, it is unlikely that this area will be very actively regulated.

REGULARITY OF SANCTIONS

*How frequently does the regulator impose serious sanctions for non-compliance?*

Very rarely. All of the KFTC enforcement actions involving prize promotions in the past ten years (the public records for which are accessible on the KFTC website) have been subject only to a corrective order without any fines or criminal sanctions.

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SPAIN

GOVERNING LAW

What are the main applicable governing laws or codes for prize promotions?

<table>
<thead>
<tr>
<th>Name</th>
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<tbody>
<tr>
<td>Spanish Gambling Act 13/2011 ('LJU') of 27 May 2011 and additional regional laws</td>
<td>Law</td>
</tr>
<tr>
<td>Spanish Consumers' Protection Act RDL1/2007 ('LPCU') and additional regional laws</td>
<td>Law</td>
</tr>
<tr>
<td>Spanish Publicity Act 34/1988 ('LGP') and additional sectorial and regional laws</td>
<td>Law</td>
</tr>
<tr>
<td>Spanish Fundamental Act 3/2018 on the protection of personal data and guarantee of digital rights ('NLOPD')</td>
<td>Law</td>
</tr>
<tr>
<td>Spanish Retail Trade Act 7/1996 ('LOCM') and additional regional laws</td>
<td>Law</td>
</tr>
</tbody>
</table>

EXTRA-TERRITORIALITY

Do national regulators enforce rules against entities operating abroad?

Yes. LJU and NLOPD are explicitly drafted to prevent parties based abroad from failing to comply with Spanish regulations in this regard. Same applies to LPCU when the promotional competition is addressed towards Spain i.e. carried out physically in Spain or the addressee is a consumer based in Spain.

SKILLS COMPETITIONS
Can a prize promotion be run that is based on skill?

Yes, but ensure the winner is picked only on the basis of skill not chance.

For example, if winners are selected by providing the right answer to a questionnaire this would qualify as a skill game but if a draw is carried out to decide, among them, who shall be the final winner, then it would automatically become a chance based game. Sometimes, games allocating prizes to the first 100 entrants are considered to be based on chance because there is no or little skill involved.

PRIZE DRAWS

Can a prize promotion be run where there is an element of chance in the selection of the winner?

Unlawful, unless:

- Participants do not make an additional payment to become eligible. Examples of additional payment are premium SMS or premium calls. (Standard postage, SMS or call charges would generally not be regarded as additional payments except if the call takes too long or several standard SMSs are required). Purchases of products without extra charges or requiring the condition of being a client are not considered as an additional payment.

and

- The promotion is intended exclusively for promotional or marketing purposes.

SELECTION OF WINNERS

Are there any requirements for the selection of winners and award of prizes?

For prize draws, it is best practice to file the terms and conditions with a Notary Public and for them to conduct the draw (although it is not required by the applicable regulations). Prizes may be awarded either by direct allocation (every entrant receives a prize in which case it is not a skills competition and there must be no payment to enter beyond what is set out in the Prize draws section), skill (the most successful entrants receives a prize) or randomly (for example through a draw; this applies even if there was a pre-selection of winners based on skill i.e. it would still be classified as a game of chance).

JUDGES

Are there any particular requirements in relation to judges or judging for skills competitions?

No. Judges can even be employees of the sponsor. However, appointing judges with at least a minimum knowledge of the matters to be assessed is strongly recommended. This is because otherwise the authorities could find that the competition is based on chance.

PRIZES

Are there any restrictions on the prizes awarded?

None (except that the goods restricted in circulation eg weapons obviously cannot be part of any award).
REGISTRATION REQUIREMENTS AND FEES

Are there any registration requirements, or any fees/taxes payable?

Registration Requirements

No authorization or prior communication to Spanish Gambling Authorities is required* when the prize draw has a national scope (i.e. the promotion is addressed to residents in more than one Spanish region (comunidad autónoma).

In the case of promotions with regional scope (i.e. those promotions only addressed to residents in one Spanish region – comunidad autónoma), regional regulations would apply and in some cases, prior communication to the corresponding regional authorities is required.

Fees / Taxes payable

Prize draws organizers with national scope must pay a gambling tax of 10% of the total value of prizes on offer.

Prize winners shall be subject to Spanish Personal Income Tax in connection with prize awarded.

* Note: Genuine gambling activities do require authorization from the gambling authorities.

OTHER LOCAL REQUIREMENTS

Are there any other key local requirements?

Supporting terms and conditions must appear in Spanish and must be available to the participants before entering the competition.

Filing the terms of the Competition with a Notary Public before the start date is advisable, although it is not required by law.

TIMING

Is time required to ensure compliance (other than reviewing the terms and conditions)?

Yes. In the case of prize draws (or any other competition where a random element is involved), it is necessary to pay the 10% promotional tax. Preparing and filing the related tax forms with the tax authorities may take a week. Should the sponsor of the competition be based abroad, a Spanish Tax ID for non-residents shall be obtained. The formalities attached to it may take one to two weeks.

TRANSLATIONS

Are the terms required to be translated by law?
Spanish law requires the terms of the competition be drafted at least in the Spanish language. In regional promotions, regional language translations may be mandatory as well (or strongly recommended).

**PENALTIES FOR NON-COMPLIANCE**

*What are the penalties for non-compliance?*

The LJU establishes that for the infringements that sponsors could typically be liable for, fines ranging from €100,000 (approx. US$112,000) to €1,000,000 (approx. US$1,120,000) could be imposed. Higher fines could be imposed, however, depending on the specific circumstances of the case.

Sanctions under the new data protection regime for infringing data protection law can be very high (the fines could reach the higher of €20 million (approx. US$22.4) or 4% the global turnover of the infringing company or its group, in the most aggravated cases).

**RESTRICTIVENESS OF REGULATIONS**

*How restrictive are the legal obligations applicable to prize promotions?*

There are significant and fairly onerous obligations, for example relating to taxation; and GDPR has introduced various obligations around processing personal data which have significant application to prize promotions (e.g. use of submissions including personal data, winner publicity, etc.). However, the requirements relating to the contents of terms and conditions are not very extensive.

**REGULARITY OF SANCTIONS**

*How frequently does the regulator impose serious sanctions for non-compliance?*

Fines are imposed from time to time.
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SWEDEN

Last modified 14 January 2019

GOVERNING LAW

What are the main applicable governing laws or codes for prize promotions?

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<tbody>
<tr>
<td>The Swedish Gambling Act (Sw. Spellag (2018:1138))</td>
<td>Law</td>
</tr>
<tr>
<td>The Swedish Marketing Act (Sw. Marknadsföringslag (2008:486))</td>
<td>Law</td>
</tr>
<tr>
<td>The General Data Protection Regulation (EU) 2016/679 (Sw. Dataskyddsförordningen)</td>
<td>Law</td>
</tr>
</tbody>
</table>

EXTRA-TERRITORIALITY

Do national regulators enforce rules against entities operating abroad?

The rules of the Swedish Gambling Act apply in relation to prize promotions offered in Sweden or targeting the Swedish market. In contrast, prize promotions not offered in Sweden or actively targeting the Swedish market will fall outside the scope of the Swedish Gambling Act.

Whether the Swedish Marketing Act will be applicable to marketing targeting Swedish consumers, but operated from abroad, will depend on whether the prize promotion is advertised from an EU/EEA member state or from another country. If the website/services are operated from an EU/EEA member state, the Swedish Marketing Act will not apply and the national regulator will not take action against such promotions. Instead, the rules of marketing in such member states will apply to the marketing. In contrast, if the website/services are operated from another country, for example the United States of America, and targets Swedish consumers, the rules of the Swedish marketing law will apply.
SKILLS COMPETITIONS

Can a prize promotion be run that is based on skill?

Yes. However, please note that a Swedish gambling license may be required if the selection of the winner is not based solely on the participants’ individual skills, if participation requires payment of a wager, stake or similar.

PRIZE DRAWS

Can a prize promotion be run where there is an element of chance in the selection of the winner?

Yes. However, please note that a Swedish gambling license is required if participation requires payment of a wager, stake or similar.

SELECTION OF WINNERS

Are there any requirements for the selection of winners and award of prizes?

Promotions must be performed in accordance with the conditions originally set forth by the promoter. Also, the same conditions must apply to all participants and the assessment of the contributions must be impartial and reliable. It is not permissible to select the winner in an arbitrary manner.

Please note that it is not sufficient to only contact the winner(s) of a competition. Instead, the results should be made as publicly available as the competition itself.

JUDGES

Are there any particular requirements in relation to judges or judging for skills competitions?

The criteria and mechanism for judging entries must be made known before, or at the time of, entry. Furthermore, the composition of the judging panel should be made known before, or at the time of, entry.

PRIZES

Are there any restrictions on the prizes awarded?

No. However, extensive information concerning the prizes, namely the number, value and type of prize, must be provided before, or at the time of, entry. Also, the promoter is required to provide information regarding whether or not the prize(s) may be exchanged for a cash substitute equal to its value and whether or not the winner may be liable to pay taxes.

REGISTRATION REQUIREMENTS AND FEES

Are there any registration requirements, or any fees/taxes payable?

Registration Requirements
For chance-based prize promotions, where participation requires payment of a wager, stake or similar, a Swedish gambling license is required.

No registration requirements apply to skill-based prize promotions or chance-based prize promotions which do not require payment of a wager, stake or similar.

**Fees/Taxes payable**

The winners in a skill-based promotional competition may be liable to pay income tax and the promoter may be liable to pay social security contributions on the prizes.

For chance-based prize promotions, where participation requires payment of a wager, stake or similar, the promoter may be liable to pay Swedish gambling tax.

**OTHER LOCAL REQUIREMENTS**

*Are there any other key local requirements?*

The promotion of prize promotions must comply with general marketing law requirements, such as being legal, decent, honest and truthful.

Prize promotions must be performed in accordance with the conditions originally set forth by the promoter. Also, the same conditions must apply to all participants and the assessment of the contributions must be impartial and reliable. It is not permissible to select the winner in an arbitrary manner.

Furthermore, it is important to provide sufficient information when organizing a competition. The following list is a compilation of the information that should be provided when organizing a promotional competition:

- The promoters name, address and contact details.
- All the terms and conditions associated with the promotion, including time limits and other restrictions or limitations, should be indicated in a clear and exhaustive manner.
- A detailed and unambiguous description of the assignment, and how the winner is to be selected. The participant must be able to assess the nature and the objective of the competition.
- All costs, fees and confirmation of whether or not there is a purchase requirement associated with the participation.
- A clear and comprehensive description of the assessment and the decisive factors when choosing a winner. Also, if applicable, the composition of the judging panel.
- Extensive information concerning the prizes, namely the number, value and sort. Also, one is required to provide information regarding whether or not the prizes may be exchanged for a cash substitute equal to its value.
- When and how the results will be publicized and the winners will be contacted. Please note that it is not sufficient to only contact the winner(s) of a competition. Instead, the results should be
made as publicly available as the competition itself.

- Whether or not the winner may be liable to pay any taxes.

- If the winner or winning contributions will be used in any other context; information concerning such use must be provided.

- Finally, if personal data will be processed, one must provide the registered person with information regarding the processing and the registered person’s rights. It may also be necessary to obtain consent from the participants.

Note: Where there are space limitations e.g. Twitter / banner ads, you must communicate as much information as possible and direct the entrant to where all significant terms are stated.

TIMING

Is time required to ensure compliance (other than reviewing the terms and conditions)?

No, although time should be allowed to deal with data protection issues (e.g. ensuring an appropriate privacy policy is in place).

TRANSLATIONS

Are the terms required to be translated by law?

There is no express legal requirement to translate the terms and conditions. However, the promoter is liable for ensuring that the participants understand the terms and conditions. Given that is the case, the preferred approach in Sweden is to translate the terms and conditions into Swedish.

PENALTIES FOR NON-COMPLIANCE

What are the penalties for non-compliance?

Operation or promotion of unlicensed gambling activities

The operation or promotion of unlicensed gambling activities is punishable by fines or imprisonment of up to six years.

The Swedish Gambling Authority may also issue orders and prohibitions under penalty of fines. Please note that there are no set limits for the fines, the Swedish Gambling Authority may determine an appropriate amount intended to have a deterrent effect.

In relation to licensed gambling operators, the Swedish Gambling Authority may also issue a fine between SEK 5,000 (approx. US$520) and a maximum of 10 % of the license holder’s turnover in the preceding financial year.

Violations of the Swedish Marketing Act
Violations of the Swedish Marketing Act may lead to the following sanctions:

- Orders or prohibitions under penalty of fines. It is not uncommon that such sanctions amount to SEK 1,000,000 (approx. US$104,000) but there are no maximum fines.

- Marketing Disturbance Fee of SEK 5,000 – SEK 5,000,000 (approx. US$520 – US$520,000), but no more than ten percent of the annual turnover. It should be noted that this sanction is rarely invoked; and

- Damages to affected parties.

**RESTRICTIVENESS OF REGULATIONS**

*How restrictive are the legal obligations applicable to prize promotions?*

The Swedish Gambling Act entered into force on 1 January 2019 and is less restrictive than the previous regime. However, GDPR has introduced various obligations around processing personal data which have significant application to prize promotions (eg. use of submissions including personal data, winner publicity, etc.).

**REGULARITY OF SANCTIONS**

*How frequently does the regulator impose serious sanctions for non-compliance?*

The Swedish Gambling Act entered into force the on 1 January 2019, and so far, no enforcement actions have been taken. It remains to be seen how actively the Swedish regulator will enforce the rules in relation to prize promotions.

The Swedish Consumer Agency regularly issues orders and injunctions under penalty of fines to prevent violations of the Swedish Marketing Act.
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GOVERNING LAW

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</tr>
<tr>
<td>Ministerial Regulation No. 17 issued under TGA (‘TGA-MR’)</td>
<td>Law</td>
</tr>
<tr>
<td>The official letters of Department of Provincial Administrative (DOPA) (altogether referred to as the ‘Letters’)</td>
<td>Law</td>
</tr>
<tr>
<td>The Consumer Protection Act B.E. 2522 (1979) (‘CPA’)</td>
<td>Law</td>
</tr>
<tr>
<td>Ministerial Regulation Nos. 3 and 5 issued under the CPA (‘CPA-MR’)</td>
<td>Law</td>
</tr>
</tbody>
</table>

EXTRA-TERRITORIALITY

Do national regulators enforce rules against entities operating abroad?

If the prize promotion is arranged and/or advertised online through a website (or social media page), hosted/located outside Thailand, and there is no entity/affiliate running this campaign within Thailand, it is not subject to restrictions under Thai laws.

SKILLS COMPETITIONS

Can a prize promotion be run that is based on skill?
Provided the winner is determined on the basis of skill not chance, skills competitions are not subject to any restrictions under Thai laws.

**PRIZE DRAWS**

*Can a prize promotion be run where there is an element of chance in the selection of the winner?*

Unlawful, as it is considered ‘gambling’ under the TGA, unless the participants do not pay to enter or to claim/receive the prize.

If the participants do not pay and it is not considered gambling under the TGA, it will be considered a 'prize promotion event' which is controlled under the TGA. A license must be obtained from DOPA prior to the prize promotion event.

Under the TGA, a prize promotion event is considered to be an arrangement for complimentary gifts or prizes, awarded to people trying their luck in any manner in the conduct of a business or in the pursuit of an occupation.

**SELECTION OF WINNERS**

*Are there any requirements for the selection of winners and award of prizes?*

Under the Letters, a prize promotion is only permitted to be run via the following methods:

1. By sending a voucher, card or part of a product (i.e., the bottle caps of bottles of water) to be drawn at the date, time and place specified under the License.
2. By opening a 'signboard.' These are arranged on TV shows, where a contestant chooses a 'signboard' representing the advertising sponsor of the TV show in order to hopefully win a prize.
3. By sending a text message via SMS or telephone system. The telephone numbers of the senders will be printed out to be drawn at the date, time and place specified under the License.

Under methods 1 and 2, the arranger must be the manufacturer or the exclusive distributor of the related products in Thailand (except shopping malls, department stores, banks or other corporate entities providing services). This is not a requirement if the prize promotion is conducted via method 3.

Details regarding the selection of winners (i.e., by lucky drawing) and award/prizes must be specified in the application and must be approved before the License is granted to the applicant/arranger.

**JUDGES**

*Are there any particular requirements in relation to judges or judging for skills competitions?*

There are no such requirements in relation to skill competitions.

**PRIZES**

*Are there any restrictions on the prizes awarded?*

Cash prizes are not permitted.
Cash prizes are not permitted.

REGISTRATION REQUIREMENTS AND FEES

Are there any registration requirements, or any fees/taxes payable?

Registration Requirements

Yes, according to the TGA, a License is required to run prize promotions in the course of business.

Fees / Taxes Payable

The License fees vary, depending on the duration of each event as shown in the table below.

<table>
<thead>
<tr>
<th>License Validity</th>
<th>Fee (฿)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 day</td>
<td>300 (approx. US$9.50)</td>
</tr>
<tr>
<td>Not exceeding 7 days</td>
<td>600 (approx. US$19)</td>
</tr>
<tr>
<td>Not exceeding 1 month</td>
<td>1,500 (approx. US$47.50)</td>
</tr>
<tr>
<td>Not exceeding 6 months</td>
<td>6,000 (approx. US$190)</td>
</tr>
<tr>
<td>Not exceeding 1 year</td>
<td>9,000 (approx. US$285)</td>
</tr>
</tbody>
</table>

If the prize is valued more than ฿1,000 (approx. US$32), it is subject to 5% withholding tax, which will be deducted by the arranger. It is worth noting that cash cannot be awarded instead of the complimentary gifts or prizes specified in the License.

OTHER LOCAL REQUIREMENTS

Are there any other key local requirements?

An applicant must meet certain eligibility requirements before they will be able to apply for a license, including being a permanent resident of Thailand.

In addition, the applicant must provide all details related to the prize promotion event, including objectives, method, rules, date, time and place, duration, prize/award, winner selection, announcement method of the winner, names and job positions of the witnesses and advertisement method.

When advertising the prize promotion event, the arranger must also ensure that it complies with the CPA-MR, i.e. the following must be included in the advertisement:

- The license number;
- Criteria, method and any conditions;
• Date of commencement and ending of the event;

• The type of prize/award and its value.

In addition, the arranger must ensure that it complies with other specific regulations. For example, the prize promotion event and related advertisement of drugs are not allowed under law and regulations issued by Ministry of Public Health.

TIMING

Is time required to ensure compliance (other than reviewing the terms and conditions)?

The arranger is required to obtain the License prior to the prize promotion event. A period of at least 90 days is required for DOPA to review the application and grant the License, provided that all information and documentation is fully completed and acceptable to DOPA.

TRANSLATIONS

Are the terms required to be translated by law?

The License application forms and all supporting documents must be in Thai.

PENALTIES FOR NON-COMPLIANCE

What are the penalties for non-compliance?

For non-compliance with the TGA, i.e. arranging a prize promotion event without the License, the arranger could be liable to imprisonment for up to 1 year or a fine of B50 (approx. US$1.50) – B2,000 (approx. US$63) (if the arranger is a corporate entity, the imprisonment will not be imposed).

For non-compliance with the CPA, i.e. advertising the prize promotion event in breach of the CPA, the violator will be liable to imprisonment for up to 3 months or a fine of up to B30,000 (approx. US$950), or both.

RESTRICTIVENESS OF REGULATIONS

How restrictive are the legal obligations applicable to prize promotions?

The way in which a prize promotion event is run is also restricted. Please refer to the section on Selection of winners.

REGULARITY OF SANCTIONS

How frequently does the regulator impose serious sanctions for non-compliance?

Non-compliance with the TGA is a common occurrence, particularly in relation to obtaining a license. As of yet, only fines have been imposed.

Please note that the TGA is in the process of being amended and is currently being considered by the...
House of Representatives. Under the Bill, prize promotions by risk-taking will be governed by a new Act, the 'Prize Promotion by Risk-Taking Act.'

Pursuant to the most recent version of the Bill, arranging a Prize Promotion without a license would be subject to higher sections including imprisonment of 2 years and a maximum fine of ฿80,000 (approx. US$2,530) or both.

**KEY CONTACTS**

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PRIZE PROMOTIONS AROUND THE WORLD

TURKEY

Last modified 16 January 2019

GOVERNING LAW

What are the main applicable governing laws or codes for prize promotions?

<table>
<thead>
<tr>
<th>Name</th>
<th>Law or Code?</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Decree on National Lottery w. no 320</td>
<td>Law</td>
</tr>
<tr>
<td>Regulation of the Turkish General Directorate of National Lottery on Lotteries and Draws with Non-Cash Prizes</td>
<td>Law</td>
</tr>
<tr>
<td>Consumer Protection Law</td>
<td>Law</td>
</tr>
<tr>
<td>Regulation on Commercial Advertisement and Unfair Commercial Practices</td>
<td>Law</td>
</tr>
</tbody>
</table>

EXTRA-TERRITORIALITY

Do national regulators enforce rules against entities operating abroad?

Yes, the rules for prize promotions also apply to prize promotions organized by foreign entities located outside Turkey but which target participants from within Turkey. In practice, the foreign entity organizer usually works alongside a local agency or business associate in Turkey to facilitate its application to the General Directorate of the National Lottery (“GDNL”).

SKILLS COMPETITIONS

Can a prize promotion be run that is based on skill?

Yes, skill based games are generally permissible, but this is subject to approval from the GDNL. Having said that, approval is not required if the contest fulfils any of the following conditions:

- every participant who meets a previously specified criteria is awarded a prize; or
• no entrance fee is charged and the contest does not promote or sell a particular good or service; or

• either (i) no random draw occurs, and the winners are selected according to previously specified rules, or (ii) the winners are selected by means of a draw held in the presence of all the participants in the contest.

PRIZE DRAWS

Can a prize promotion be run where there is an element of chance in the selection of the winner?

Yes, chance-based promotions are permissible, but this area is heavily regulated by the GDNL. Please note that chance-based games where cash is given as a prize can only be organized by the GDNL. On the other hand, chance-based games where non-cash prizes are awarded can be organized provided permission from the GDNL is first obtained. As an exception, if the value of a non-cash prize awarded does not exceed a specified limit (TRY 115,2 - approx. US$19, for the year 2019), the approval of the GDNL is not required before organizing the prize promotion.

SELECTION OF WINNERS

Are there any requirements for the selection of winners and award of prizes?

The terms and conditions of the promotion must be made available to the public, and the process through which the winners shall be determined needs to be clearly set out, including the dates and place where the selection of the winner(s) will take place.

With respect to prize draws, the process of selecting winners must be open to the general public to observe, and the winner must be selected in the presence of a Turkish Notary Public. After the selection, the winners and the deadline for the application to receive the prize must be announced and notified to the winners. The prize must be delivered to the winners at the date announced previously, and this period cannot be more than one year after the beginning of the promotion.

JUDGES

Are there any particular requirements in relation to judges or judging for skills competitions?

There are no specific requirements in relation to skill competitions.

PRIZES

Are there any restrictions on the prizes awarded?

Under Turkish Law, the GDNL alone has the authority to organize lotteries with prize money. Therefore, in Turkey, promoters are not allowed to organize lotteries where the prize is money or any other convertible currency. There are no other specific restrictions on the prizes awarded. However, the prize given should not violate other legislative provisions or public orders (i.e. weapons, tobacco products, etc. cannot be given as non-cash prizes).
REGISTRATION REQUIREMENTS AND FEES

Are there any registration requirements, or any fees/taxes payable?

Registration Requirements

Pursuant to the Regulation of the Turkish General Directorate of National Lottery on Lotteries and Draws with Non-Cash Prizes, promoters are required to obtain the approval of the GDNL before organizing a lottery, competition or prize promotion with a non-cash prize. Having said that, there are certain exceptions where approval is not required (certain exceptions are mentioned in the sections on Skills Competitions and Prize Draws).

Fees/Taxes payable

The organizer must pay 3% of the total value of prizes on offer (+18% VAT) to the GDNL as a registration fee. The registration fee cannot be less than TRY 6,000 (approx. US$993) (+18% VAT). Further, the organizer must deposit an amount that corresponds to more than 10% of the total market value of the promised prizes with the GDNL. This deposit requirement is reduced by 50% if the commencement date of the promotion is more than six months before the date for final delivery of the prizes.

In terms of taxes, the winner is responsible for all tax liability associated with the prize. On the other hand, prize draw organizers must pay an inheritance and gift tax of 10% of the total value of prizes on offer. Organizers of contests, sweepstakes and competitions are responsible for submitting the declaration by the evening of the 20th day of the month that follows the month when the contest, sweepstake or competition was held. Then the organizer can receive the tax amount from the winner.

OTHER LOCAL REQUIREMENTS

Are there any other key local requirements?

According to an announcement of the GDNL, prize promotions must be declared/announced through the official website of the entity running the promotion. In practice, the Directorate does not approve a draw if it is only announced through social media accounts.

TIMING

Is time required to ensure compliance (other than reviewing the terms and conditions)?

The organizer is required to apply to the GDNL at least 15 days before the prize promotion event. The GDNL generally reviews and responds to the application within 5 business days of receiving the application.

TRANSLATIONS

Are the terms required to be translated by law?

If the promotion targets Turkish citizens, the terms and conditions must be prepared in Turkish and understandable for the Turkish participants in order for the contest/draw to be in compliance with Turkish Consumer Protection Law.
PRIZE PROMOTIONS AROUND THE WORLD

PENALTIES FOR NON-COMPLIANCE

What are the penalties for non-compliance?

According to the Decree on National Lottery w. no 320, if a prize promotion is not in compliance with the relevant rules, an imprisonment between 2 months to 2 years and a monetary fine from TRY 100,000 to TRY 10,000,000 (approx. US$16,500 - 1,655,000) is legally possible. Additionally, such non-compliant activity may be evaluated in the scope of Consumer Protection Law, and may be deemed to be a misleading activity and/or unfair commercial activity. In this case, the relevant authority may apply an administrative fine up to TRY 341,921 (approx. US$56,600).

Furthermore, the GDNL may prohibit the organizer from arranging a prize promotion for two years.

RESTRICTIVENESS OF REGULATIONS

How restrictive are the legal obligations applicable to prize promotions?

In Turkey, prize promotion activities are allowed as long as the prize is not money or any other convertible currency. The main focus is on providing consumers with clear and explicit information on the rules of the promotion and on prohibiting misleading marketing.

The skill-based prize promotions are generally subject to general legal rules which are not restrictive. For prize draws, there is a requirement to obtain an approval, and there are also some quite specific requirements as to what must be included in terms and conditions.

REGULARITY OF SANCTIONS

How frequently does the regulator impose serious sanctions for non-compliance?

Prison sentences are rarely imposed, but fines and prohibition from arranging a prize promotion for two years can be applied.
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UKRAINE

GOVERNING LAW

What are the main applicable governing laws or codes for prize promotions?

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<thead>
<tr>
<th>Name</th>
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</tr>
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<tbody>
<tr>
<td>Civil Code of Ukraine</td>
<td>Code</td>
</tr>
<tr>
<td>Tax Code of Ukraine</td>
<td>Code</td>
</tr>
<tr>
<td>On Advertising</td>
<td>Law</td>
</tr>
<tr>
<td>On Protection from Unfair Competition</td>
<td>Law</td>
</tr>
<tr>
<td>On Prohibition of Gambling in Ukraine</td>
<td>Law</td>
</tr>
<tr>
<td>On State Lotteries in Ukraine</td>
<td>Law</td>
</tr>
<tr>
<td>On Electronic Commerce</td>
<td>Law</td>
</tr>
<tr>
<td>On Personal Data Protection</td>
<td>Law</td>
</tr>
</tbody>
</table>

EXTRA-TERRITORIALITY

Do national regulators enforce rules against entities operating abroad?

Based on complex interpretation of legislation related to prize promotions, Ukrainian legislation is applied and enforced with respect to prize promotions operated by non-resident legal entities, if:

- The prize promotion is operated in the territory of Ukraine, and/or
- The prize promotion, even if it is operated from abroad (via the Internet), is aimed at Ukrainian consumers
SKILLS COMPETITIONS

Can a prize promotion be run that is based on skill?

Yes. Ukrainian legislation regulates prize promotions based on skill as a public promise of a reward, based on the result of competition. Specifically, the Civil Code of Ukraine establishes that skill competitions may relate to intellectual or creative activity, commission of a certain action, performance of work, etc.

PRIZE DRAWS

Can a prize promotion be run where there is an element of chance in the selection of the winner?

The Law of Ukraine on ‘Prohibition of Gambling in Ukraine’ prohibits gambling activity in Ukraine. Within the meaning of the said law, gambling is any game, a compulsory condition of which involves the payment of money by the player, including via e-payment, which will enable the participant to either get the winning (prize) in any form, or to not get it, depending on chance.

The following (among other things) are excluded from the prohibition on gambling and can be run in Ukraine:

1. Prize draws based on chance run on a free of charge basis aimed at promoting (popularizing) certain goods, services, trademarks, company names or areas of business offered by a business entity, commercial program which provide for prizes either in monetary or property form, and

2. Lotteries

Lotteries are subject to separate regulation by the Law of Ukraine on ‘State Lotteries in Ukraine’. In particular, the law prohibits holding lotteries without a license. Currently, the application process for lottery licenses is blocked due to the absence of adopted license requirements. State lottery operators are operating based on the respective licenses issued to them prior to adoption of the Law of Ukraine on ‘State Lotteries in Ukraine’; thus, existing lottery operators are conducting their activity based on the old licenses, but the order allowing new licenses to be obtained has not been adopted yet.

SELECTION OF WINNERS

Are there any requirements for the selection of winners and award of prizes?

Ukrainian legislation does not provide for any requirements relating to the selection of winners and award of prizes. Promoters are free to define the selection procedure for winners and the award of prizes in the terms and conditions of their prize promotion.

JUDGES

Are there any particular requirements in relation to judges or judging for skills competitions?

No particular requirements on judges or judging for skills competitions are established by the law. According to the Civil Code of Ukraine, a winner of a skill competition shall be defined according to the criteria set out by a competition organizer in its terms and conditions.

Also, the Civil Code of Ukraine provides that the winner of the skill competition is the person who
achieved the best result.

Based on results of the skill competition, the competition founder may approve a decision on the following:

- Award all prizes, provided by the terms and conditions of the competition
- Award specific prizes, if several of them were envisioned
- Refuse the awarding of prizes, if none of the entries meets the requirements of the competition, or
- Award an encouragement prize

The results of the skill competition may be disputed by an interested party in court.

No other requirements are established by the law.

**PRIZES**

*Are there any restrictions on the prizes awarded?*

No.

According to the law, prizes (types, quantity, etc) shall be defined in the terms and conditions of prize promotions. In this regard, from a consumer protection perspective, the prizes to be awarded must correspond to those prizes which were announced by the advertiser in the terms and conditions of the prize promotion.

**REGISTRATION REQUIREMENTS AND FEES**

*Are there any registration requirements, or any fees/taxes payable?*

**Registration Requirements**

There is no requirement to register prize promotions.

**Fees/Taxes payable**

Tax aspects of prize promotions are as follows:

*Corporate Profit Tax (CPT)*

Basic CPT rate is 18%. Generally, the cost of prizes purchased by a prize promotions operator is deductible for CPT purposes. The general approach of the Ukrainian tax authorities is that all deductions must be supported with the appropriate original documents.

*Value Added Tax (VAT)*

Generally, the transfer of prizes by the prize promotions operator to the winner is treated as a taxable supply for VAT purposes (if such operator is a VAT-payer). Thus, prize promotions operators must
charge 20% VAT on the value of the prize but in any case the VAT base may not be lower than the purchase price of such prize. Such VAT is not collected from prize winners and is paid by operators at their own expense.

**Personal Income Tax (PIT)/Military Duty**

Basic PIT rate is 18%. Temporary military duty is 1.5%.

Prize promotions operators are obliged to act as a tax agent for the winner. If the amount of the prize value is less than UAH 1043.25 per (for 2019) (approx. US$39), it is exempted from PIT and military duty.

Prize promotions operators are liable to pay PIT and military duty on behalf of the winner if the prize amount exceeds UAH 1043.25 (for 2019) (approx. US$39). In cases where the prize is provided in non-monetary form, WHT and PIT are paid by prize operator at its own cost (on top of the value of prizes).

It is also important to note that operators cannot act as tax agents in those cases where prizes are distributed to an unidentified recipient.

Lotteries have further specific tax treatment.

**OTHER LOCAL REQUIREMENTS**

Are there any other key local requirements?

Other key legal requirements for prize promotions are as follows:

- Advertisements about the conduct of prize promotions and skill competitions must contain information regarding time periods, the place of the event, and indicate the competition organiser.
- Information regarding all changes in terms and conditions, places and competition time period should be presented in the same way as it was initially distributed.
- Other general requirements established by the law of Ukraine 'On Advertising' must be complied with (eg advertising of certain categories of goods, etc).

**TIMING**

Is time required to ensure compliance (other than reviewing the terms and conditions)?

No.

**TRANSLATIONS**

Are the terms required to be translated by law?

Currently, Ukrainian legislation does not expressly oblige promoters to translate the terms into Ukrainian language. However, in practice, terms in foreign languages, which are aimed at Ukrainian consumers, should be provided in Ukrainian language. This approach is in line with requirements of
consumer protection legislation, according to which any consumer-related information shall be provided to consumers in an accessible manner (i.e. in an understandable way, which, among other things, means use of Ukrainian language as a state language in Ukraine).

PENALTIES FOR NON-COMPLIANCE

What are the penalties for non-compliance?

The following penalties can be outlined with respect to conducting prize-promotions:

- For non-compliance by advertisers relating to the content of advertisements or regarding the dissemination of such advertisements – fines amount to five times the cost of the distributed advertisement
- For breach of requirements of the Law of Ukraine on 'Protection from Unfair Competition' – fines in amount of up to 5% of business profits (group) for the last year (if profits of the business entity for the last year is not declared – an amount of US$6,164)
- For breach of data protection rules within prize promotions – fines of approximately US$61 – US$307

Separately, please see the penalties for conducting gambling which is prohibited in Ukraine – fines in amount of around US$1,205,721 with confiscation of gambling facilities and all the realized profit is to be paid to the State budget of Ukraine. Also Ukrainian legislation provides for criminal responsibility for conducting gambling in the form of fines of approx. US$6,164 – US$24,566, depending on the circumstances of the commission of the crime.

Finally, the following penalty is established for conducting lottery without license – fines of approx. US$2,412,139, together with the confiscation of gaming facilities.

RESTRICTIVENESS OF REGULATIONS

How restrictive are the legal obligations applicable to prize promotions?

The Ukrainian legislation does not set out detailed requirements, applicable to holding prize promotions. Thus the applicable legislation cannot be regarded as onerous.

However, the Ukrainian legislation strictly prohibits gambling and holding lotteries without a license.

REGULARITY OF SANCTIONS

How frequently does the regulator impose serious sanctions for non-compliance?

Serious sanctions are rarely imposed. As a matter of practice, serious sanctions could be imposed by the Antimonopoly Committee of Ukraine, if, for example, misleading information (which is very broadly interpreted under Ukrainian law) in advertising or comparative advertising were distributed.
KEY CONTACTS

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GOVERNING LAW

What are the main applicable governing laws or codes for prize promotions?

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<tr>
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<td>Commercial Permit Guidebook of the Dubai Department of Economic Development (the 'Dubai Commercial Permit Guidebook')</td>
<td>Guidebook</td>
</tr>
<tr>
<td>Federal Law (3) of 1987 (the 'Penal Code')</td>
<td>Code</td>
</tr>
<tr>
<td>Federal Law (5) of 1985 (the 'Civil Code')</td>
<td>Code</td>
</tr>
<tr>
<td>Federal Law (24) of 2006 (the 'Consumer Protection Law')</td>
<td>Code</td>
</tr>
<tr>
<td>Federal Law (19) of 2016 (the 'Anti-Commercial Fraud Law')</td>
<td>Code</td>
</tr>
</tbody>
</table>

Note: There is broad scope for the exercise of discretion by the relevant authorities and the rules themselves may change at short notice. The information included in this handbook in relation to the UAE - Dubai reflects the content of the rules and regulations available to the public and our conversations with the relevant officials.

EXTRA-TERRITORIALITY

Do national regulators enforce rules against entities operating abroad?

The Dubai Commercial Guidebook rules on promotions which applies to a promotion that targets customers located in Dubai and is operated from a non-UAE website by an entity operating abroad.
We understand that it is sufficient that the promotion targets and addresses customers in Dubai for the rules to apply. However, we are not aware of instances where the authorities have actually enforced those rules against entities operating abroad.

**SKILLS COMPETITIONS**

*Can a prize promotion be run that is based on skill?*

Yes, provided that:

- A permit is obtained for the campaign (instant prize fees paid as skills competition prizes are considered instant prizes);
- Participants do not pay to enter, and
- Criteria for awarding prizes are clearly defined.

The skill element requires that the prize promotion is not based on a game of chance and the participants are not gambling or otherwise participating in a bet.

**PRIZE DRAWS**

*Can a prize promotion be run where there is an element of chance in the selection of the winner?*

Only prize draws are permitted, provided:

- Participants do not pay to enter (but participation may be linked to paying for the promoted product or service); and
- A permit is obtained from the Department of Economic Development (DED) for conducting the promotional campaign and its relevant draw.

**SELECTION OF WINNERS**

*Are there any requirements for the selection of winners and award of prizes?*

The draw itself must be conducted in the presence of a representative of the DED, even when taking place outside of Dubai or the United Arab Emirates.

This requirement is compulsory and any draw that fails to meet this condition may be cancelled by the DED.

Prize winners should receive their prize within 60 days from the final day of the promotional campaign or draw date. Any unclaimed prizes at the end of this period should be returned to the DED and when the prizes are vouchers, travel tickets or coupons the same should be returned in the form of cheques.

**JUDGES**

*Are there any particular requirements in relation to judges or judging for skills competitions?*
There are no set qualifications in relation to judges for skill competitions. However, the attendance of a DED representative is compulsory at the time of selecting winners.

**PRIZES**

*Are there any restrictions on the prizes awarded?*

Prizes must be awarded as described in the marketing communication.

Consumers are protected under the Consumer Protection Law and so all prizes must be fit for purpose and confirm with their advertised specification.

Prizes can include benefits, incentives or vouchers but cannot be an amount of money. Generally a request can be made on a case by case basis to the DED to confirm whether a prize is acceptable.

Alcohol, pork products or any other product or service that is against Islamic Shari’a law cannot be awarded as a prize.

Campaign organizers can allocate consolation prizes of a value not exceeding AED 100 (approx. US$27), provided there are no more than 100 awards in a single campaign, and 50 awards for each draw in case of multiple draws.

**REGISTRATION REQUIREMENTS AND FEES**

*Are there any registration requirements, or any fees/taxes payable?*

**Registration Requirements**

A permit must be obtained from the DED for all types of prize promotion campaigns.

**Fees / Taxes Payable**

Fees vary according to campaign details (prize value, number of sites etc.) and to whether it is related to draws or to instant prizes. A list of fees is provided by the DED for certain standard campaigns. For other types of campaigns, the DED will decide on the fees payable after reviewing the details of the specific campaign.

Please find the list of fees for certain standard campaigns in the Guidebook (pp.19 and 20) [here](#).

Any tax implications in relation to prize promotions should be confirmed directly with specialist tax advisors.

**OTHER LOCAL REQUIREMENTS**

*Are there any other key local requirements?*

The applicant must have a valid commercial license in the Emirate of Dubai and have been carrying out its activities in Dubai under the license for more than one month.

It is not permitted to promote tobacco and cigarettes, drugs, alcohol, pork or spoiled or expired food.
The terms and conditions of the draw/competition must be in the Arabic language. The terms and conditions should include as much detail as possible, relevant dates and other requirements (for example, the requirement to produce a passport or other documentation in order to receive a prize).

The term of the campaign should not exceed two months. In some exceptional cases promotional campaigns may run for a maximum period of one calendar year where the fees are calculated by the type of campaign, with the condition of having one draw every two months in the case of campaigns involving draws.

The requirements to obtain a permit for promotional campaigns vary between Emirates. This note deals with the Emirate of Dubai only.

Particular rules may apply when the draw falls during one of the Dubai shopping festivals.

**TIMING**

*Is time required to ensure compliance (other than reviewing the terms and conditions)?*

No, although the DED requires that the term of the promotion does not exceed two months (in other words, longer promotions will require more than one permit). A permit may take two to three weeks to obtain.

**TRANSLATIONS**

*Are the terms required to be translated by law?*

The terms and conditions of the draw/competition must be translated to the Arabic language, as per the DED requirement.

**PENALTIES FOR NON-COMPLIANCE**

*What are the penalties for non-compliance?*

There are a variety of fines which may be awarded by the DED for non-compliance, such as a fine for not having the DED representative present at the draw (AED10,000) (approx. US$2,700), a fine for using or exploiting a Dubai Shopping Festival without permission (AED20,000) (approx. US$5,400) and a fine for submitting false information to the DED (AED20,000) (approx. US$5,400). Further, the campaign can be cancelled by the DED.

Gambling is forbidden under the Penal Code and the Civil Code. People who operate gambling establishments and participants can be fined and receive custodial sentences of up to ten years. As such it is important to consider the elements of each campaign to ensure it does not fall foul of this legislation.

Announcing fictitious prizes or discounts and promoting adulterated, corrupt or counterfeit products amount to commercial fraud under the Anti-Commercial Fraud Law. Businesses that commit commercial fraud risk a penalty of up to two years of prison and up to AED1,000,000 (approx. US$272,000) in fines depending on the type of goods to which the violations relate.

Other penalties may apply such as closure of premises and withdrawal of licences and the penalties
may be doubled in case of repeat violations.

**RESTRICTIVENESS OF REGULATIONS**

*How restrictive are the legal obligations applicable to prize promotions?*

The laws and regulations relating to prize promotions in the UAE - Dubai are relatively limited when compared with other heavily regulated jurisdictions.

However, the requirements are onerous as a permit is required to run promotions, and a representative of the DED should be present in case of a prize draw, even when the draw is taking place outside of Dubai. Travel and accommodation of the DED representative should be included in the budget.

This said, most prize promotion mechanics are allowed as long as they are not considered as gambling or betting. The steps required to avoid falling into these categories are not very restrictive.

**REGULARITY OF SANCTIONS**

*How frequently does the regulator impose serious sanctions for non-compliance?*

In the UAE there is generally no access to relevant cases to give details of which sanctions have been imposed. Only a small number of cases are made available to the public, and none of these are relevant to trade promotions.
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### GOVERNING LAW

**What are the main applicable governing laws or codes for prize promotions?**

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</tr>
<tr>
<td>The Business Protection from Misleading Marketing Regulations 2008 (SI 2008/1276)</td>
<td>Law</td>
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<td>Gambling Act 2005</td>
<td>Law</td>
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<tr>
<td>PhonepayPlus Code of Practice (relevant where a premium rate telephone number is used as the method of entry for example)</td>
<td>Code</td>
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<tr>
<td>Privacy and Electronic Communications (EC Directive) Regulations 2003 (as amended, &quot;PECR&quot;)</td>
<td>Law</td>
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<tr>
<td>Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2011</td>
<td>Law</td>
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</table>
Note: Prize promotions on broadcast media (TV and radio) are subject to significantly fewer rules (under the BCAP Code) than on non-broadcast media (under the CAP Code). This booklet reflects the more detailed requirements relating to non-broadcast media; a careful approach would be to seek compliance with these for broadcast ads as well.

EXTRA-TERRITORIALITY

Do national regulators enforce rules against entities operating abroad?

The CAP Code does not apply in relation to prize promotions which are published in foreign media (e.g. in a US newspaper).

If the promotion targets UK consumers, but is promoted from a non-UK website or in direct marketing from outside the UK, then:

- If the promoter is based in a country which operates a cross-border complaint system that the ASA considers suitable, the ASA will leave it to the relevant authority in that other country. The ASA is a member of the European Advertising Standards Alliance and considers most EU countries to operate suitable systems.

- If the promoter is not based in such a country, the ASA will do what it can to take action, but in reality such action is likely to be limited and the ASA is unlikely to prioritize such cases.

The BCAP Code only applies to promotions on TV services licensed by UK media regulator Ofcom.

SKILLS COMPETITIONS

Can a prize promotion be run that is based on skill?

Yes, but ensure:

- The winner is determined on the basis of skill not chance, particularly if the entrant pays to enter.

- The skill element requires entrants to exercise skill or judgement or to display knowledge as part of requirements which either prevent a significant proportion of potential entrants from taking part or prevent a significant proportion of entrants from receiving a prize. (If this level of skill is not met, it could be categorized as a promotion determined on the basis of chance and as such if payment is required, this would be a lottery, giving rise to criminal liability if the appropriate license is not obtained).

Note: Asking one question the answer to which is widely known is unlikely to qualify as sufficient
exercise of ‘skill, knowledge or judgement’.

and

- Terms are notified to entrant before purchase is made.

If a multiple choice format is used:

- There must be significant plausible alternatives to the correct answer, and
- The correct answer must not be obviously given close to the question

**Note:** Be ready to provide evidence of work undertaken to ensure sufficient level of skill is required.

**PRIZE DRAWS**

*Can a prize promotion be run where there is an element of chance in the selection of the winner?*

This would be unlawful (potentially deemed an illegal lottery in the absence of a license), unless participants do not pay to enter or to claim/ receive prize.

‘Payment’ includes: where the only route of entry is a premium rate phone line; paying more than usual rates for delivery of the prize; paying to discover whether a prize has been won or to collect a prize; and paying for goods and services at an inflated rate which reflects the opportunity to take part in the promotion (but a purchase requirement where the price of the product purchased is not inflated does not amount to a “payment to enter”). As a general rule, the provision of data does not amount to payment, but a requirement to provide a large quantity of data could amount to payment, especially if the promoter intended to sell such data to third parties (note that requirements to provide data separately raise various GDPR issues).

**Note:** In Northern Ireland (which is part of GB but not the UK), a genuine, no-purchase route to entry must be provided. This is not a requirement in the UK, but it can be a good way to avoid the risk of there being a payment.

**SELECTION OF WINNERS**

*Are there any requirements for the selection of winners and award of prizes?*

Promoters must ensure promotions are conducted under proper supervision, make adequate resources available to administer them and allow enough time for each stage eg judging rounds.

Prize draws must be selected by a computer process producing verifiably random results, or by (or under supervision of) an independent person.
Prize winners should receive their prizes normally within 30 days of the closing date. It is no longer a requirement, but advisable, if possible, to let winners know when they can expect their prize if not within 30 days.

Winners should be informed individually.

Promoters are required to publish or make available information that indicates an award of prize(s) took place – usually prize winner(s)’ surname(s) and county/counties. The promoter must warn entrants of their intention to do so, and give entrants the opportunity to object to or reduce the information made available.

**JUDGES**

*Are there any particular requirements in relation to judges or judging for skills competitions?*

Skill competitions where the selection of winning entries is open to subjective interpretation must be judged by a demonstrably independent judge or a panel with at least one independent member. Those judging must be competent.

The criteria and mechanism for judging entries must be made known before, or at time of, entry.

**PRIZES**

*Are there any restrictions on the prizes awarded?*

Prizes awarded must be as described in their marketing communications, or reasonably equivalent to that description.

Participants in instant-win promotions must get their winnings at once or must know immediately what they have won and how to claim without delay, unreasonable costs or administrative barriers.

**REGISTRATION REQUIREMENTS AND FEES**

*Are there any registration requirements, or any fees/taxes payable?*

**Registration Requirements**

There are no requirements to register prize promotions.

**Fees/Taxes payable**

The tax consequences must always be considered, in particular VAT and income tax/corporation tax and specialist advice should be sought. All will depend on the facts. Tripartite arrangements tend to be particularly complicated.

Generally, if publicity, advertising or some other form of consideration is received in return for incurring the cost of the prize, the promoter may deduct the cost of the prize for corporation tax purposes but must account for VAT on the supply of the prize and the promoter may claim input VAT on the cost of the prize.

If the prize is a true gift, the promoter only needs to account for VAT where the value of that prize
exceeds £50 (approx. US$64) under the business gift rules but then will be entitled to claim input VAT on the cost of the prize. The promoter will not generally be able to claim a deduction for the cost of the prize for corporation tax purposes unless the promotion is open to the general public and the prize is one of the promoter's products.

**OTHER LOCAL REQUIREMENTS**

*Are there any other key local requirements?*

Promoters must conduct prize promotions fairly and efficiently, and must ‘avoid causing unnecessary disappointment’, e.g. by changing the terms (to be avoided if at all possible) or stopping the promotion.

Significant conditions, or information which, if omitted, is likely to mislead, must be included on all marketing communications regarding the promotion. Examples of significant conditions include: restrictions on entry (e.g. age, geographical), how to participate, costs of participating, start and close dates, proof of purchase requirements, details of prizes, IP assignment, any post-event publicity requirement.

**Note:** Where there are space limitations e.g. Twitter or banner ads, you must communicate as much information as possible and direct the entrant to where all significant terms are stated.

A promoter’s name and address must be stated unless it is obvious from the context.

The CPRs (which carry potential criminal liability for breach) specifically prohibit claiming to offer a prize without awarding it, and creating a false impression that a consumer has won a prize.

Promoters should be mindful of the extensive obligations (and hugely significant sanctions- see Penalties for Non-Compliance section) now imposed by GDPR, which can impact on prize promotions in various ways, such as:

- If a promoter wishes to use winners’ or entrants’ personal data (e.g. photographs) for publicity or other purposes beyond simply administering the promotion, it must carefully consider what lawful basis it can rely on under GDPR. Consent may not be an appropriate basis unless it can be refused (GDPR requires “unbundled” consent so it cannot generally be a condition of entry); legitimate interests may be appropriate, but this requires an assessment to be undertaken of the competing interests;

- GDPR-compliant data processing notices must be given to entrants;

- It is difficult to run a compliant consumer-targeted prize promotion that requires as a condition of entry that the consumer agrees to receive electronic direct marketing from the promoter;

- Particular care must be taken where child data is to be processed.

**TIMING**

*Is time required to ensure compliance (other than reviewing the terms and conditions)?*
No, although time should be allowed to deal with data protection issues (see Other local requirements).

TRANSLATIONS

*Are the terms required to be translated by law?*

No legal requirement for translation.

PENALTIES FOR NON-COMPLIANCE

*What are the penalties for non-compliance?*

The ASA has limited sanctions, the main one being publicizing adjudications that a company breached the CAP/BCAP code (which can lead to negative press coverage).

The majority of offences arising under the CPR’s are punishable by a fine, which used to be set at a maximum of £5,000 (approx. US$6,440). However, this statutory maximum has now been disapply so there is flexibility to impose a higher fine. For more serious cases, an (unlimited) fine or a prison term of up to 2 years or both can be imposed. For example, a fine was levied on a retailer of £300,000 (approx. US$386,400) for misleading advertising in breach of the CPRs. Sanctions are proportionate to the breach and routinely commence with requests to amend or stop non-compliant promotions. Immediate compliance often prevents more severe sanctions. In addition, the amendments made to the CPRs in 2014 provided consumers with a direct right to redress (in addition to actions that can be brought by the regulators), and this includes possible remedies such as damages.

Sanctions under GDPR for breaching data protection law can be very high indeed (fines could reach the higher of €20 million (approx. US$22.4m) or 4% the global turnover of the infringing company / its group, in the most serious cases). Criminal prosecution under and class action consumer damages claims are also possible under GDPR.

RESTRICTIVENESS OF REGULATIONS

*How restrictive are the legal obligations applicable to prize promotions?*

The CAP rules set out quite detailed requirements, but are based on common sense and are not unduly onerous (there are no registration or other formality requirements, and most prize promotion mechanics are allowed so long as it is not a lottery). Compliance with the CAP rules will generally result in compliance with the (less detailed) CPRs. The steps necessary to avoid falling into the category of ‘lottery’ under the Gambling Act 2005 are (while important) not very restrictive.

GDPR imposes significant restrictions on the data aspects of running prize promotions (eg. use of submissions including personal data, winner publicity, etc.).

REGULARITY OF SANCTIONS

*How frequently does the regulator impose serious sanctions for non-compliance?*

Fines and prison sentences have rarely been imposed. However, the introduction of GDPR in May 2018 raises the possibility of more regular fines for breaches of data protection law by promoters.
It only takes one complaint for the ASA to investigate a promotion, and adverse ASA adjudications are very common (5-15 a week). But while an adverse ASA adjudication can cause bad publicity, it does not carry a monetary sanction.

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GOVERNING LAW

What are the main applicable governing laws or codes for prize promotions?

Overall Summary

Prize promotions are governed under both Federal and State law. States have varying laws on prize promotions. Special rules also apply to sweepstakes promotions used in connection with sales of time shares and similar real estate offerings.

Federal Law

At the federal level, the US Department of Justice is primarily responsible for enforcing criminal violations such as illegal lotteries. The US Postal Service is responsible for enforcing regulations regarding sweepstakes sent through the mail. The Federal Trade Commission can bring actions for unfair and deceptive trade practices relating to sweepstakes and contests. The Federal Communications Commissions can bring actions relating to sweepstakes and contest offerings over broadcast, cable or satellite television, or radio.

Racketeer Influenced and Corrupt Organizations Act (‘RICO’)

Section 5(a) of the Federal Trade Commission Act

Federal Deceptive Mail Prevention and Enforcement Act (‘DMA’)

CAN-SPAM Act of 2003

Telemarketing Sales Rule (‘TSR’)

Telephone Consumer Protection Act (‘TCPA’)

Children’s Online Privacy Protection Act (‘COPPA’)

18 U.S.C. §§1301-1306 - Federal law prohibits lotteries and other forms of gambling

47 C.F.R. § 73.1211 – Code of Federal Regulations prohibits television or radio stations from broadcasting advertisements or transmitting information on lotteries
Selected States

Arizona Stat. §§13-3301 to 13-3311


Florida – Fla. Stat. § 849.094


Texas – Texas Business and Commerce Code Chapters 621 and 622

Industry Regulation

The Children's Advertising Review Unit (CARU) of the Council of Better Business Bureaus was established by the National Advertising Review Council (NARC) to promote responsible children’s advertising. It has specific guidelines that govern sweepstake and contest promotions involving children.

EXTRA-TERRITORIALITY

Do national regulators enforce rules against entities operating abroad?

Overall Summary

Generally speaking, state regulators will enforce regulations if the sweepstakes or contest promotion allows residents of that state to enter the promotion, even if entry is done purely online and there is no in-state advertising or promotion. Federal regulators will enforce regulations against any sweepstakes or contest promotion that involves interstate commerce (across state lines).

SKILLS COMPETITIONS

Can a prize promotion be run that is based on skill?

Overall Summary

Federal law has specific regulations for skill competitions offered through the mail. State rules differ regarding how much chance is allowed in a skill contest, however, a majority of states apply the rule that it is not an illegal lottery so long as skill is the dominant factor in determining the winner. Ellison v. Lavin, 179 N.Y. 164 (1904); State v. Stroupe, 238 N.C. 34 (1953). Several states prohibit charging entry fees or requiring other consideration to enter or participate in skill contests.

Whether a contest is determined by skill or chance is a fact specific analysis. A skill contest generally is one where success depends principally on the superior knowledge, attention, experience, and skill of the player whereby the elements of chance in the game are overcome. Contests should be structured such that one with skills has an advantage over non-skilled players.
Federal Law

A skill contest is a puzzle, game, competition, or other contest in which a prize is awarded or offered, the outcome depends predominately on the skill of the contestant, and a purchase, payment, or donation is required to enter. The DMA requires that mailings for skills contests include a clear and conspicuous statement which discloses all terms and conditions and provides a name and address where the sponsor can be reached. Additionally, the mailings must disclose certain information such as the number of rounds or levels, the cost to enter each round, the maximum cost to enter all rounds, the estimated number of entrants who may win, the qualifications of the judges, the method used in judging, the date prizes will be awarded and the value and nature of each prize. 39 U.S.C. § 3001(k)(3)(B).

Selected States

Arizona – Before engaging in an intellectual contest or event that requires the purchase of a product, a sponsor must pre-register with the Arizona Attorney General. Ariz. Rev. Stat. § 13-3311.

California - To qualify as a contest the game must require a combination of skill and chance, but skill does not need to dominate the game. Haskell v. Time, Inc., 857 F. Supp. 1392 (E.D. Cal. 1994). Operators of a skills contest must clearly and conspicuously disclose the rules, regulations, terms and conditions of the contest, the maximum number of games which may be necessary to complete the contest and determine winners, the maximum amount of money which a participant may be asked to pay, and the dates upon which the contest will terminate, and how ties will be decided. Cal. Bus. & Prof. Code § 17539.1.

Colorado – Prohibits requiring a person to pay the sponsor money or other consideration as a condition of allowing the person to receive, use, compete for, or obtain a prize or information about a prize. Colo. Rev. Stat. § 6-1-803.

Illinois – Certain games of skill are exempted from Illinois’s prohibition on gambling. The contest must be a ‘bona fide contest for the determination of skill, speed, strength or endurance...’ 720 ILCS 5/28-1(b).

Oregon – Requires that a skills competition have a combination of skill and chance, but skill does not need to dominate the game. Or. Rev. Stat. § 646.651.

Texas – Contests that involve an offer of a prize, award, or compensation to the actual contestants in a bona fide contest for the determination of skill, speed, or strength are exempted from Texas’s prohibition of gambling. Tex. Penal Code. § 47.01.

PRIZE DRAWS

Can a prize promotion be run where there is an element of chance in the selection of the winner?

Overall Summary

Prize draws are generally allowed, but you cannot require consideration as a condition for entering or awarding a prize in a chance competition. Most states prohibit illegal lotteries, which is a defined as a scheme that involves a prize, chance, and consideration. Consideration usually takes two forms:
monetary consideration which involves a product purchase or payment, and non-monetary consideration in which the entrant expends substantial time or effort which benefits the sponsor or provides some other thing of value to the sponsor.

A legal sweepstakes avoid being an illegal lottery by removing the element of consideration. One way to eliminate consideration is offer a free, alternative method of entry (AMOE). The AMOE must be truly free and have equal dignity (eg the same number of entries or chances to win) as a purchase method of entry. The AMOE must be clearly and conspicuously disclosed in the advertising of the sweepstakes.

A skill contest avoids being a lottery by removing the element of chance from the competition. The key here is making sure the winner of the contest is determined by skill and not chance.

**Federal Law**

The DMA requires that sweepstakes mailings include statements that disclose, among other things, that a purchase is not necessary to enter and will not improve the chances of winning, a name and address where the sponsor can be contacted, the terms and conditions, the entry procedure, the estimated odds of winning each prize, the quantity and estimated retail value of every prize, and a statement of the payment schedules of any prize. 39 U.S.C. § 3001(k)(3)(A).

**Selected States**


Florida – Prohibits requiring an entry fee, payment, or proof of purchase as a condition to entering a game promotion. Fl. Stat. §849.094(2)(e).

Illinois – Defines 'prize' to include prizes from games of chance. Sponsors must not charge a fee for entry or require purchase. 815 ILCS 525/10, 20.

Georgia – Prohibits promotions that require person to pay money, including payments for service fees, mailing fees, or handling fees. Ga. Code Ann. § 10-1-393(b)(16)(C).

Kansas – Prohibits lotteries for consideration, but mere registration without the purchase of goods or services does not constitute consideration. Promotions therefore cannot require the purchase of goods or services or attendance at places or events which require the payment of an admission fee. Kan. Stat. § 21-6403.

New Mexico – Prohibits any promotions for consideration unless certain disclosures are made in each and every representation made in connection with the promotion. N.M. Code R. § 12.2.2.10.

New York – Requires posting of minimum number and value of prizes and the rules of the promotion in every retail establishment offering participation. N.Y. Gen Laws § 369-3(2).

Texas – Prohibits allowing individuals to choose a prize unless that choice appeared on the entry form and is in no way connected to an order form or other purchasing mechanism. Tex. Bus. & Com. Code § 622.103.
PRIZE PROMOTIONS AROUND THE WORLD

SELECTION OF WINNERS

Are there any requirements for the selection of winners and award of prizes?

Overall Summary

There is no specific statutory requirement for the selection of winners, but promoters must ensure promotions are conducted under proper supervision, make adequate resources available to administer them and allow enough time for each stage e.g. judging rounds. Some states do regulate the award of prizes.

Selected States

California – In California, an operator must award and distribute all prizes ‘of the value and type represented’. Cal. Bus. & Prof. Code § 17539.1. Additionally, at the conclusion of a contest, its conductor must send, upon request by any contestant, the names of all winners, the prize won by each and, if applicable, the correct solution and the winning solution (if different). Cal. Bus. & Prof. Code § 17539.2.

Florida – It is illegal to fail to award prizes offered. Fl. Stat. §849.094(2)(c).

Illinois – Must award the prize within 30 days of announcing the winner. 815 ILCS 525/30.

Nebraska – It is illegal to fail to award the prizes which are offered. N.R.S. § 9-701(3)(c).

New York – Within 90 days of completion of promotion where the prizes offered exceed US$5,000, the operator must file with the Secretary of State the name and address of each winner of every prize valued more than US$25. N.Y. Gen. Laws § 369-e(5).

Rhode Island – It is illegal to fail to award the prizes which are offered. R.I. Gen. Laws § 11-50-5.

JUDGES

Are there any particular requirements in relation to judges or judging for skills competitions?

Overall Summary

There are no statutory requirements. However, the key is making sure that bona fide skill determines the outcome and entrants are clearly notified of the standard of skill required (i.e. criteria by which the winner will be determined). Skill competitions where the selection of winning entries is open to subjective interpretation must be judged by a demonstrably independent judge or a panel with at least one independent member. Those judging must be competent.

PRIZES

Are there any restrictions on the prizes awarded?

Overall Summary

The sweepstakes laws generally do not restrict the type or prizes awarded. However, there may be restrictions on the awards of certain kinds of prizes under industry-specific regulations, such as alcohol or prescription drugs.
Selected States

Arizona – Prizes cannot be offered that are a lure to separate participants from their money. A.R.S. § 13-3301.

California – Alcoholic beverages or anything redeemable for alcoholic beverages cannot be awarded in a sweepstake. Cal. Bus. & Prof. Code § 25600.2.

REGISTRATION REQUIREMENTS AND FEES

Are there any registration requirements, or any fees/taxes payable?

Overall Summary

In general, a sponsor of a sweepstakes or competition where the prize has a value of US$600 or more must report the value of the prize to the Internal Revenue Service on a Form 1099 with the name and tax identification of the winner.

Federal Law

No specific rules other than general tax reporting rule stated above.

Selected States

A number of states require either sweepstakes or skill contests to be registered.

Arizona – Requires any 'intellectual contest' that involves the purchase of a product to be registered with the Arizona Attorney General. A.R.S. § 13-3311.

Florida – Requires the operator of a game promotion where the total announced value of the prizes exceeds US$5000 to register and post a bond with the Department of Agriculture and Consumer Services. Fl. Stat. § 849.094(3).


Rhode Island – Requires a retail establishment that offers the opportunity to receive gifts, prizes, or gratuities, as determined by chance, in order to promote its retail business, where the total announced value of the prizes offered to the general public is in excess of five hundred dollars ($500) must register with the Rhode Island Secretary of State. R.I. Gen. Laws § 11-50-1.

OTHER LOCAL REQUIREMENTS

Are there any other key local requirements?

Overall Summary

Both state and federal law mandate certain disclosures that need to be made in connection with sweepstakes promotions and advertising. Generally speaking you must provide no purchase necessary disclosures, eligibility requirements, the method of entry, deadline dates (entry, prize claims etc.), the
odds of winning, the prize description, and number of prizes and their value, and any special conditions. Social media sites such as Facebook and Instagram have certain additional disclosures that have to be made.

Selected States – Disclosure Requirements

California – Use of the word 'lucky' to describe an entry form or the use of simulated checks, currency, or items of value are prohibited unless they bear the words 'SPECIMEN-NON-NEGOTIABLE' clearly and conspicuously. Cal. Bus. & Prof. Code, § 17539.1(a)(11), (13).

Illinois – Prize offer must include the following clear and conspicuous disclosures:

- The true name or names of the sponsor and the address of the sponsor’s actual principal place of business;
- The retail value of each prize the person receiving the notice has been selected to receive or may be eligible to receive;
- A disclosure that no purchase is necessary to enter such written promotional offer;
- A disclosure that a purchase will not improve the person’s chances of winning with an entry;
- A statement of the person’s odds of receiving each prize identified in the notice;
- Any requirement that the person pay the actual shipping or handling fees or any other charges to obtain or use a prize, including the nature and amount of the charges;
- If receipt of the prize is subject to a restriction, a description of the restriction;
- Any limitations on eligibility; and
- If a sponsor represents that the person is a 'finalist', has been 'specially selected', is in 'first place', or is otherwise among a limited group of persons with an enhanced likelihood of receiving a prize, the written prize notice must contain a statement of the maximum number of persons in the group or purported group with this enhanced likelihood of receiving a prize. 815 ILCS 525/25.

New York – The sponsor shall cause to be posted in a conspicuous and prominent location in every retail establishment offering the opportunity to participate in such game or contest and published in all advertising copy used in connection therewith, a statement showing the minimum number and value of prizes available to be won over a stated period of time and stated geographic area, and the rules and regulations pertaining to such promotion or advertising scheme or plan. N.Y. Gen. Bus. Law §369-e.

Texas – A person using a drawing must clearly and conspicuously disclose the following:

- A statement of the odds of winning each prize offered, expressed as a ratio in Arabic numerals, except that if the odds of winning a prize cannot be determined because the total number of entries is not known, the offeror shall make a statement to the effect that the odds of winning depend on the total number of entries received;
- The exact prizes to be awarded in the drawing;
- The beginning and ending dates of the contest period;
PRIZE PROMOTIONS AROUND THE WORLD

- The date the drawing will occur;
- The location at which the drawing will occur; and
- The retail value of a prize; and clearly and conspicuously in at least 10-point type that airfare, lodging, or both are not included in a prize that is a trip or recreational activity to the extent that either or both are not included.

Applies only to sweepstakes where a prize is offered as an inducement to attend a sales presentation. Tex. Bus. & Com. Code § 621.106.

Additional disclosures required for ‘matched contests’ and certain sweepstakes offered through the mail where the prize value is in excess of US$50,000. Tx. Bus. & Comm. Code §§ 621.102, 621.103, 621.104.

Selected States – Recordkeeping Requirements

A number of states require the promoter of the sweepstakes to keep certain records for a period of time.

Florida – Operator must keep winning entries for 90 days after close or completion of game. Fl. Stat. § 849.094(5).

Rhode Island – Operator must maintain records of winners for 6 months following completion of the promotion. R.I. Gen. Laws § 11-50-3.

Texas – For certain contests other than a drawing, the offeror must maintain certain records relating to the contest for two years from the date the prize was awarded. Tex. Bus. & Com. Code § 621.202.

Selected States – Winners List

States that require registration will also usually require filing of winner's lists. Other states require winner’s lists to be made available on request.

Arizona – Must file winner's list within 10 days for intellectual contests. A.R.S. § 13-3311(B).

Florida – For registered sweepstakes, must file winner’s list for all prizes over US$25 in value within 60 days after final determination of winners. Fl. Stat. §849.094(5) The operator must provide a copy of the list of winners, without charge, upon request of any person. Id.

New York – Must file winner's list for all prize over US$25 in value within 90 days after determination of winners for registered sweepstakes. The promoter must also provide a winner’s list to any person that requests it. N.Y. Gen. Laws § 396-e(5).

Texas – At the end of the contest period, each person who conducts a contest shall provide the names of all major prize winners and the prizes won by each winner to any person who requests. Tex. Bus. & Com. Code § 621.204.

TIMING

Is time required to ensure compliance (other than reviewing the terms and conditions)?
Overall Summary

Generally speaking you should allow enough time for the rules to be drafted and posted, data protection issues resolved, advertising reviewed and all entry mechanisms tested before launching the sweepstakes or competition. In addition, you need to allow additional time to meet any applicable registration requirements. Registration deadlines are provided below.

Selected States

Arizona – No specific time requirement except that they should be filed prior to the commencement of the promotion. A.R.S. § 13-3311.

Florida – The sweepstakes registration form needs to be filed at least 7 days in advance of the commencement of the game promotion if the total announced value of all prizes is greater than US$5000. Fl. Stat. §849.094(4)(a).

New York – The sweepstakes registration form and the official rules need to be filed at least 30 days before the sweepstakes commences if the total announced value of all prizes exceeds US$5000. N.Y. Gen. Laws § 396-e(1).

Rhode Island – No specific time requirement except that they should be filed prior to the commencement of the promotion. R.I. Gen. Laws § 11-50-1.

TRANSLATIONS

Are the terms required to be translated by law?

Overall Summary

There are no translation requirements, although rules should generally be written in English.

PENALTIES FOR NON-COMPLIANCE

What are the penalties for non-compliance?

Overall Summary

Penalties vary by state and under Federal law. An improperly structured sweepstakes or skill competition arguably could constitute an illegal lottery or gambling, which are criminal offenses under state and Federal law. However, it is more common for regulators and consumers to seek civil remedies, such as injunctions, restitution, and civil penalties.

Federal Law

The FTC can bring enforcement actions for unfair and deceptive trade practices under Section 5 of the FTC Act. Remedies can include injunctions, civil penalties, and audits.

Under the DMA, the US Postal Inspection Service can obtain temporary restraining orders and injunctions, as well as assess civil penalties up to US$2 million dollars.

The FCC can assess fines starting at US$4,000 for each violation of its contest rules.
Selected States

Arizona – Violation would be considered gambling and likely a class 1 misdemeanor. R.S. §§ 13-3303, 13-3304.

Arkansas – Consumers can file a lawsuit for violations of the prize promotion laws or consumer protection laws. AR Code § 4-102-103.

California – Violations of Cal. Bus. & Prof. Code § 17539.1 constitute unfair business practices and are likely enforceable in a civil action under Cal. Bus. & Prof. Code § 17200. That law also provides for injunctions and civil penalties not to exceed US$2,500 per violation. The penalties for engaging in illegal gambling, such as the operation of an illegal lottery, are a fine between US$100 and US$1000 and imprisonment in county jail not exceeding 6 months, or both. Cal. Pen. Code § 330.

Colorado – Can be up to US$10,000 per violation if the violation committed against an elderly person. Colorado Consumer Protection Act § 6-1-112(c).

Florida – Any person, firm, corporation, association, agent, or employee who violates any provision of this section or any of the rules and regulations made pursuant to this section shall be liable for a civil penalty of not more than US$1,000 for each such violation, which shall accrue to the state and may be recovered in a civil action brought by the Department of Agriculture and Consumer Services or the Department of Legal Affairs. Fl. Stat. §849.094(9)(b).

Georgia – Consumers can file a lawsuit for violations of the prize promotion laws or consumer protection laws. See e.g. O.C.G.A. §§ 10-1-390 et seq.

Illinois – Violations are generally considered an unfair practice under the Consumer Fraud and Deceptive Business Practices Act, which may subject the promoter to penalties and injunctions. Consumer can also bring class actions for intentional violations of the law and recover the greater of US$500 or twice the amount of pecuniary loss. 815 ILCS 525/40.

Massachusetts – An illegal lottery can result in fines of not more than US$2,000 or imprisonment up to 1 year. General Laws of Massachusetts 271, § 15.

New York – Every person, firm or corporation who coerces a retail dealer to participate in any promotion or advertising scheme or plan of the type set forth in subdivision one of this section shall be guilty of a Class B Misdemeanor. N.Y. Gen. Laws § 396-e(7).


Texas – Violations of sweepstakes law can give rise to a civil penalty of not less than US$5,000 or more than US$50,000 for each violation found. Actions can only be brought by the state Attorney General. Violations of gift offer law is a Class B misdemeanor for first offense, a Class A misdemeanor for a second offense committed within 5 years of the first conviction and a third degree felony for a third offense committed within five years of the first two convictions. They are also subject to deceptive trade practice action. Tex. Bus. & Com. Code §§ 621.251, 621.252.

RESTRICTIVENESS OF REGULATIONS

How restrictive are the legal obligations applicable to prize promotions?

Overall Summary

A prize promotion mechanic is highly likely to be prohibited if chance is the dominant factor and entrants are required to make a payment or purchase a product or a substantial expenditure of effort in order to enter. If there is no purchase or payment required to enter then, except for registrations requirements in a few states, it is likely the prize promotion can be offered as long as certain disclosures are made.

REGULARITY OF SANCTIONS

How frequently does the regulator impose serious sanctions for non-compliance?

Overall Summary

Regulators have not frequently imposed serious sanctions for non-compliance except in cases of promotion schemes that were merely a form of disguised gambling or misleading (e.g. a failure to adequately disclose an AMOE). There have been class actions filed under state unfair trade practice cases from time to time in connection with promotions where some purchase or payment was required (e.g. text to enter games where there was a premium text charge imposed).

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