



PRIZE PROMOTIONS AROUND THE WORLD

Denmark



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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.

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GOVERNING LAW

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

Name	Law or Code?
The Danish Marketing Practices Act	Law
The Danish Gambling Act	Law
The Danish Gambling Duty Act	Law

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

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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

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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.

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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;

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8. Conditions for delivery or pick up of the prize;
9. The period of limitation.

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 be 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

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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 (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 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.

KEY CONTACTS



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