



PRIZE PROMOTIONS AROUND THE WORLD

Hong Kong, SAR



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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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HONG KONG, SAR



Last modified 08 January 2019

GOVERNING LAW

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

Name	Law or Code?
Gambling Ordinance (Cap. 148 of the laws of Hong Kong) (the 'Gambling Ordinance')	Law
Gambling Regulations (Cap. 148A of the laws of Hong Kong)	Subsidiary legislation
Trade Promotion Competition Licence - Application Forms and Guide for Applicants	Guidance Note
Guidance Notes on Application for the Grant of Amusements with Prizes Licence	Guidance Note
Personal Data (Privacy) Ordinance (Cap. 486 of the laws of Hong Kong) (the 'Personal Data (Privacy) Ordinance')	Law
Places of Public Entertainment Ordinance (Cap. 172)	Law
Trade Descriptions Ordinance (Cap. 362 of the laws of Hong Kong) (the 'Trade Descriptions Ordinance')	Law
Generic Code of Practice on Television Advertising Standards	Code
Radio Code of Practice on Advertising Standards	Code

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Code of Practice of the Association of Accredited Advertising Agents of Hong Kong	Code
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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

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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).

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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.

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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?

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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.

RESTRICTIVENESS OF REGULATIONS

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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 complaint 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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