



PRIZE PROMOTIONS AROUND THE WORLD

Ireland



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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.

PRIZE PROMOTIONS AROUND THE WORLD

IRELAND



Last modified 10 January 2019

GOVERNING LAW

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

Name	Law or Code?
Advertising Standards Authority for Ireland's 'Code of Standards for Advertising and Marketing Communications in Ireland' ('ASAI Code')	Code
Gaming and Lotteries Acts 1956 to 2013 (Gaming and Lotteries Acts)	Law
Consumer Protection Act 2007 ('CPA')	Law
Unfair Terms in Consumer Contracts Regulations 1995 and 2000	Law
The Commission for Communications Regulation (ComReg) Code of Practice on Premium Rate Services	Code
European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011	Law
Data Protection Acts 1988 and 2018 ('Data Protection Acts')	Law

EXTRA-TERRITORIALITY

Do national regulators enforce rules against entities operating abroad?

PRIZE PROMOTIONS AROUND THE WORLD

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.

PRIZE PROMOTIONS AROUND THE WORLD

'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 (eg 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

PRIZE PROMOTIONS AROUND THE WORLD

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 (ie 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.

PRIZE PROMOTIONS AROUND THE WORLD

- 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:

PRIZE PROMOTIONS AROUND THE WORLD

- 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

PRIZE PROMOTIONS AROUND THE WORLD

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.

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