



PRIZE PROMOTIONS AROUND THE WORLD

Japan



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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? |
|---|--------------|
| Act against Unjustifiable Premiums and Misleading Representations (Act No. 134 of 1962) (the 'AAUPMR') | Law |
| Penal Code (Act No. 45 of 1907), Chapter XXIII. Crimes Related to Gambling and Lotteries (the 'Penal Code') | Code |

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

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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

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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

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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.

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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.

KEY CONTACTS



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