PRIZE PROMOTIONS
AROUND THE WORLD
Norway
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.
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 Lottery Act of 24 February 1995 no. 11 ('LA')</td>
<td>Law</td>
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<tr>
<td>The Marketing Control Act of 9 January 2009 no. 2 ('MCA')</td>
<td>Law</td>
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<td>Act of 4 December 1992 no. 127 relating to broadcasting ('The Broadcasting Act')</td>
<td>Law</td>
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<td>Act of 15 June 2018 no. 38 relating to the processing of personal data ('Personal Data Act')</td>
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<tr>
<td>The Gambling Act of 28 August 1992 no. 103('Gambling Act')</td>
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<td>The Horse Gambling Act of 1 July 1927 no. 3 ('Horse Gambling Act')</td>
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<tr>
<td>Regulation on prohibition of payment services for gambling of 19 February 2010 no. 184 (&quot;Payment Regulation&quot;)</td>
<td>Law</td>
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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.
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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;
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- 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.
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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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