



PRIZE PROMOTIONS AROUND THE WORLD

New Zealand



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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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NEW ZEALAND



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GOVERNING LAW

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

| Name | Law or Code? |
|--|--------------|
| Gambling Act 2003 ('Gambling Act') | Law |
| Fair Trading Act 1986 ('Fair trading Act') | Law |
| Privacy Act 1993 | Law |

EXTRA-TERRITORIALITY

Do national regulators enforce rules against entities operating abroad?

If any element of gambling is organized or conducted in or from New Zealand, it must comply with the Gambling Act.

The Gambling Act bans the advertisement or promotion in New Zealand of an overseas-based gambling activity (including prize promotions which meet the definition of gambling).

Otherwise, it is not illegal for someone in New Zealand to participate in gambling over the internet if that website is not in New Zealand.

SKILLS COMPETITIONS

Can a prize promotion be run that is based on skill?

Yes, but the winner must be determined only on the basis of skill and not chance, particularly if the entrant pays to enter (including buying a product in order to be eligible to enter).

If a prize promotion requires no purchase or consideration to enter, i.e. simply a skill question, the Fair Trading Act would apply. The main prohibitions under the Fair Trading Act are the prohibitions on misleading and deceptive conduct and false, misleading or unsubstantiated representations.

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If the outcome is partly based on skill and partly based on chance (for example a skill question, with the correct answers going into a draw) a prize promotion might be considered as an authorized gambling activity under the Gambling Act if it meets the requirements of a 'sales promotion scheme'. The requirements are listed below:

- Participation in the prize promotion requires purchase of the goods or services being promoted for a price not exceeding the usual retail price.
- The entrant is not required to pay direct or indirect consideration to enter the promotion (other than purchasing the relevant goods or services).
- The date or period over which the outcome of the promotion will be determined is clear to the entrant at the time and place of sale.
- The promotion is run by the creator, distributor or vendor of goods or services to promote those goods or services.
- The promotion does not involve a gaming machine nor a restricted or prohibited prize.

PRIZE DRAWS

Can a prize promotion be run where there is an element of chance in the selection of the winner?

A sweepstake is considered a lottery under the Gambling Act and as such will be permitted as a prize promotion if it meets the criteria of a 'sales promotion scheme' (defined in section regarding skill based competitions). Otherwise, the gambling will normally be unlawful unless the proceeds are applied or distributed for 'authorised purposes' which include a charitable purpose, a non-commercial purpose which is beneficial to the community, race meetings under the Racing Act 2003 or an electioneering purpose. Also, a license may be required from the Department of Internal Affairs, depending on the total value of the prizes and the turnover of the gambling.

Where a product purchase is not required and no other entry fee is paid to enter a prize draw, a license or permit is not required. This is because the entrant is not 'paying or staking consideration seeking to win money' and as such it does not amount to gambling. However, the Fair Trading Act would continue to apply (as above).

SELECTION OF WINNERS

Are there any requirements for the selection of winners and award of prizes?

Prize promotions that are run as 'sales promotion schemes' do not generally have specific requirements regarding the selection of winners and award of prizes.

Where a sales promotion scheme meets the definition of 'remote interactive gambling', as defined in the Gambling Act, including any aspect of on-line entry, the outcome of the gambling must be determined by way of a lottery i.e. among other things, the draw must take place after all the participants have entered (note daily draws are permitted).

JUDGES

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Are there any particular requirements in relation to judges or judging for skills competitions?

Competitions that are entirely skilled based have no requirements for judges or judging.

PRIZES

Are there any restrictions on the prizes awarded?

Where a prize promotion amounts to gambling, the prize being offered must not be prohibited under the Gambling Act. It is illegal to offer the following as prizes for a prize promotion:

- Firearms or explosives;
- Restricted weapons or air guns;
- Any form of liquor and alcohol;
- Tobacco products;
- Commercial sexual services;
- An object more than 50 years old that relates to Māori culture, history or society, and was brought into New Zealand by Māori people; and
- Vouchers or entitlements to any of the above.

REGISTRATION REQUIREMENTS AND FEES

Are there any registration requirements, or any fees/taxes payable?

Provided a prize promotion is undertaken as a 'sales promotion scheme' it will not require a license, regardless of the value of the prizes offered.

OTHER LOCAL REQUIREMENTS

Are there any other key local requirements?

If a prize promotion falls within the definition of gambling, it is critical that that the promotion fits within the definition of a 'sales promotion scheme' in the Gambling Act so that it is an authorized gambling activity for the purposes of the Gambling Act.

Note that the retail value of non-cash prizes must be disclosed to the customer prior to entry into the competition.

If a competition or promotion amounts to gambling but is not a 'sales promotion scheme', it is likely to be considered as either an illegal gambling activity, or another form of gambling where a license may be required.

The net proceeds of a gambling activity are required to be used for 'authorized purposes' (essentially, charitable purposes or purposes which benefit the community) so it is generally not feasible to obtain a

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license.

Under the Consumer Guarantees Act 1993, any good or service provided by the promoter of goods and services must be reasonably fit for purpose.

It is an offence under the Fair Trading Act to offer a prize having no intention to deliver it as offered.

The Fair Trading Act also prohibits misleading and deceptive conduct and making false, misleading and unsubstantiated representations.

For any personal information collected in connection with a prize promotion or competition, the Privacy Act 1993 requires that entrants are aware of:

- The fact that the information is being collected;
- The purpose for which it is being collected;
- The intended recipients of the information; and
- The name and address of the agency that is collecting the information and the agency that will hold the information.

TIMING

Is time required to ensure compliance (other than reviewing the terms and conditions)?

No.

TRANSLATIONS

Are the terms required to be translated by law?

None required.

PENALTIES FOR NON-COMPLIANCE

What are the penalties for non-compliance?

The Gambling Act provides for penalties for anybody who participates in unauthorized gambling (i.e. both promoters and participants).

Fines can be imposed of up to NZ\$50,000 (approx. US\$33,000) for organizations and up to NZ\$20,000 (approx. US\$13,000) for individuals. This includes anybody participating in remote interactive gambling and anybody who conducts the gambling.

Individuals involved in promoting unauthorized gambling may also face imprisonment for a maximum of one year.

The Gambling Act carries a fine of up to NZ\$10,000 (approx. US\$6,500) for advertising overseas gambling.

RESTRICTIVENESS OF REGULATIONS

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How restrictive are the legal obligations applicable to prize promotions?

The Gambling Act has limited compliance requirements for sales promotion schemes in New Zealand. There is no restriction on turnover or on the value of prizes awarded, and no license is required.

The key restriction is on 'remote interactive gambling' where, as noted, the prize winners must be chosen by way of a lottery.

REGULARITY OF SANCTIONS

How frequently does the regulator impose serious sanctions for non-compliance?

The Department of Internal Affairs (DIA) will investigate alleged breaches of the Gambling Act.

Cases are relatively rare as New Zealand generally has a reasonable level of compliance among corporates and unlawful gambling is not a usual part of New Zealand society. We are aware of competitors making complaints to the regulatory body in respect of prize competitions so it is important that compliance is built into planning of prize promotions. Finally, we note that the DIA operates a leniency and co-operation policy in relation to gambling enforcement.

KEY CONTACTS



Mark Williamson
Partner
DLA Piper New Zealand
mark.williamson@dlapiper.com
T: +64 9 300 3857



Rachel Taylor
Partner
DLA Piper New Zealand
rachel.taylor@dlapiper.com
T: +64 4 474 3256

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