



PRIZE PROMOTIONS AROUND THE WORLD

Sweden



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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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SWEDEN



Last modified 14 January 2019

GOVERNING LAW

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

| Name | Law or Code? |
|---|--------------|
| The Swedish Gambling Act (Sw. Spellag (2018:1138)) | Law |
| The Swedish Marketing Act (Sw. Marknadsföringslag (2008:486)) | Law |
| The Consolidated ICC Code of Advertising and Marketing Communication Practice (Sw. ICC:s regler för Reklam och Marknadskommunikation) | Code |
| The General Data Protection Regulation (EU) 2016/679 (Sw. Dataskyddsförordningen) | Law |

EXTRA-TERRITORIALITY

Do national regulators enforce rules against entities operating abroad?

The rules of the Swedish Gambling Act apply in relation to prize promotions offered in Sweden or targeting the Swedish market. In contrast, prize promotions not offered in Sweden or actively targeting the Swedish market will fall outside the scope of the Swedish Gambling Act.

Whether the Swedish Marketing Act will be applicable to marketing targeting Swedish consumers, but operated from abroad, will depend on whether the prize promotion is advertised from an EU/EEA member state or from another country. If the website/services are operated from an EU/EEA member state, the Swedish Marketing Act will not apply and the national regulator will not take action against such promotions. Instead, the rules of marketing in such member states will apply to the marketing. In contrast, if the website/services are operated from another country, for example the United States of America, and targets Swedish consumers, the rules of the Swedish marketing law will apply.

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SKILLS COMPETITIONS

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

Yes. However, please note that a Swedish gambling license may be required if the selection of the winner is not based solely on the participants' individual skills, if participation requires payment of a wager, stake or similar.

PRIZE DRAWS

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

Yes. However, please note that a Swedish gambling license is required if participation requires payment of a wager, stake or similar.

SELECTION OF WINNERS

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

Promotions must be performed in accordance with the conditions originally set forth by the promoter. Also, the same conditions must apply to all participants and the assessment of the contributions must be impartial and reliable. It is not permissible to select the winner in an arbitrary manner.

Please note that it is not sufficient to only contact the winner(s) of a competition. Instead, the results should be made as publicly available as the competition itself.

JUDGES

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

The criteria and mechanism for judging entries must be made known before, or at the time of, entry. Furthermore, the composition of the judging panel should be made known before, or at the time of, entry.

PRIZES

Are there any restrictions on the prizes awarded?

No. However, extensive information concerning the prizes, namely the number, value and type of prize, must be provided before, or at the time of, entry. Also, the promoter is required to provide information regarding whether or not the prize(s) may be exchanged for a cash substitute equal to its value and whether or not the winner may be liable to pay taxes.

REGISTRATION REQUIREMENTS AND FEES

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

Registration Requirements

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For chance-based prize promotions, where participation requires payment of a wager, stake or similar, a Swedish gambling license is required.

No registration requirements apply to skill-based prize promotions or chance-based prize promotions which do not require payment of a wager, stake or similar.

Fees/Taxes payable

The winners in a skill-based promotional competition may be liable to pay income tax and the promoter may be liable to pay social security contributions on the prizes.

For chance-based prize promotions, where participation requires payment of a wager, stake or similar, the promoter may be liable to pay Swedish gambling tax.

OTHER LOCAL REQUIREMENTS

Are there any other key local requirements?

The promotion of prize promotions must comply with general marketing law requirements, such as being legal, decent, honest and truthful.

Prize promotions must be performed in accordance with the conditions originally set forth by the promoter. Also, the same conditions must apply to all participants and the assessment of the contributions must be impartial and reliable. It is not permissible to select the winner in an arbitrary manner.

Furthermore, it is important to provide sufficient information when organizing a competition. The following list is a compilation of the information that should be provided when organizing a promotional competition:

- The promoters name, address and contact details.
- All the terms and conditions associated with the promotion, including time limits and other restrictions or limitations, should be indicated in a clear and exhaustive manner.
- A detailed and unambiguous description of the assignment, and how the winner is to be selected. The participant must be able to assess the nature and the objective of the competition.
- All costs, fees and confirmation of whether or not there is a purchase requirement associated with the participation.
- A clear and comprehensive description of the assessment and the decisive factors when choosing a winner. Also, if applicable, the composition of the judging panel.
- Extensive information concerning the prizes, namely the number, value and sort. Also, one is required to provide information regarding whether or not the prizes may be exchanged for a cash substitute equal to its value.
- When and how the results will be publicized and the winners will be contacted. Please note that it is not sufficient to only contact the winner(s) of a competition. Instead, the results should be

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made as publicly available as the competition itself.

- Whether or not the winner may be liable to pay any taxes.
- If the winner or winning contributions will be used in any other context; information concerning such use must be provided.
- Finally, if personal data will be processed, one must provide the registered person with information regarding the processing and the registered person's rights. It may also be necessary to obtain consent from the participants.

Note: Where there are space limitations e.g. Twitter / banner ads, you must communicate as much information as possible and direct the entrant to where all significant terms are 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 privacy policy is in place).

TRANSLATIONS

Are the terms required to be translated by law?

There is no express legal requirement to translate the terms and conditions. However, the promoter is liable for ensuring that the participants understand the terms and conditions. Given that is the case, the preferred approach in Sweden is to translate the terms and conditions into Swedish.

PENALTIES FOR NON-COMPLIANCE

What are the penalties for non-compliance?

Operation or promotion of unlicensed gambling activities

The operation or promotion of unlicensed gambling activities is punishable by fines or imprisonment of up to six years.

The Swedish Gambling Authority may also issue orders and prohibitions under penalty of fines. Please note that there are no set limits for the fines, the Swedish Gambling Authority may determine an appropriate amount intended to have a deterrent effect.

In relation to licensed gambling operators, the Swedish Gambling Authority may also issue a fine between SEK 5,000 (approx. US\$520) and a maximum of 10 % of the license holder's turnover in the preceding financial year.

Violations of the Swedish Marketing Act

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Violations of the Swedish Marketing Act may lead to the following sanctions:

- Orders or prohibitions under penalty of fines. It is not uncommon that such sanctions amount to SEK 1,000,000 (approx. US\$104,000) but there are no maximum fines.
- Marketing Disturbance Fee of SEK 5,000 – SEK 5,000,000 (approx. US\$520 – US\$520,000), but no more than ten percent of the annual turnover. It should be noted that this sanction is rarely invoked; and
- Damages to affected parties.

RESTRICTIVENESS OF REGULATIONS

How restrictive are the legal obligations applicable to prize promotions?

The Swedish Gambling Act entered into force on 1 January 2019 and is less restrictive than the previous regime. However, 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?

The Swedish Gambling Act entered into force the on 1 January 2019, and so far, no enforcement actions have been taken. It remains to be seen how actively the Swedish regulator will enforce the rules in relation to prize promotions.

The Swedish Consumer Agency regularly issues orders and injunctions under penalty of fines to prevent violations of the Swedish Marketing Act.

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