



PRIZE PROMOTIONS ACROSS THE WORLD



ABSTRACT

Prize promotions are an effective and increasingly popular marketing tool used globally for attracting 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 to their attention as soon as possible potentially problematic issues. Our advisors are available to offer more detailed advice including in respect of jurisdictions not detailed here. A list of our contacts is included. Please contact us if you require either advice in respect of the jurisdictions which are listed or those which are not listed.

Please note – this booklet is not intended to give advice in relation to gambling it being understood that prize promotions can stray into the realm of gambling regulation. DLA Piper has a specialist Gambling Team who provide first class multi-jurisdictional advice on gambling law and regulation. Please email them at gambling@dlapiper.com for further assistance.

INTRODUCTION

Welcome to the second edition of our Prize Promotions Handbook.

We have seen that increasingly our clients run prize promotions cross jurisdictionally and on short time scales from idea generation to launch. This second edition promises a new format with guidance from new contributors: Australia, Hong Kong S.A.R., Japan, Portugal, Romania, Russia, Turkey, UAE – Dubai, and USA.

The purpose of this booklet is to introduce you to some of the key requirements surrounding prize promotions. It provides summaries for the following jurisdictions:

Australia
Austria
Belgium
Denmark
France
Germany
Hong Kong S.A.R.
Italy
Japan
Netherlands
Norway
Portugal
Romania
Russia
Spain
Sweden
Turkey
UAE – Dubai
United Kingdom
United States of America

It is not intended to be an exhaustive guide to all rules and regulations relating to promotions, but aims to simplify what are often complex provisions into a more manageable summary and to highlight areas of potential concern to promoters.

The questions we have considered for each jurisdiction are as follows:

1. What is the applicable Governing law or code?
2. “Skills competitions” – can a promotion be run that is based on skill and where a prize is awarded?
3. “Prize draws” – can a promotion be run where there is an element of chance in the selection of the winner and where a prize is awarded?
4. Are there any requirements for the selection of winners and the award of prizes?
5. Are there any restrictions on the prizes awarded?
6. Are there any registration requirements and/or fees or taxes that are payable?
7. Are there any other key local requirements?
8. What are the penalties for non-compliance?

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This handbook is provided to you as a courtesy, and it does not establish a client relationship between **DLA Piper** and you, or any other person or entity that receives it. It provides a general overview of the prize promotions rules currently in force in 20 jurisdictions. It is a general reference document and should not be relied upon as legal advice. The application and effect of any law or regulation upon a particular situation can vary depending upon the specific facts and circumstances, and so you should consult with a lawyer regarding the impact of any of these regimes in any particular instance.

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I. AUSTRALIA

I.I AUSTRALIAN CAPITAL TERRITORY (“ACT”)

GOVERNING LAW/CODES

Lotteries Act 1964 (ACT)

Gambling and Racing Control (Code of Practice) Regulation 2002

AUTHORITY

ACT Gambling and Racing Commission

SKILLS COMPETITIONS – CAN A PROMOTION BE RUN THAT IS BASED ON SKILL AND WHERE A PRIZE IS AWARDED?

Yes.

When the determination of the prize winner involves skill only (i.e. no element of chance is involved), an approval is not required.

In this context, “skill” means any competition that involves a decision or input by the participant, such as guessing a sound or number or weight, submitting a description of an item or activity or describing or stating reasons for liking something. Skill may also include any event or competition that is judged by people qualified in a field relevant to the event or competition.

PRIZE DRAWS – CAN A PROMOTION BE RUN WHERE THERE IS AN ELEMENT OF CHANCE IN THE SELECTION OF THE WINNER AND WHERE A PRIZE IS AWARDED?

Yes.

However a permit is required if the promotion involves free entry with the distribution of prizes being determined by any means that includes an element of chance or a mixture of skill and chance.

A permit is not required if the only prizes offered are rebates or discounts off goods sold by the business holding the promotion and the promotion is open to all customers of that business.

PRIZE DRAWS – SELECTION OF WINNERS AND REQUIREMENTS FOR AWARDING PRIZES

Unless otherwise approved by the ACT Gambling and Racing Commission, the draw must occur within 12 months of the issue date of the permit.

The determination of the winner must be undertaken in a transparent manner with each participant having an equal chance of winning the competition.

Winning must not be contingent on the participant being present at the draw.

Australia
 Austria
 Belgium
 Denmark
 France
 Germany
 Hong Kong S.A.R
 Italy
 Japan
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 United States of America

If more than one prize is being determined at a draw, the major prize must be drawn first unless winning entries of lesser prizes are eligible to be redrawn.

If a prize winner cannot be contacted or has not collected their prize 3 months after the initial draw, a redraw or a ‘second chance draw’ must be conducted so as to distribute the prize.

PRIZE DRAWS – RESTRICTIONS ON PRIZES AWARDED

There is no cap on the value of prizes, however the total application fee will be dependent on the prize value.

Prohibited prizes

Where participants are (or could be) under the age of 18 years, the Commission will refuse to approve an application where the Commission considers the prizes to be unlawful or inappropriate e.g. liquor products, tobacco products or dangerous goods.

Where prizes include alcohol, lottery entrants must be aged 18 years or older.

If a prize involves travel, all relevant information must be included in the terms of entry.

Details of departure point and destination, the number of people included in the fare, class of travel, inclusion of transfers, name and location of accommodation, duration of stay, inclusions, date by which travel must be taken, availability, transferability, restrictions and spending money must be listed if applicable.

PRIZE DRAWS – REGISTRATION REQUIREMENTS AND FEES/TAXES PAYABLE

A permit must be obtained from the ACT Gambling and Racing Commission.

The fee to apply for a trade permit will depend on the prize value:

Prize Value	Fee*
\$1,000 or less	\$64
\$1,001 to \$2,500	\$123
\$2,501 to \$5,000	\$184
\$5,001 to \$10,000	\$265
\$10,001 to \$50,000	\$512
\$50,001 to \$100,000	\$732
\$100,001 to \$200,000	\$1,460
greater than \$200,000	\$2,927

*Fees as at 24 January 2014 and subject to change.

PRIZE DRAWS – OTHER KEY SPECIFIC LOCAL REQUIREMENTS

Where entry is by telephone, SMS or MMS, the cost to the caller must not exceed 55 cents (including GST).

Australia

Austria
Belgium
Denmark
France
Germany
Hong Kong S.A.R.
Italy
Japan
Netherlands
Norway
Portugal
Romania
Russia
Spain
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Information that must be included in the promotional material:

- The Permit number.
- The full terms of the trade promotion or, if not possible to publish the full terms in the advertising material, where the full terms can be found.
- The actual cost of each call or connection if the lottery is using communication or delivery revenue sharing arrangements (such as SMS, MMS, 190 phone numbers or other similar electronic methods, or postal arrangements) as a mode of entry to the promotion.
- Entry forms must also include full details of the manner in which the results of the lottery will be made known.

PRIZE DRAWS – PENALTIES FOR NON-COMPLIANCE

Penalties apply for various offences under the Lotteries Act, including fines and/or imprisonment for conducting lotteries that are not approved or exempt from approval.

1.2 NEW SOUTH WALES

GOVERNING LAW/CODES

Lotteries and Art Unions Act 1901 no 34 (NSW)

Licensing and Registration (Uniform Procedures) Act 2002 (NSW)

Lotteries and Art Unions Regulation 2007 (NSW)

GOVERNING AUTHORITY

Office of Liquor, Gaming and Racing

SKILLS COMPETITIONS – CAN A PROMOTION BE RUN THAT IS BASED ON SKILL AND WHERE A PRIZE IS AWARDED?

Yes.

A permit is not required for a game of skill whereby the winners are determined by qualified or expert judges, the decision is judged against set criteria and there is no element of chance involved.

Australia

Austria

Belgium

Denmark

France

Germany

Hong Kong S.A.R

Italy

Japan

Netherlands

Norway

Portugal

Romania

Russia

Spain

Sweden

Turkey

UAE – Dubai

United Kingdom

United States of America

PRIZE DRAWS – CAN A PROMOTION BE RUN WHERE THERE IS AN ELEMENT OF CHANCE IN THE SELECTION OF THE WINNER AND WHERE A PRIZE IS AWARDED?

Yes.

However a permit is required for all trade promotion lotteries and games of chance conducted in NSW.

PRIZE DRAWS – SELECTION OF WINNERS AND REQUIREMENTS FOR AWARDING PRIZES

Entry must be free, although a requirement to purchase goods or services at the normal retail value is allowed.

Participants cannot be required to redeem loyalty or reward points for entry into a trade promotion lottery.

An entrant must not be required to call or message a telephone service on more than one occasion to provide particulars or to answer a question or for any other reason in order to obtain a right to a valid entry.

Where entry is by telephone, SMS or MMS, the means of entry cost to the caller must not exceed 50 cents (plus GST).

Where a computerised system is used to decide the winners of prizes, the application must be accompanied by two reports – an Appraisal Report and a Draw Procedure Report.

For trade promotion lotteries involving instant win prizes, additional conditions are required to be met, including printing and lodging requirements.

For prizes worth more than \$10,000, the draw and the announcement of the prize winner(s) must be scrutinized by an independent person unless otherwise approved by the Department.

At the end of 3 months, if the prize remains unclaimed, the organization/permit holder can write to the Department for permission to redraw and send a letter to the Department setting out the full details of the steps that were taken to contact the winner and deliver the prize.

PRIZE DRAWS – RESTRICTIONS ON PRIZES AWARDED

Restrictions on the value of prizes:

There is no cap on the value of prizes, however the total application fee will be dependent on the prize value.

Prohibited prizes:

- Tobacco products in any form.
- Firearms or ammunition.
- Weapons.
- Cosmetic surgery or other procedure designed to improve personal appearance.
- Alcohol – if the maximum quantity on offer exceeds 20 litres.
- Alcohol that is to be consumed on licensed premises.

Australia

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Belgium

Denmark

France

Germany

Hong Kong S.A.R

Italy

Japan

Netherlands

Norway

Portugal

Romania

Russia

Spain

Sweden

Turkey

UAE – Dubai

United Kingdom

United States of America

PRIZE DRAWS – REGISTRATION REQUIREMENTS AND FEES/TAXES PAYABLE

A permit must be obtained from the Office of Liquor, Gaming and Racing.

The fee to apply for a trade permit will depend on the prize value:

Prize value in NSW	Application fee*	
	Online	via other method
\$10,000 or less	\$80	\$138
\$10,001 to \$50,000	\$320	\$385
\$50,001 to \$100,000	\$585	\$660
\$100,001 to 200,000	\$1,120	\$1,232
\$200,001 or more	\$2,185	\$2,400
Multiple lottery Class B (total prize value capped at \$50,000)	\$320	\$385
Multiple lottery Class C (total prize value capped at \$100,000)	\$585	\$660

*Fees as at 24 January 2014 and subject to change.

PRIZE DRAWS – OTHER KEY SPECIFIC LOCAL REQUIREMENTS

Information that must be included in the promotional material:

- The full terms of the trade promotion or, if not possible to publish the full terms in the advertising material, where the full terms can be obtained.
- The name and address of the person or business for whose benefit the trade promotion lottery is conducted.
- Details of each prize and its recommended retail value – including any conditions (for example, that it must be taken before a certain date).
- The period of the promotion, especially the closing date (and time) for entry into the competition.
- If the nature of the lottery means that it is likely that a prize will not be awarded, the chance of winning a prize.
- Any qualifying requirements, including the category of persons entitled to take part or excluded.
- The method of and preconditions (e.g. proof of purchase) to entering into the promotion.
- The method used to decide prize winners.
- Where and when the names of prize winners will be published.
- Any arrangement for a second chance draw for unclaimed prizes.
- The permit number (i.e., “NSW Permit No. TPL...”).

Australia

Austria
Belgium
Denmark
France
Germany
Hong Kong S.A.R
Italy
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Turkey
UAE – Dubai
United Kingdom
United States of America

PRIZE DRAWS – PENALTIES FOR NON-COMPLIANCE

If an party does not comply with a permit issued by the Office of Liquor, Gaming and Racing. The Office can:

- prohibit further fundraising or community gaming activities;
- stop further actions by the charity’s management committee in dealing with the charity’s property (which includes land, buildings, investments and cash);
- appoint an administrator to conduct the affairs and activities of a charity;
- refer the matter to the appropriate authorities for them to consider legal proceedings;
- refer the matter to the police or to other government agencies for appropriate action;
- refer issues concerning trustees to the Attorney General’s Department for consideration of matters under the *Charitable Trusts Act 1993* (suspend or remove trustees and employees, appointment of new trustees, etc.).

Penalties also apply for offences against the Lotteries and Art Unions Act, including severe penalties for serious offences such as misappropriation of funds or prizes or fraudulent conduct.

1.3 NORTHERN TERRITORY (“NT”)

GOVERNING LAW/CODES

Gaming Control Act 2000 (NT)

Gaming Control (Community Gaming) Regulations 2011 (NT)

Northern Territory Code of Practice for Responsible Gambling

AUTHORITY

Licensing, Regulation and Alcohol Strategy, Department of Justice

SKILLS COMPETITIONS – CAN A PROMOTION BE RUN THAT IS BASED ON SKILL AND WHERE A PRIZE IS AWARDED?

Yes.

A permit is not required if the promotion involves a game of skill which has no element of chance.

PRIZE DRAWS – CAN A PROMOTION BE RUN WHERE THERE IS AN ELEMENT OF CHANCE IN THE SELECTION OF THE WINNER AND WHERE A PRIZE IS AWARDED?

Yes.

A permit is required for the conduct of a ‘major’ trade lottery (i.e. where the total prize value is greater than \$5,000).

However, the Northern Territory recognizes permits issued by other Australian states and territories. If the promoter holds a current permit to run the trade lottery in another Australian state or territory, the promoter may conduct the trade lottery in the Northern Territory without the need to obtain a Northern Territory permit.

Australia

Austria

Belgium

Denmark

France

Germany

Hong Kong S.A.R

Italy

Japan

Netherlands

Norway

Portugal

Romania

Russia

Spain

Sweden

Turkey

UAE – Dubai

United Kingdom

United States of America

PRIZE DRAWS – SELECTION OF WINNERS AND REQUIREMENTS FOR AWARDING PRIZES

Entry must be free of charge. However, entries may be conditional on purchase of goods or services.

Each entry must have an equal probability of winning the major prize.

No employees of the business or family members of those employees may participate in the trade promotion lottery.

Prizes unclaimed for more than 3 months after the date of the draw must be surrendered to the Director of Licensing.

PRIZE DRAWS – RESTRICTIONS ON PRIZES AWARDED

Restrictions on the value of prizes: Nil.

Prohibited prizes:

- Liquor must not be the ‘principal prize’ (this includes prizes consisting solely of money and liquor).
- Firearms.
- Weapons.
- Ammunition.
- Explosives.
- Tobacco products.

PRIZE DRAWS – REGISTRATION REQUIREMENTS AND FEES/TAXES PAYABLE

There is no fee to obtain a permit for ‘major’ trade lotteries.

PRIZE DRAWS – OTHER KEY SPECIFIC LOCAL REQUIREMENTS

Information that must be included in the promotional material:

- The terms of the promotion.
- Start and closing dates.
- How to enter.
- The date, time and place of the draw.
- Details of how the winners are determined.
- How winners will be notified.
- Permit number (where applicable).

Australia

Austria

Belgium

Denmark

France

Germany

Hong Kong S.A.R

Italy

Japan

Netherlands

Norway

Portugal

Romania

Russia

Spain

Sweden

Turkey

UAE – Dubai

United Kingdom

United States of America

If the promoter advertises, gives information or issues publicity about the lottery before a permit is granted, the promoter must state in the information or publicity that the lottery is subject to the grant of a permit and will not proceed if a permit is not granted.

Prizes subject to restrictions and conditions, such as travel prizes, must clearly display the term “Conditions Apply” on the ticket and any of the trade lottery advertising material.

PRIZE DRAWS – PENALTIES FOR NON-COMPLIANCE

Depending on the nature of the non-compliance and the findings of any investigations by the director, the outcome could include directions being issued by the director to either:

- invalidate the draw and direct another draw to be undertaken un the supervision of the director and under appropriate conditions.
- cancel the lottery or game of chance and undertake appropriate actions as required by the director.
- direct the organiser to adopt, vary or cease practice in the conduct of the lottery or game of chance.

Serious breaches of the act or regulations may result in severe penalties, including fines and imprisonment.

I.4 QUEENSLAND (“QLD”)

GOVERNING LAW/CODES

Charitable and Non-Profit Gaming Act 1999 (QLD)

AUTHORITY

Office of Liquor, Gaming and Racing

SKILLS COMPETITIONS – CAN A PROMOTION BE RUN THAT IS BASED ON SKILL AND WHERE A PRIZE IS AWARDED?

Yes.

A game of skill which has no element of chance is not regulated and therefore not subject to the conditions noted.

However, guessing competitions are considered to be games of chance.

PRIZE DRAWS – CAN A PROMOTION BE RUN WHERE THERE IS AN ELEMENT OF CHANCE IN THE SELECTION OF THE WINNER AND WHERE A PRIZE IS AWARDED?

Yes.

No permit is required but the promotion must comply with certain requirements if it is a game of chance.

Australia
Austria
Belgium
Denmark
France
Germany
Hong Kong S.A.R
Italy
Japan
Netherlands
Norway
Portugal
Romania
Russia
Spain
Sweden
Turkey
UAE – Dubai
United Kingdom
United States of America

PRIZE DRAWS – SELECTION OF WINNERS AND REQUIREMENTS FOR AWARDING PRIZES

If an entrant is required to buy goods to be eligible to enter, the cost of buying the goods must be no more than the prevailing market value of those goods.

Unclaimed prizes must be kept for 3 months from the day of the draw. After that, another winner must be drawn.

PRIZE DRAWS – RESTRICTIONS ON PRIZES AWARDED

Restrictions on the value of prizes: Nil

Prohibited prizes:

- Tobacco product.
- Surgery.
- A weapon or ammunition.
- Any other item that the sale and acquisition of which is restricted by legislation of the State or Commonwealth. This includes weapons restricted by the *Weapons Categories Regulation 1997*.
- A ticket or other chance in a game that is not approved under a gaming act.

PRIZE DRAWS – REGISTRATION REQUIREMENTS AND FEES/TAXES PAYABLE

N/A.

Permits are not required.

PRIZE DRAWS – OTHER KEY SPECIFIC LOCAL REQUIREMENTS

Information that must be included in the promotional material:

- Eligibility requirements for entrants.
- Description and retail value of each prize.
- The closing and drawing dates.
- Full terms of the trade promotion or, if not possible to publish the full terms in the advertising material, where the full terms can be found.

PRIZE DRAWS – PENALTIES FOR NON-COMPLIANCE

There are various penalty provisions in the Charitable and Non-Profit Gaming Act, including failing to comply with the rules of the promotion and failing to comply with various record-keeping requirements. Monetary penalties may be imposed.

Australia

Austria

Belgium

Denmark

France

Germany

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Japan

Netherlands

Norway

Portugal

Romania

Russia

Spain

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Turkey

UAE – Dubai

United Kingdom

United States of America

1.5 SOUTH AUSTRALIA (“SA”)

GOVERNING LAW/CODES

Lottery and Gaming Act 1936 (SA)

Lottery and Gaming Regulations 2008 (SA)

AUTHORITY

Office of the Liquor and Gambling Commissioner

SKILLS COMPETITIONS – CAN A PROMOTION BE RUN THAT IS BASED ON SKILL AND WHERE A PRIZE IS AWARDED?

Yes.

Where a promotion is deemed to be a “game of skill”, a permit is not required regardless of the prize value. If however there is any random element to the prize draw (even where an entrant has answered a game of skill question first, but a winner is then drawn randomly from all correct entries) a permit is required.

PRIZE DRAWS – CAN A PROMOTION BE RUN WHERE THERE IS AN ELEMENT OF CHANCE IN THE SELECTION OF THE WINNER AND WHERE A PRIZE IS AWARDED?

Yes.

However a permit is required for a ‘major’ trade promotion lottery which is where the total value (nationally) of all prizes in the lottery exceeds \$5,000 or the prizes include both instant and drawn prizes (regardless of the value of the prizes).

A permit is not required for ‘minor’ trade promotion lotteries (i.e. promotions that are not ‘major’ trade promotion lotteries), however they must comply with the minor trade promotion lottery rules.

PRIZE DRAWS – SELECTION OF WINNERS AND REQUIREMENTS FOR AWARDING PRIZES

The value of the prize advertised in the terms must reflect the accurate retail value of the prize.

A trade promotion lottery must not be drawn electronically unless the system has been approved by the Minister.

If a permit has been obtained:

- If any of the prizes remain unclaimed 3 months after the draw, the organization must notify the Minister and directions will be given on how to dispose of the prize; or
- If the prize is perishable, the organization may sell the prize and retain the proceeds of the sale until claimed by the winner or until given directions by the minister. Prizes involving a limited timeframe for use (tickets to a specific event) are not considered perishable.

Australia
 Austria
 Belgium
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 United States of America

If a permit has not been obtained and the prize is unclaimed:

- The organization must retain each prize for 1 month after the draw; and
- if unclaimed after 1 month, the organization may dispose of the prize and the winner will be taken to have forfeited any right to the prize; or
- if the prize is perishable and has not been claimed by the winner by the time it is likely to deteriorate, the organization may dispose of the prize and the winner will be taken to have forfeited the prize.

PRIZE DRAWS – RESTRICTIONS ON PRIZES AWARDED

Restrictions on the value of prizes: There is no cap on the value of prizes, however the application fee value will be dependent on the total prize value.

Prohibited prizes:

- Tobacco products.
- Firearms, antique firearms and ammunition.
- Dangerous articles and prohibited weapons.
- Cosmetic surgery.
- Any goods or services the sale of which would be an offence in SA.

PRIZE DRAWS – REGISTRATION REQUIREMENTS AND FEES/TAXES PAYABLE

A permit must be obtained from the Office of the Liquor Gambling Commissioner.

The fee to apply for a trade permit will depend on the prize value:

Prize Value	Fee*
< \$10,000	\$175
\$10,001 to \$50,000	\$642
\$50,001 to \$100,000	\$1,121
\$100,001 to \$200,000	\$1,923
greater than \$200,000	\$3,525

*Fees as at 24 January 2014 and subject to change.

PRIZE DRAWS – OTHER KEY SPECIFIC LOCAL REQUIREMENTS

Information that must be included in the promotional material:

All advertisements of a major trade promotion lottery (other than advertisements on television, radio or at the cinema) must contain the following information:

- The name and address of the trader.
- The licence number.

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- The duration of the lottery.
- The nature and value of the prizes to be won.
- The number of draws in the lottery and the date, place and time for the drawing of the lottery.
- The date on which and method by which participants in the lottery will be advised of the results of the drawing of the lottery.

All advertisements of a trade promotion lottery (whether minor, major or instant prize) on television, radio or at the cinema must contain the following information:

- The permit/licence number has been granted. The permit number must appear on all advertising.
- How a person may enter the lottery.
- The nature and value of the prizes to be won.
- How and where to get a copy of the full terms of the lottery.

No advertising of a major or instant prize trade promotion lottery can commence until the application has been approved as a trade promotion lottery.

PRIZE DRAWS – PENALTIES FOR NON-COMPLIANCE

Penalties may be imposed under the Lottery and Gaming Act and Regulations. Serious breaches of the Act and Regulations may attract monetary penalties.

I.6 TASMANIA (“TAS”)

GOVERNING LAW/CODES

Gaming Control Act 1993 (TAS)

Gaming Control Regulations 2004 (TAS)

AUTHORITY

Liquor and Gaming; Department of Treasury and Finance

Australia
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SKILLS COMPETITIONS – CAN A PROMOTION BE RUN THAT IS BASED ON SKILL AND WHERE A PRIZE IS AWARDED?

No.

The winner of a trade promotion must be determined by chance. A trade promotion based on skill does not fall within the definition of trade promotion in Tasmania.

PRIZE DRAWS – CAN A PROMOTION BE RUN WHERE THERE IS AN ELEMENT OF CHANCE IN THE SELECTION OF THE WINNER AND WHERE A PRIZE IS AWARDED?

Yes.

No permit is required for trade promotion lotteries, however to be a legitimate trade promotion the below steps must be followed:

1. A customer may enter a trade promotion only by purchasing specified goods and/or services. The person conducting the trade promotion may determine what goods and/or services entitle customers to enter;
2. The goods and/or services must be sold at the regular retail price. There should be no cost to enter the trade promotion EXCEPT the regular purchase price of goods and/or services that are part of the promotion; and
3. The winner of the promotion must be determined by chance.

If any of these rules are broken, the trade promotion may actually be an unauthorised lottery.

PRIZE DRAWS – SELECTION OF WINNERS AND REQUIREMENTS FOR AWARDING PRIZES

There must be no cost of entry, though it may be a condition of entry that goods or services must first be purchased in order to participate. If making a purchase is necessary to enter a trade promotion:

- the cost of the goods or services must not exceed the prevailing market price; and
- determination of the market price lies with the Department of Liquor and Gaming and Department of Treasury and Finance.

If in doubt as to whether the amount charged exceeds the market price, details may be submitted to the Department for determination. If it is determined that the amount being charged exceeds the market price of the goods or services, the scheme would be deemed a lottery and would be unlawful.

PRIZE DRAWS – RESTRICTIONS ON PRIZES AWARDED

Restrictions on the value of prizes: Nil.

Prohibited prizes: Nil.

PRIZE DRAWS – REGISTRATION REQUIREMENTS AND FEES/TAXES PAYABLE

N/A.

Permits are not required.

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PRIZE DRAWS – OTHER KEY SPECIFIC LOCAL REQUIREMENTS

A trade promotion lottery must involve the promotion of a business.

PRIZE DRAWS – PENALTIES FOR NON-COMPLIANCE

Penalties may be imposed for breaching the legislation. Serious penalties apply for conducting unauthorised lotteries, including large fines and imprisonment.

1.7 VICTORIA (“VIC”)

GOVERNING LAW/CODES

Gambling Regulation Act 2003 (VIC)

Gambling Regulation Regulations 2005 (VIC)

Gambling Regulation Amendment (Licensing) Act 2009 (VIC)

Gambling Regulation Amendment Regulations 2012 (VIC)

AUTHORITY

Victorian Commission for Gambling Regulation – Minor Gaming Unit

SKILLS COMPETITIONS – CAN A PROMOTION BE RUN THAT IS BASED ON SKILL AND WHERE A PRIZE IS AWARDED?

Yes.

A game of skill with no element of chance is not regulated and therefore the conditions noted do not apply.

PRIZE DRAWS – CAN A PROMOTION BE RUN WHERE THERE IS AN ELEMENT OF CHANCE IN THE SELECTION OF THE WINNER AND WHERE A PRIZE IS AWARDED?

Yes.

However, a permit is required if:

- the promotion promotes the products or services of a trade or business and offers prizes where winners are selected by a method which includes an element of chance; and
- the total retail value of all prizes in the promotion exceeds \$5,000.

A permit is not required if:

- the total value of the prizes does not exceed \$5,000. However, the trade promotion lottery must still be conducted in accordance with the conditions.

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PRIZE DRAWS – SELECTION OF WINNERS AND REQUIREMENTS FOR AWARDING PRIZES

Winners of prizes must be advised in writing.

Where the prize is worth more than \$250, the names of prize winners must be published:

- in a newspaper circulating generally in Victoria; or
- if the lottery was advertised solely through a trade journal, promotional magazine, that publication; or
- if the value of the prizes is \$500 or less, a newspaper circulating the area in which the trade promotion lottery was held.

If the prize is unclaimed and the terms of the permit provide that the Permit holder may hold a redraw, and reasonable efforts have been made to identify the winner, a redraw can be held.

PRIZE DRAWS – RESTRICTIONS ON PRIZES AWARDED

Restrictions on the value of prizes: Nil.

However, a full description of each prize, including its retail value, must be disclosed.

Prohibited prizes:

- Cigarettes, tobacco or tobacco products.
- Firearms.
- Prostitution services.

PRIZE DRAWS – REGISTRATION REQUIREMENTS AND FEES/TAXES PAYABLE

A permit must be obtained from the Victorian Commission for Gambling Regulation – Minor Gaming Unit. A trade promotion lottery permit costs \$333.80 (This fee is as at 1 June 2013 and is subject to change.)

PRIZE DRAWS – OTHER KEY SPECIFIC LOCAL REQUIREMENTS

No entry fee shall be required from any person for the right to participate in the lottery.

The cost of entering by telephone call, SMS or post must not exceed 60 cents.

Information that must be included in the promotional material:

- The terms of the promotion.
- Where and when the lottery will be drawn.
- The name and date of the publication in which the names of the winners will be published.
- Permit number.

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PRIZE DRAWS – PENALTIES FOR NON-COMPLIANCE

Monetary penalties apply for breaches of the Gambling Regulation Act. Other disciplinary action may also be taken, including suspension or withdrawal of the trade promotion permit.

1.8 WESTERN AUSTRALIA (“WA”)

GOVERNING LAW/CODES

Gaming And Wagering Commission Act 1987 (WA)

Gaming and Wagering Commission Regulations 1988 (WA)

AUTHORITY

Department of Racing, Gaming and Liquor

SKILLS COMPETITIONS – CAN A PROMOTION BE RUN THAT IS BASED ON SKILL AND WHERE A PRIZE IS AWARDED?

Yes.

A game of skill with no element of chance is not regulated and therefore the conditions noted do not apply.

PRIZE DRAWS – CAN A PROMOTION BE RUN WHERE THERE IS AN ELEMENT OF CHANCE IN THE SELECTION OF THE WINNER AND WHERE A PRIZE IS AWARDED?

Yes.

A permit is not required, so long as the trade promotion complies/is conducted in accordance with certain conditions detailed below.

PRIZE DRAWS – SELECTION OF WINNERS AND REQUIREMENTS FOR AWARDING PRIZES

The draw must be conducted within one month of the closure of the lottery.

Where practicable, members of the public must be afforded the opportunity to witness the draw.

Where not practicable, audit records confirming the prize draw must be made available to an authorised officer of the Gaming and Wagering Commission or a Police Officer upon request.

All advertising must provide a description of the prizes and must contain the terms of the lottery or direct contestants to where the terms can be found.

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PRIZE DRAWS – RESTRICTIONS ON PRIZES AWARDED

Restrictions on the value of prizes: Nil.

Prohibited prizes:

Cosmetic, surgical and medical procedures.

PRIZE DRAWS – REGISTRATION REQUIREMENTS AND FEES/TAXES PAYABLE

N/A.

PRIZE DRAWS – OTHER KEY SPECIFIC LOCAL REQUIREMENTS

There shall be no cost to enter the lottery.

If the entry is via a telephone call or other electronic medium, the cost of the call must not exceed 55 cents.

If entry is via the Internet, there must be no additional cost to the participant to register his/her name other than the cost paid by the participant to access the web site via the internet service provider.

Once the trade promotion lottery has commenced:

- the published rules and conditions of the lottery cannot be amended without written approval of the Gaming and Wagering Commission; and
- it cannot be cancelled or withdrawn without prior written approval of the Gaming and Wagering Commission.

Where a trade promotion lottery is conducted by audio, visual or other electronic media, a copy of the terms and conditions of entry shall be lodged with the Gaming and Wagering Commission prior to the commencement of the promotion.

PRIZE DRAWS – PENALTIES FOR NON-COMPLIANCE

Various penalties apply for breaching Western Australian trade promotions regulations. For example, monetary penalties apply for:

- failing to ensure that every ticket or chance is included in the draw; and
- failing to hold the draw within one month of the closure of the lottery.



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2. AUSTRIA

GOVERNING LAW/CODES

Games of Chance Act (Glücksspielgesetz, “GSpG”).

Criminal Code (Strafgesetzbuch, “StGB”) [s. 168 StGB].

Unfair Competition Act (Gesetz gegen den unlauteren Wettbewerb, “UWG”) – General Provisions.

SKILLS COMPETITIONS – CAN A PROMOTION BE RUN THAT IS BASED ON SKILL AND WHERE A PRIZE IS AWARDED?

Yes, but ensure the winner is picked on the basis of skill, not chance.

The skill element must be predominant, i.e. sufficiently complex to ensure that everyone cannot automatically be considered a winner.

In addition,

- (a) the promotion must not invoke a psychological pressure on participants to buy the promoted products or services; and
- (b) the conditions for participation must be stated clearly and unambiguously.

PRIZE DRAWS – CAN A PROMOTION BE RUN WHERE THERE IS AN ELEMENT OF CHANCE IN THE SELECTION OF THE WINNER AND WHERE A PRIZE IS AWARDED?

Unlawful, unless:

- (a) participants **do not** pay to enter

“Payment” is broadly interpreted by courts and includes a scenario where the purchase of goods or services is a pre-condition for participation and the price for the goods or services is higher than the market rate for such goods or services. A requirement to use a telephone number triggering a higher than standard rate is considered an unlawful payment for entry;

AND

- (b) the promotion does not invoke a psychological pressure on participants to buy the promoted products or services;

AND

- (c) the conditions for participation are stated clearly and unambiguously.

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SELECTION OF WINNERS AND REQUIREMENTS FOR AWARDING PRIZES

The conditions for both Skills Competitions and Prize Draws, including for the awarding of the prizes, have to be transparent to participants.

RESTRICTIONS ON PRIZES AWARDED

The promotion must not invoke a psychological pressure on to buy the promoted products or services nor may it be aggressive.

REGISTRATION REQUIREMENTS AND FEES/TAXES PAYABLE

Certain Prize Draws (e.g. lotteries) require an authorisation from the ministry of finance and are subject to strict regulations and payment of taxes.

Prizes from promotional free of charge games are subject to a tax of 5% of the total value of all prizes (if the value of all prizes exceeds EUR 10,000). The prize promotion organisers or contracting parties are liable for the tax.

OTHER KEY SPECIFIC LOCAL REQUIREMENTS

For business to consumer promotions, supporting terms and conditions must appear in German. For business-to-business promotions the use of German language is recommended but not mandatory.

PENALTIES FOR NON-COMPLIANCE

(a) Conduct of Prize Draws that require economic investments: monetary fines (up to 360 times the daily rates* of the conducting person's average daily income) or imprisonment for up to six months; administrative penalties.

(*The court determines a certain amount of the fine dependant on the economic capacity of the infringer. A daily rate for a natural person may range from EUR 4,000 – 5,000.)

Business entities conducting such games are subject to a monetary fine of 40 times the average daily profit (calculated by dividing the annual return by 360).

b) Unlawful conduct of promotional games.

Civil claims for injunctive relief, removal, damages, publication of a verdict;

c) Confiscation of infringing products.



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3. BELGIUM

GOVERNING LAW/CODES

Games of Chance:
 Games of Chance Act 1999, as amended.
 Lotteries:
 Lotteries Act 1851.
 Articles 301 to 304 of the Belgian Criminal Code.

SKILLS COMPETITIONS – CAN A PROMOTION BE RUN THAT IS BASED ON SKILL AND WHERE A PRIZE IS AWARDED?

Yes, but ensure the winner is picked only on the basis of his skill, knowledge or exercise, not on chance.
 Specific rules may apply in cases where the winner is selected on the basis of both skill/knowledge/exercise and an element of chance (see below: specific rules in relation to lotteries and games of chance).

PRIZE DRAWS – CAN A PROMOTION BE RUN WHERE THERE IS AN ELEMENT OF CHANCE IN THE SELECTION OF THE WINNER AND WHERE A PRIZE IS AWARDED?

Lawful, provided:

(a) participants have an active involvement (i.e. physical or intellectual effort). If no active participation is required, the contest is to be considered a prohibited lottery (Note: a company can organise a lottery in collaboration with and through a not-for-profit organisation that has obtained a licence from one of the competent public authorities but this is likely to substantially increase the cost of the promotion).

AND

(b) a licence is obtained from the Belgian Gaming Commission (required both for the offline and online offering of games of chance)

OR, if case (b) is not applicable:

(c) participants **do not** pay to enter

“Payment” is interpreted to mean any stake or direct counterpart required from the participants to enter, e.g. any price to be paid or the obligation to purchase goods or services at a price higher than its market rate (i.e. purchasing a newspaper containing a participation form at its normal price is not considered a stake from the participants). Internet connection, mail and phone costs

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(with the exception of phone calls to an 0900- or an 070- number (i.e. at higher rates), premium text-messages or the obligation to send “as many text messages as possible”) are not considered a stake from the participants.

SELECTION OF WINNERS AND REQUIREMENTS FOR AWARDING PRIZES

None but it is strongly recommended to set out requirements (e.g. age) and restrictions in a terms and conditions document, especially as the promotions will often be offered to consumers (filing the terms and conditions with a notary public is not required by law).

RESTRICTIONS ON PRIZES AWARDED

In general none.

If a company organises a lottery in collaboration with and through a not-for-profit organisation that has been granted a licence to organise lotteries (see above), the prize awarded may not, in general, consist of the payment of money.

REGISTRATION REQUIREMENTS AND FEES/TAXES PAYABLE

Games of chance (involving an element of chance and requiring the participant to make a stake) can only be offered by companies that have obtained a licence from the Belgian Gaming Commission (in principle: casinos, arcades and betting shops). The number of these licenses is limited. These licensed companies are subject to a specific tax regime.

Lotteries are generally prohibited and can only be organised by the Belgian National Lottery or, after formal approval, by some not-for-profit organisation for purposes of charity. In the latter case the competent authority for providing formal approval depends on the geographical scope of the lottery. Companies can work together with such approved not-for-profit organisations. In the current interpretation and enforcement of the legislation, no specific taxes are being imposed on the organising company.

OTHER KEY SPECIFIC LOCAL REQUIREMENTS

It is recommended that supporting terms and conditions appear in Belgium’s official languages.

PENALTIES FOR NON-COMPLIANCE

In the case of unlawful operation of games of chance (establishment):

For individuals: fines from 600 EUR to 600,000 EUR and/or imprisonment from 6 months to 5 years;

For companies: fines from 18,000 EUR to 1,200,000 EUR.

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In the case of advertising, facilitating the operation or recruiting players for unlawful games of chance (establishment):

For individuals: fines from 156 EUR to 150,000 EUR and/or imprisonment from 1 month to 3 years;

for companies: fines from 3,000 EUR to 432,000 EUR.

In the case of prohibited lotteries:

-the perpetrators, administrators, agents or employees:

for individuals: fines from 300 to 18,000 EUR and an imprisonment from 8 days to 3 months;

for companies: fines from 3,000 to 36,000 EUR.

-those who have distributed unlawful lottery tickets:

for individuals: fines from 156 to 6,000 EUR and an imprisonment from 8 days to 1 month or only one of these sanctions;

for companies: fines from 3,000 to 12,000 EUR.



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4. DENMARK

GOVERNING LAW/CODES

The Danish Gambling Act (Act no 848/2010 as later amended) (“the **GA**”) applies to games, where winners are picked (wholly or partially) on the basis of chance (e.g. lotteries/raffles), if participation requires payment.

The Danish Marketing Practices Act (Consolidate Act no 58/2012 as later amended) (“the **MPA**”), applies to all promotional measures, including prize competitions.

SKILLS COMPETITIONS – CAN A PROMOTION BE RUN THAT IS BASED ON SKILL AND WHERE A PRIZE IS AWARDED?

Yes, but ensure the winner is picked on the basis of skill, not chance.

The competition must require that the entrants perform a task to demonstrate skill and that the winner is picked for the best performance.

The skill requirement must not be non-existent so anyone can be considered a winner.

Conditions for participation and the value of the prize must be stated clearly to consumers.

If the winner is picked (partially or wholly) by chance, the **GA** applies (cf. our reply below).

PRIZE DRAWS – CAN A PROMOTION BE RUN WHERE THERE IS AN ELEMENT OF CHANCE IN THE SELECTION OF THE WINNER AND WHERE A PRIZE IS AWARDED?

Unlawful unless participants **do not** pay to enter.

“Payment” is broadly interpreted, although if the purchase of a product (e.g. sodas) at “normal” price constitutes a ticket in the raffle/lottery, it is not considered payment.

A sales promotion campaign shall generally be presented in such a way that the terms of offer are clear and easily accessible to the consumer, and the value of any additional services, e.g. prizes, is clearly indicated.

Further essential information that could potentially have a distorting effect on the consumer’s economical behaviour must not be left out.

The policy behind this rule is to ensure that the consumer is given a real possibility of assessing the pros and cons of offers including sales promotions.

Please also note that for certain types of products (e.g. alcohol and tobacco) restrictions may apply.

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SELECTION OF WINNERS AND REQUIREMENTS FOR AWARDING PRIZES

The terms for the awarding of prizes must be clear and easily accessible.

RESTRICTIONS ON PRIZES AWARDED

None, although the prize itself must be legal to distribute to the winner (e.g. no alcohol to minors), and the nature of the prize should not itself run contrary to “fair marketing practice”.

REGISTRATION REQUIREMENTS AND FEES/TAXES PAYABLE

Indirect taxes are applicable for Prize Draws (i.e. “public” and free prize competitions with a chance-element).

The indirect tax amounts to 15-17.5% of the value of a prize, where the value of the prize exceeds 200 DKK (€26.84). The promoter is obligated to withhold and pay the indirect taxes and only pay the net prize to the winner.

Other prize competitions (e.g. purely skill based) are subject to regular income tax and the winner is required to include the prize in his or her annual tax return and pay the applicable taxes.

OTHER KEY SPECIFIC LOCAL REQUIREMENTS

None.

PENALTIES FOR NON-COMPLIANCE

Fines (unlimited) or imprisonment.



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- Austria
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5. FRANCE

GOVERNING LAW/CODES

May 21, 1836 law, prohibiting lotteries, codified under Articles L. 322-1 *et seq* of the Internal Security Code.

June 23, 1989 law, and articles L. 121-36 to L. 121-41 of the Consumer Code, deal with Promotional lotteries, by mail, (*loteries publicitaires*).

Lotteries/sales promotions are sometimes considered deceptive advertising/misleading commercial practises, and as such governed by article L. 121-1 of the Consumer Code.

French bill on consumption, so-called “Loi Hamon” (to be definitively adopted in the coming months) (the “Bill”). The Bill aims to clarify the extent to which lotteries are prohibited by the Internal security Code.

SKILLS COMPETITIONS – CAN A PROMOTION BE RUN THAT IS BASED ON SKILL AND WHERE A PRIZE IS AWARDED?

Yes, but ensure:

(a) the winner is picked on the basis of skill alone (*e.g.* quality, accuracy, originality) not in any way by chance (this includes use of tie-breakers);

AND

(b) criteria for awarding prizes are precisely defined.

The Bill aims to prohibit any and all operations (including skills contests) offered to the public under any name whatsoever that creates an expectation of gain and the outcome of which is conditioned, even in part, by chance and for which a financial contribution from the participants is required by the organizer (even though a later reimbursement of the financial contribution is offered in the terms and conditions). This prohibition would, however, not apply to competitions organised for advertising purposes (to advertise products or services) to the extent it is free of charge (see conditions for prize draws).

PRIZE DRAWS – CAN A PROMOTION BE RUN WHERE THERE IS AN ELEMENT OF CHANCE IN THE SELECTION OF THE WINNER AND WHERE A PRIZE IS AWARDED?

Unlawful, unless for advertising purposes, assuming the following conditions are complied with:

(a) participants **do not** pay to enter (Article L. 121-36 Consumer Code)

“Payment” is broadly interpreted by courts: includes cost of internet connection or telephone call or stamps necessary to participate;

AND

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(b) promotional material does not look confusingly similar to an official administrative notice or banking document (Article L. 121-37);

AND

(c) details of prizes and value of prizes is detailed in promotional material and terms and conditions;

OR

(d) it is a charity raffle.

Please note that pursuant to the French law dated May 17, 2011, when the participation in the lottery is subject to a purchase from the consumer, such lottery is unlawful only if it may be qualified as unfair practice.

The Bill provides that postage, communication or connection costs at a non-premium rate, which may be charged to consumers are authorized to the extent that reimbursement of such costs is provided for in the terms and conditions and the consumers are made aware of that prior to participating in the lottery.

SELECTION OF WINNERS AND REQUIREMENTS FOR AWARDING PRIZES

The conditions for the awarding of the prizes must be transparent for participants.

Regarding Skills Competitions, the judges must have sufficient capability to judge a Skills Competition and more generally must be independent from the participants and objective.

It is recommended that the name and occupation of the judge(s) be specified in the terms and conditions.

RESTRICTIONS ON PRIZES AWARDED

The following cannot be awarded as prizes: (article 5, July 12, 1985 Law)

- weapons;
- tobacco-related products;
- anything contrary to public order or anything the distribution of which is prohibited or regulated (e.g. drugs).

The trade mark owner may object to its trademarked goods being offered as prizes if the organizer is not an authorized reseller. It may also be considered unfair competition.

REGISTRATION REQUIREMENTS AND FEES/TAXES PAYABLE

Not applicable.

OTHER KEY SPECIFIC LOCAL REQUIREMENTS

Supporting terms and conditions must:

- (a) appear in French (August 4, 1994 Law);

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(b) be deposited in the office of a court official (*huissier de justice, notaire*) in the case of a Prize Draw. This is strongly recommended but not mandatory in the case of a Skills Competition;

(c) sent without charge upon request and entrants must be advised of their right to request a copy (article L. 121-38 Consumer Code).

Express, opt-in acceptance of terms and conditions and all related documentation must be a condition for entry or receiving a prize.

When the lottery is presented in a written document, the document must include some of the terms and conditions governing the lottery. This extract of the full length terms and conditions must notably provide for a short description of the prize and the conditions of participation in the prize draw or skill contest. The extract must also indicate where and how the full length terms and conditions can be obtained by the participants.

PENALTIES FOR NON-COMPLIANCE

Article 3, May 21, 1836 law (Article L. 324-6 of the Internal Security Code): Up to 3 years imprisonment & a maximum fine of EUR 90,000 for individuals (cap multiplied by 5 for legal entities).

Civil penalties for individuals:

- (a) Loss of civil rights (e.g. right to vote and/or be elected to a public office);
- (b) Judgment publicised;
- (c) Closing down of facility used to commit the crime, permanently or for up to 5 years.

A corporation itself may be criminally responsible:

- (a) Up to EUR 450,000;
- (b) Penalties provided for by article 131-39 1°, 4°, 8°, and 9° of the Criminal Code (closing down, confiscation, publicity).

Article 4, May 21, 1836 law (Article L. 324-9 of the Internal Security Code): EUR 100,000 fine for tickets sellers, or for people having advertised the lottery. Court may raise fine to four times the amount spent to advertise the lottery.

Promotional lotteries: EUR 37,500 fine for individuals (cap multiplied by 5 for legal entities) and the publication of the court judgment, at the convicted person's cost. Article L. 121-41 Consumer Code.

Lotteries constituting false/misleading advertising or unfair commercial practices: up to EUR 37,500 fine for individuals (cap multiplied by 5 for legal entities), or up to 50% of false/misleading advertising costs, and/or up to 2 years in jail (Article L. 121-6 Consumer Code).

The Bill increases the sanctions: up to EUR 300,000 for individuals (cap multiplied by 5 for legal entities). The fine could be increased in proportion to the benefit derived from the violation, up to 10% of the average annual turnover or up to 50% of the spend incurred for the performance of the practice that constitutes the violation.



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6. GERMANY

GOVERNING LAW/CODES

Criminal Code (“**StGB**”) [s.284-287 StGB] concerning unlawful gambling (where a stake is involved and the outcome is purely or primarily based on chance).

The Interstate Treaty on Gambling (“**GlüStV**”).

German Act against Unfair Competition (“**UWG**”) [s. 3 and 4 UWG, in particular s. 4 no. 5 and 6].

Interstate Treaty on Broadcasting for offers on broadcast media (“**RSStV**”).

Schleswig-Holstein Gambling Act.

SKILLS COMPETITIONS – CAN A PROMOTION BE RUN THAT IS BASED ON SKILL AND WHERE A PRIZE IS AWARDED?

Yes, but if a stake (payment) is involved, ensure the winner is picked on the basis of skill not chance, or not primarily on the basis of chance.

A scheme is primarily based on chance if the decision of winning or losing is not substantially determined by the skill, knowledge and attentiveness of the participants, but solely, or mainly by coincidence.

On broadcast media the stakes should not exceed EUR 0.50 (s. 8a RSStV).

PRIZE DRAWS – CAN A PROMOTION BE RUN WHERE THERE IS AN ELEMENT OF CHANCE IN THE SELECTION OF THE WINNER AND WHERE A PRIZE IS AWARDED?

Such a prize draw would only be lawful, if:

(a) participants **do not** pay to enter

“Payment” is interpreted to mean that the participant renders a financial sacrifice in order to obtain a chance to win, except where the amount is irrelevant e.g. (most courts assess relevance starting between Euro 0.05 and Euro 2.50); this would include standard telephone and postal services;

AND

(a) the conditions for participation are stated clearly and unambiguously;

AND

(b) the promotion/prize draw does not provoke in participants a psychological pressure to buy the promoted products/services.

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SELECTION OF WINNERS AND REQUIREMENTS FOR AWARDING PRIZES

The conditions for the awarding of the prizes have to be transparent for participants, which means that amongst other things, information must be provided about how winners will be notified.

RESTRICTIONS ON PRIZES AWARDED

Prizes may not be so valuable (having regard to the promoted products or services) that participants feel a psychological pressure to buy the products.

REGISTRATION REQUIREMENTS AND FEES/TAXES PAYABLE

In the case of gambling according to s. 284 StGB an administrative permit is required; most of these permits cannot be obtained by private entities but only by public bodies, depending on the type of the gambling offer.

Online gambling is prohibited under the GlüStV.

Permits formerly granted for online gambling under the Schleswig-Holstein Gambling Act (also to private entities) which was replaced by the GlüStV remain valid for six years from grant. They are however restricted to the State of Schleswig-Holstein. It is no longer possible to receive a permit for online gambling under the Schleswig-Holstein Gambling Act nor the GlüStV.

Prize promotions organised under the UWG require no registration or permit.

OTHER KEY SPECIFIC LOCAL REQUIREMENTS

Supporting terms and conditions must appear in German and comply with the comparatively strict provisions on standard terms of the German Civil Code.

PENALTIES FOR NON-COMPLIANCE

In the case of a criminal offence (according to s. 284 StGB) the penalty is up to five years imprisonment or a monetary fine.

In the case of infringement of the provisions of the UWG the penalties are injunctive relief (s. 8 UWG) and damages in the event of intent or negligence (s. 9 UWG).



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7. HONG KONG S.A.R.

SKILLS COMPETITIONS – CAN A PROMOTION BE RUN THAT IS BASED ON SKILL AND WHERE A PRIZE IS AWARDED?

In most cases, competitions will be considered as “Trade Promotion Competitions” under the Gambling Ordinance as a competition that is “promoted, conducted or managed for the purpose of promoting a trade/business/product by way of a game that distributes or allots prizes by lot/chance”.

However, where a competition is completely based on skill and there is no element of chance involved, such competitions do not require a trade promotion competition licence.

If the competition in any way involves chance, the competition will be governed by the Gambling Ordinance and a licence will be required.

PRIZE DRAWS – CAN A PROMOTION BE RUN WHERE THERE IS AN ELEMENT OF CHANCE IN THE SELECTION OF THE WINNER AND WHERE A PRIZE IS AWARDED?

Under the Gambling Ordinance, a prize draw is considered to be a form of lottery. Lotteries include raffles, sweepstakes, local Chinese games and gambling (po piu (舖票), hung piu (紅票) and tse fa (字花)) and any competition involving guessing or estimating results that does not depend to a substantial degree on skill of competitors which distributes or allots prizes by lot or chance.

In most cases, prior approval is needed for a prize draw in the form of a licence and for the majority of competitions, this will need to be in the form of a Trade Promotion Competition Licence.

Selling, disposing, printing and publishing tickets without a licence are criminal offences along with publishing and forecasting results and providing money for unlawful lotteries, all punishable by fines or imprisonment.

A Trade Promotion Competition Licence is granted for particular competitions and if there is more than one competition running simultaneously, corresponding licences may be required for each competition or location, depending on the connection between the two competitions.

SELECTION OF WINNERS AND REQUIREMENTS FOR AWARDING PRIZES

The application form for the licence requires a declaration that there is a prize awarding process which is random and with each participant having an equal chance of winning.

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RESTRICTIONS ON PRIZES AWARDED

It is not permitted to award cash prizes as part of a competition. However, businesses can award vouchers or gift cards as long as these cannot be redemmed for cash or used to pay for, or settle, debts.

Any prizes that are illegal or contrary to public decency or encourage participants (particularly under 18 years of age) to become involved with gambling, are not permitted.

REGISTRATION REQUIREMENTS AND FEES/TAXES PAYABLE

In order to obtain a licence it is necessary to submit the relevant documentation and forms to the Licensing Authority of the Home Affairs Department along with the relevant fee:

- HK\$1,590 for licence;
- HK\$125 for duplicate licence; and
- HK\$155 for change in particulars.

The application includes a requirement to enclose business information, memoranda and articles, identification for the applicant, public materials to be used, relevant terms and conditions and any other samples relevant to the promotion.

In considering whether to grant the licence, the authority will take into account the public interest and will refuse to grant a licence if the competition is believed to be fraudulent or indecent or if the applicant is identified as a “dishonest trader”.

Competitions must be incidental to the business, not recurrent or last for an unreasonably long period of time. Generally, licences are not granted for more than three months and the application procedure can take around 2-3 weeks to complete.

OTHER KEY SPECIFIC LOCAL REQUIREMENTS

The Licensing Authority may apply conditions to the licence for the business to comply with. There are general conditions that must be met under all trade promotion competition licences, in addition to the specific prohibition on cash prizes.

It is not permitted to charge a fee to enter a competition. However, the example application provided by the Licensing Authority does not indicate that participants can be required to purchase a product or number of products for entry into a competition, e.g. proof of purchase of 5 products entitles the participants to 5 entries into a draw.

All advertising for the competition must quote the relevant licence number and the results of the competition must be published in a Chinese and English newspaper 10 days after the judging or drawing of the prize(s). A cutting of the newspaper article must be forwarded to the Licensing Authority for its records.

Changes cannot be made to a competition once it has commenced (including the cancellation or change to the competition period). If a competition has not commenced, minor changes can be made, subject to approval by the Licensing Authority. Making changes costs HK\$155 and only one change can be made.

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PENALTIES FOR NON-COMPLIANCE

Non-compliance with a licence can result in a fine of HK\$50,000 and imprisonment for 2 years. Non-compliance will also be taken into consideration on any future application for a licence.

In addition, the following penalties may be relevant under the Gambling Ordinance:

- HK\$5,000,000 and 2 years imprisonment on summary conviction or HK\$5,000,000 and 7 years imprisonment on indictment, for knowingly running an unlawful lottery or providing money to an unlawful lottery;
- HK\$50,000 and imprisonment for 2 years for selling, disposing of or possessing with a view to selling, illegal lottery tickets; and
- HK\$50,000 and imprisonment for 2 years for printing, publishing or writing tickets, lists of prizes, tips, hints forecasts or announcements in relation to an illegal lottery.



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8. ITALY

GOVERNING LAW/CODES

Decree of the President of the Republic of 26 October 2001 No. 430 (the “DPR”).

Bulletin Circular of the Ministry of Productive Activities of 28 March 2002, No. 1.

SKILLS COMPETITIONS – CAN A PROMOTION BE RUN THAT IS BASED ON SKILL AND WHERE A PRIZE IS AWARDED?

Yes, but ensure:

(a) participants are not required to pay any contribution.

“Payment” is interpreted to mean any kind of contribution/entry fee save for the price for the purchase of the promoted product/service;

AND

(b) the stringent formalities required by the DPR are complied with.

Unless a promotion falls under one of exceptions provided by the DPR, it is not possible to run multi-jurisdictional promotions, they need to be addressed only to people located in Italy and any activity, including the server, used for the promotion must be located in Italy.

PRIZE DRAWS – CAN A PROMOTION BE RUN WHERE THERE IS AN ELEMENT OF CHANCE IN THE SELECTION OF THE WINNER AND WHERE A PRIZE IS AWARDED?

Same restrictions that apply for Skills Competitions (see above) also apply to

Prize Draws (both called “Concorsi a premio”).

SELECTION OF WINNERS AND REQUIREMENTS FOR AWARDING PRIZES

For Skills Competitions and Prize Draws, the winner must be selected either in the presence of an Italian Notary Public or an Officer of the Chamber of Commerce. In the case where the selection of winners is undertaken electronically, the un-alterability of the results generated by such type of device shall be certified by an expert.

Prize winners should receive their prizes within 180 days of the closure of the promotion.

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RESTRICTIONS ON PRIZES AWARDED

Money cannot be offered as a prize, but discounts and golden coins can be awarded.

REGISTRATION REQUIREMENTS AND FEES/TAXES PAYABLE

Organisers must post a guarantee equal to 100% of the value of prizes offered.

Organisers cannot deduct VAT on the prizes of promotions and shall pay a tax equal to 25% of the value of the prizes awarded.

OTHER KEY SPECIFIC LOCAL REQUIREMENTS

Terms and conditions must be provided to participants in Italian and contain all the information required by the DPR.

The terms and conditions and a bank guarantee equal to the aggregate value of the prizes shall be filed with the Ministry of the Economic Development at least 15 days prior to the commencement of the Skills Competition/Prize Draw through a web based functionality.

Very stringent formalities need to be adopted prior and during the course of both Skills Competitions and Prize Draws.

In case of Skills Competitions and Prize Draws arranged by non-Italian entities, it will be necessary to appoint an Italian VAT representative.

PENALTIES FOR NON-COMPLIANCE

In the event of late delivery of the documentation to the Ministry of Economic Development promoters are subject to fines of between €2.065,83 up to €10.329,14. In case of performance of promotions according to a mechanic different from the one outlined in the Ts&Cs or notified to the Ministry of the Economic Development fines of between €1,032.91 and €5,164.57 are applicable.

In the event of promotions contravening the requirements stated above, fines of between €50,000.00 up to €500,000.00 are applicable.

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9. JAPAN

GOVERNING LAW/CODES

Act against Unjustifiable Premiums and Misleading Representations (Act No. 134 of 1962) (the “AAUPMR”)¹

Notification on Premium Offers by Lotteries or Prize Competition (the Japan Fair Trade Commission’s Notice No. 3 of 1977) (the “Notification”)²

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) (the “Guidelines”)³

Penal Code (Act No. 45 of 1907), Chapter XXIII. Crimes Related to Gambling and Lotteries⁴

SKILLS COMPETITIONS – CAN A PROMOTION BE RUN THAT IS BASED ON SKILL AND WHERE A PRIZE IS AWARDED?

Yes, Skills Competitions in which winners are determined “through superiority or correctness in a particular performance” are allowed. The Guidelines 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 through the superiority of the same;
- 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).

¹ <http://www.jftc.go.jp/eacpf/01/Japan-premium.pdf>

² http://www.caa.go.jp/representation/pdf/100121premiums_8.pdf (only in Japanese)

³ <http://warp.ndl.go.jp/info:ndljp/pid/286894/www.jftc.go.jp/e-page/legislation/premiums/Lotteries.pdf>

⁴ <http://www.japaneselawtranslation.go.jp/law/detail/?id=2007&vm=&re=02>, or <http://www.cas.go.jp/jp/seisaku/hourei/data/PC.pdf>

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PRIZE DRAWS – CAN A PROMOTION BE RUN WHERE THERE IS AN ELEMENT OF CHANCE IN THE SELECTION OF THE WINNER AND WHERE A PRIZE IS AWARDED?

Under the AAUPMR and 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: (i) “Closed” prize competitions, which require purchase of products/ services to participate in the prize draw, or (ii) “Open” prize competitions, which do not require such purchase.

Only “Closed” prize competitions are regulated under the AAUPMR and the Notification. The Notification regulates 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 AND REQUIREMENTS FOR AWARDING PRIZES

The methods for selection of winners and the requirements for awarding prizes in prize promotions are not regulated under the AAUPMR or the Notification. Methods can be determined at the discretion of the retailer. However, if a certain selection method was made public but the actual selection was conducted using a different method, it could be a violation of the AAUPMR’s prohibition against misrepresentation.

RESTRICTIONS ON PRIZES AWARDED

For Lotteries, Sweepstakes, Contests, Games

The AAUPMR provides that when an award provided by way of a contest/game/lottery/ sweepstakes is related to the promotion of product sales (“buy this product, receive an entry into the sweepstakes” is a typical example), the maximum value of such award may not exceed 20 times the Transaction Amount (as defined below), and in no case may exceed JPY 100,000 (roughly 1,000 USD). 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/sweepstakes. 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 JPY300,000 regardless of the Transaction Amount, and the total value of awards given may not exceed 3% of the sellers’ total sales prospects.

The interpretation of “Transaction Amount” differs depending on the circumstances: (i) when the award provided to purchasers relates to the value of purchased product’s purchase price, the product purchase price is the Transaction Amount; (ii) when the awards are provided to purchasers regardless of purchase price, the Transaction Amount is generally considered to be JPY100; and (iii) 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 JPY100 or the cost of the least expensive good in the store, whichever is greater.

For “Open” prize competitions

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Where there is no entry fee and no connection with promoting a particular transaction, the game/contest/lottery/quiz 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/TAXES PAYABLE

There is no requirement for prize award promotion operators to register or pay any fees to an authority to run the promotion.

Operating a prize promotion is itself not taxable to the promoter, 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 promoter.

OTHER KEY SPECIFIC LOCAL REQUIREMENTS

Currently, gaming is generally banned in Japan with a few limited exceptions with respect to certain sports: (betting on horseracing, speedboat racing, bicycle racing or motorcycle racing is permitted). There are also a few government sanctioned lotteries, and pachinko (a combination of slot machine and vertical pinball machine) is popularly accepted though it is not clearly legal. Casino gaming (including online gaming) is strictly prohibited in Japan, although there have been recent political pushes toward legalization of casinos.

PENALTIES FOR NON-COMPLIANCE

The Consumer Affairs Agency (“CAA”) will investigate the activities of a retailer that it suspects is violating the AAUPMR. The CAA will give that retailer the opportunity to offer evidence in its favor and/or take measures to end the practices that the CAA views as violations. 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. Issuance of and compliance with a CDO is an involved process requiring the participation of the retailer. The enforcement hearings are often drawn out, involving multiple meetings with regulators and submissions of drafts of improvement plans.

Violation of a CDO is punishable by up to two years imprisonment or a criminal fine of up to JPY3,000,000 on the responsible individual.⁵ In addition to the aforesaid sanctions on the individual, the company where such individual was an employee or an officer may be made subject to a fine of up to JPY300,000,000.

Cease-and-desist orders are publicly published and so are damaging to the reputation of the retailer found in breach.

⁵ AAUPMR, Art. 15.1



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10. NETHERLANDS

GOVERNING LAW/CODES

Betting and Gaming Act and Code of Conduct for Promotional Games of Chance.

Consumer Protection (Enforcement) Act of 29 December 2006.

SKILLS COMPETITIONS – CAN A PROMOTION BE RUN THAT IS BASED ON SKILL AND WHERE A PRIZE IS AWARDED?

Yes, purely skill based competitions are allowed, but ensure the winner is picked on the basis of skill and not chance.

An example of what is considered to constitute an element of skill is drawing a picture, answering a riddle or answering qualified questions.

PRIZE DRAWS – CAN A PROMOTION BE RUN WHERE THERE IS AN ELEMENT OF CHANCE IN THE SELECTION OF THE WINNER AND WHERE A PRIZE IS AWARDED?

Unlawful, unless this if for the promotion of products/services/brands/companies and:

(a) participants **do not** pay to enter (but communication costs of up to a maximum of €0.45 per participation may be charged);

AND

(b) there is an element of chance (this is crucial);

AND

(c) players do not have an overwhelming influence on the winning of prizes of free gifts;

AND

(d) the marketing and terms and conditions are not misleading, incomplete or give rise to false expectations and have been made available free of charge;

AND

(e) the single purpose of the promotion is not collecting personal data of participants.

Note: Specific rules set out in the Code of Conduct for Promotional Games of Chance apply, whereby a distinction is made between ‘small promotional games of chance’ with a prize value of less than €4,500, and ‘normal promotional games of chances’.

SELECTION OF WINNERS AND REQUIREMENTS FOR AWARDING PRIZES

Selection of the winners(s) of prizes or free gifts from participants shall take place in an impartial manner.

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The results of the drawing have to be communicated within 3 months of the promotion.
A list of winners should be available on request.

RESTRICTIONS ON PRIZES AWARDED

The total economic value (to the participants) of the prizes or free gifts made available per promotional game of chance may be a maximum of €100,000 per year.

The prizes should not offend against good taste, common decency or decorum.

All prizes should be given a description which shows the economic value of the prize.

All promised prizes should be actually paid out.

REGISTRATION REQUIREMENTS AND FEES/TAXES PAYABLE

The payment of Taxes in respect of Prize Draws may be due from:

- a) The promoter; or
- b) the prize winner.

Tax rate for the promoter is a percentage of 40,85% of the economic value of the prize. For the prize winner it is 29% of the economic value of the prize.

For prizes under €454 – no taxes have to be paid.

OTHER KEY SPECIFIC LOCAL REQUIREMENTS

(a) Prize value must not exceed €100,000 in value per year;

AND

(b) Maximum of one game of chance in relation to any product, service or organisation per year, with a maximum of 20 drawings, i.e. a maximum of 20 occasions per year when winners can be selected.

AND

(c) The provider shall impose on minors that parental content should be obtained;

AND

(d) The provider shall ensure there is a complaints procedure and shall provide the address or phone number where complaints can be lodged.

Note: small games of chance with a maximum value of prizes of €4,500 can be organised as often as the promoter wishes.

PENALTIES FOR NON-COMPLIANCE

A financial penalty can be imposed up to €780,000 or 10% of the annual turnover of the year proceeding the year in which the violation was committed.



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II. NORWAY

GOVERNING LAW/CODES

The Lottery Act of 24 February 1995 (“LA”).

The Marketing Control Act of 9 January 2009 (“MCA”).

SKILLS COMPETITIONS – CAN A PROMOTION BE RUN THAT IS BASED ON SKILL AND WHERE A PRIZE IS AWARDED?

Yes, but ensure:

(a) the winner is picked on the basis of skill not chance;

AND

(b) terms and conditions are clear and easily accessible to consumers.

PRIZE DRAWS – CAN A PROMOTION BE RUN WHERE THERE IS AN ELEMENT OF CHANCE IN THE SELECTION OF THE WINNER AND WHERE A PRIZE IS AWARDED?

A Prize Draw may be conducted pursuant to the MCA if participation is not conditional upon a stake.

If participation is conditional upon payment (a stake), the Prize Draw will be deemed to be a lottery pursuant to the LA.

General rule – any payment over and above the going rate for the service is to be regarded as a “stake” (first class post and standard rate calls are fine).

Lotteries may in principle only be held for the benefit of a humanitarian or socially beneficial aim. It is in principle prohibited to hold a lottery in Norway without a permit from the Lottery Gaming Board.

SELECTION OF WINNERS AND REQUIREMENTS FOR AWARDING PRIZES

Prize Draws and Skills Competitions governed by the MCA: The conditions for awarding the prizes, have to be transparent for participants and be conducted in an impartial manner.

Prize Draws governed by the LA: The Prize Draw shall in principle be made by the Lottery Gaming Board or another authority as decided by the Ministry.

RESTRICTIONS ON PRIZES AWARDED

The use of live animals, alcoholic beverages or tobacco as prizes is prohibited.

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REGISTRATION REQUIREMENTS AND FEES/TAXES PAYABLE

Prize Draws and Skills Competitions governed by the MCA: No registration requirements. Prizes up to NOK 10,000 are in general not subject to tax.

Prizes won in connection with competitions arranged by mass media (newspapers, TV, radio) are in general not subject to tax.

Other prizes are in general subject to 28% tax.

Prize Draws governed by the LA: Permits must be obtained from the Lottery Gaming Board.

Prizes are in general not subject to tax.

OTHER KEY SPECIFIC LOCAL REQUIREMENTS

Prize Draws and Skills Competitions governed by the MCA: Supporting terms and conditions must be clear and easily accessible to the consumers.

Prize Draws governed by the LA: It is prohibited to engage in the marketing of or mediating lotteries for which no permit has been granted.

PENALTIES FOR NON-COMPLIANCE

Prize Draws and Skills Competitions governed by the MCA: Fines or imprisonment for a term not exceeding six months.

Prize Draws governed by the LA: Fines or imprisonment for a term not exceeding three years.



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12. PORTUGAL

GOVERNING LAW/CODES

Gambling Law (Decree-Law no 422/89, December, 2 as amended by Decree-Law no 114/2011, November, 11).

SKILLS COMPETITIONS – CAN A PROMOTION BE RUN THAT IS BASED ON SKILL AND WHERE A PRIZE IS AWARDED?

Yes with one limitation: it is not admissible to provide games in machines or other devices in which the result depends exclusively or essentially on the skill of the player and that may result in payment (as a prize) of money, chips or other goods with economic value.

Please note that the winner must be picked only on the basis of skill not chance.

PRIZE DRAWS – CAN A PROMOTION BE RUN WHERE THERE IS AN ELEMENT OF CHANCE IN THE SELECTION OF THE WINNER AND WHERE A PRIZE IS AWARDED?

Yes with the following limitations:

- (i) it may only be performed if authorized by the local competent authority – General Secretary of Ministry of Internal Affairs;
- (ii) it must not be performed by entities with profitable purposes except as a means to promote and advertise products or services provided;
- (iii) the participant may not incur any expenses other than post or telecommunication expenses (with no value added, whatsoever), or expenses higher than the cost of the product or service that the contestant is intended to claim;
- (iv) it cannot be similar to or use themes from fortune games (such as poker, fruits, bells, roulette, dice, bingo, numbered lotteries, etc.).

SELECTION OF WINNERS AND REQUIREMENTS FOR AWARDING PRIZES

Prize-draws – The selection of the winner must be observed by a representative of the General-Secretary of Ministry of Internal Affairs or, in case it is executed by a computer program, such program must be provided to the General-Secretary of Ministry of Internal Affairs with the filing of the request for authorization for assessment. The promoters must publish the details regarding the name and address of prize-winners as well as the last day to claim the prize in the same media as used to advertise the competition (the prizes must be claimed within 90 days after the selection of the winners).

Skill competitions – If the selection of winning entries is open to subjective interpretation, an independent judge, or a panel, should be appointed. Those appointed to act as judges should be competent to judge the subject matter of the competition. The full names of judges should be made available on request.

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RESTRICTIONS ON PRIZES AWARDED

Prizes cannot be cash (only goods or services with economic value) or substituted by cash. In addition please note that there may be specific regulations prohibiting the award of certain goods as prizes (for example tobacco products, weapons etc).

REGISTRATION REQUIREMENTS AND FEES/TAXES PAYABLE

- For prize draws: when filing the prior authorization request with the General-Secretary of Ministry of Internal Affairs, the payment of an official fee of €500 (five hundred Euros) is required.
- Regarding taxation issues, all prizes to be delivered are subject to Stamp Duty at a 45% rate. The tax is due at the moment the prize is granted to the beneficiary and the amount of the tax must be paid by the entity granting the prize by the 20th of the month following the date in which the prize is granted.
- For prize draws: within 8 days after the end of the 90 day period (after the selection of the winners), the promoter must present evidence to the General-Secretary of Ministry of Internal Affairs that the tax due has been paid.

OTHER KEY SPECIFIC LOCAL REQUIREMENTS

- All of the details of the competition must be disclosed in the respective Terms and Conditions, and an indication of the prizes, their value, contact details of the promoter and all relevant dates of the promotion must be included.
- The procedural rules and regulations must be accessible for consultation, at all times.
- For prize draws: all promotional materials regarding the prize draw should have a specific reference to the authorisation number granted by the General Secretary of Ministry of Internal Affairs.
- General Advertising rules are fully applicable to prize promotions which means that advertising must abide by all obligations set out in the Advertising Code (Decree Law no 390/90, October, 23 as amended by Law 8/2011, April, 11). In particular, the advertising of the promotion must refer to all its main conditions and may not mislead the consumer.
- General Data Protection provisions are fully applicable to prize promotions, which means that any marketing lists must comply with the Data Protection Law (Law no 67/98, October 26 which enacted Directive n. ° 95/46/CE regarding the collection and processing of personal data and the free circulation of that data.

PENALTIES FOR NON-COMPLIANCE

Non compliance with the specific provisions applicable to prize promotions are considered to be administrative offences punished with fines ranging between €250 and €2,500 for individuals and €2,500 and €24,940 for companies. As an additional penalty, (i) the equipment used and any monies obtained may be seized and (ii) a ban on performing activities in the establishment for a period of up to 6 (six) months may be applicable.

In addition, general penalties for breaches of advertising, data protection and tax requirements may apply depending on the specific circumstances.



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13. ROMANIA

GOVERNING LAW/CODES

Government Ordinance no. 99/2000 regarding the marketing of products and services (“GO”).

Government Ordinance no. 21/1992 on consumer protection.

Law no. 148/2000 on advertising.

Law no. 158/2008 concerning misleading and comparative advertising.

Law no. 363/2007 on the fight against unfair commercial practices of traders in their relationship with consumers and the harmonization of regulations with European consumer protection legislation.

SKILLS COMPETITIONS – CAN A PROMOTION BE RUN THAT IS BASED ON SKILL AND WHERE A PRIZE IS AWARDED?

Yes, but ensure the winner is picked based on their skills, knowledge, commercial enterprise, being rewarded by taking into consideration their performance.

PRIZE DRAWS – CAN A PROMOTION BE RUN WHERE THERE IS AN ELEMENT OF CHANCE IN THE SELECTION OF THE WINNER AND WHERE A PRIZE IS AWARDED?

A Prize Draw may be conducted if the following legal requirements are complied with:

(a) participants are not subject to a direct or indirect payment, in addition to the price for the acquisition of the product/service, to enter the competition. However, expenses incurred by participants in respect of postal services as well as normal telephone costs are allowed.

AND

(b) the presentation adverts must mention (i) the nature, the number and the commercial value of the prizes and (ii) the competitions rules are available for free to any applicant;

AND

(c) the competition rules must (i) be authenticated by a public notary and (ii) mention the obligation of the promoter to publicly present the name of the winners and their prizes.

SELECTION OF WINNERS AND REQUIREMENTS FOR AWARDING PRIZES

Selection of the winners shall be based on a Draw (for Prize Draws) or on the participants’ performance (for Skills Competitions).

The name of the winners and their prizes must be made public by the organiser of the Prize Promotion. However, GO does not impose a specific means for the publication of the winners’ names and prizes granted, and thus, the organizer may choose the means of publication at its convenience.

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RESTRICTIONS ON PRIZES AWARDED

The organiser must ensure that prizes granted correspond with the descriptions indicated in the competitions rules, marketing presentations or other similar documents. Otherwise, advertising communications may be considered as misleading (e.g. when they advertise important prizes, when in reality the prize has a minimum or nominal value).

The legal framework requires compliance with strict rules when advertising alcoholic drinks, tobacco, guns, munitions etc.; the advertising for medicines issued with no medical prescription is conditioned by the approval of the National Medicine Agency.

Organizers must ensure that participants in instant-win promotions receive their prizes at once or must inform them immediately in respect of the prizes won and the manner in which such prizes may be claimed, without delay, unreasonable costs or administrative barriers.

REGISTRATION REQUIREMENTS AND FEES/TAXES PAYABLE

The granted prizes are subject to an income tax in the amount of 16% of the prize value. The income tax is withheld at source by the organizer and paid to the competent tax authorities.

Prizes below 600 RON (EURO 140) are not taxable.

OTHER KEY SPECIFIC LOCAL REQUIREMENTS

The rules of the promotional lottery must be authenticated by a notary public prior to the commencement of the promotional activity.

Representatives from the National Consumer Protection Authority, Ministry of Economy, and Ministry of Internal Affairs may request organizers of promotional lotteries the regulation of the promotional lottery, as well as a copy of the advertising materials addressed to the public. Organizers must hand over the required documentation within 5 days of the request date.

PENALTIES FOR NON-COMPLIANCE

The offences are punishable by a fine which varies from 100 RON (equivalent of approx. EUR 23) up to 30,000 RON (approx. EUR 6,800), depending on the breach.



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14. RUSSIA

GOVERNING LAW/CODES

(a) Russian Civil Code (Part II of 26 January 1996 No. 14-FZ) governing conducting prize competitions based on skills;

(b) Russian Civil Code (Part II of 26 January 1996 No. 14-FZ) and Russian Federal Law on Lotteries (dated November 11, 2003 No. 138-FZ) governing conducting lotteries and other games based on luck.

SKILLS COMPETITIONS – CAN A PROMOTION BE RUN THAT IS BASED ON SKILL AND WHERE A PRIZE IS AWARDED?

Yes, this is permitted and specifically regulated under the Russian Civil Code. The main requirements set out in the Code are:

- (a) the competition must be directed to the achievement of socially amenable purposes;
- (b) the announcement of the competition must contain, at least, the essence of the task; criteria and procedure of assessment of results; place, term and order of delivery of results; amount and type of award; order and terms of announcement of the competition's results;
- (c) the competition organizer may modify or cancel the competition only within the first half of the set term of delivery and must make the announcement in the same way as the initial announcement. The organizer must re-imburse the expenses incurred by participants before such cancellation/modification.

PRIZE DRAWS – CAN A PROMOTION BE RUN WHERE THERE IS AN ELEMENT OF CHANCE IN THE SELECTION OF THE WINNER AND WHERE A PRIZE IS AWARDED?

Yes. In that case the promotion will fall under the definition of “lottery” (which is regulated differently and separately from skills-based competitions). The main requirements set in the Code and in the Law on Lotteries are:

- (a) a lottery conducted in Russia must adhere to certain formal requirements and must be registered as such;
- (b) the terms of the lottery must contain the timeframes of conducting the lottery, order of determining the award and its amount and other formal requirements;
- (c) if the timing for payment of the award is not indicated, the award must be paid out not later than 10 days commencing on the date of determination of the results of the lottery (general rule); in case of non-payment the participants may claim the redress of damages in full amount from the organizer.

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(d) the refusal to conduct the lottery in the pre-agreed term will give the participants the right to demand the pay out of damages (only real damages, not lost profit);

SELECTION OF WINNERS AND REQUIREMENTS FOR AWARDING PRIZES

In relation to skills competitions, the process of selection of winners and requirements for awarding prizes is defined by the organizer but must be clearly described in the announcement of the competition.

In relation to lotteries, the order of determining the award and its amount must be defined by the organizer and clearly communicated to participants.

RESTRICTIONS ON PRIZES AWARDED

There are no specific restrictions on prizes to be awarded (except that the goods restricted in circulation obviously cannot be part of any award).

REGISTRATION REQUIREMENTS AND FEES/TAXES PAYABLE

The skills competitions are not subject to specific requirements. The lotteries are subject to state registration and the state fee of 10% (general rule).

OTHER KEY SPECIFIC LOCAL REQUIREMENTS

The Law on Lotteries contains certain requirements – e.g. requirements on mandatory state inspection of equipment used by organizers in the running of a lottery as well as an annual mandatory audit of the organizer.

PENALTIES FOR NON-COMPLIANCE

Aside from the afore-mentioned civil damage awards (in the case of any breach of the rules), there may be administrative (or even criminal) sanction applied to organizer in the case of a major violation (including imprisonment in case of serious financial violations).



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15. SPAIN

GOVERNING LAW/CODES

Spanish Gambling Act (“SGA”) of 27 May 2011 and additional regional laws.

SKILLS COMPETITIONS – CAN A PROMOTION BE RUN THAT IS BASED ON SKILL AND WHERE A PRIZE IS AWARDED?

Yes, but ensure the winner is picked only on the basis of skill not chance.

For example, if winners are selected by providing the right answer to a questionnaire this would qualify as a skill game but if a draw is carried out to decide, among them, who shall be the final winner, then it would automatically become a chance based game. Sometimes, games allocating prizes to the first 100 entrants are considered to be based on chance because there is no or little skill involved.

PRIZE DRAWS – CAN A PROMOTION BE RUN WHERE THERE IS AN ELEMENT OF CHANCE IN THE SELECTION OF THE WINNER AND WHERE A PRIZE IS AWARDED?

Unlawful, unless:

(a) participants **do not** make an additional payment to become eligible. Examples of additional payment are premium SMS or premium calls. Standard postage, SMS or call charges would generally not be regarded as additional payments (except if the call takes too long or several standard SMS’ are required). Prior purchases of products without extra charges or requiring the condition of being a client are not considered as an additional payment;

AND

(b) the promotion is intended exclusively for promotional or marketing purposes.

SELECTION OF WINNERS AND REQUIREMENTS FOR AWARDING PRIZES

For Prize Draws, it is best practice to file the terms and conditions with a Notary Public and for them to take care of the draw (although it is not required by the applicable regulations). Prizes may be awarded either by direct allocation (every entrant receives a prize), skill (the most successful entrants receives a prize) or randomly (for example through a draw; this applies even if there was a pre-selection of winners based on skill).

RESTRICTIONS ON PRIZES AWARDED

None.

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REGISTRATION REQUIREMENTS AND FEES/TAXES PAYABLE

No authorisation or prior communication to Spanish Gambling Authorities is required* when the prize draw has a national scope (i.e. the promotion is addressed to residents in more than one Spanish region (“*comunidad autónoma*”).

In the case of promotions with regional scope (i.e. those promotion only addressed to residents in one Spanish region – “*comunidad autónoma*”), regional regulations would apply and in some cases, prior communication to the corresponding regional authorities is required.

Prize draws organizers with national scope must pay a gambling tax of 10% of total value of prizes on offer.

Prize winners shall be subject to Spanish Personal Income Tax in connection with prize awarded.

*Note that genuine gambling activities do require authorization from the gambling authorities.

OTHER KEY SPECIFIC LOCAL REQUIREMENTS

Supporting terms and conditions must appear in Spanish and must be available to the participants before entering the competition.

Filing the terms of the Competition with a Notary Public before the start date is advisable, although it is not required by law.

PENALTIES FOR NON-COMPLIANCE

Fines in cash.

The scope of the penalties depends on the circumstances of the case.



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16. SWEDEN

GOVERNING LAW/CODES

Lotteries Act (1994:1000) (“**LA**”) applies if the game/contest is regarded as a *lottery*, which will be the case if the winner is randomly selected.

Marketing Act (2008:486) (“**MA**”) will apply if the outcome of the game/contest is dependent on a skill based activity, i.e. a *skills competition*.

SKILLS COMPETITIONS – CAN A PROMOTION BE RUN THAT IS BASED ON SKILL AND WHERE A PRIZE IS AWARDED?

Yes, but ensure:

(a) the winner is picked on the basis of skill and not chance.

An example of what is considered to constitute an element of skill is drawing a picture, answering a riddle or answering qualified questions;

OR

(b) if the winner is selected based on an element of chance, a permit from the Swedish Gaming Board (*Sw. Lotteriinspektionen*) must be obtained.

If an arrangement involves *both* an element of skill and an element of chance, the arrangement will, in general, be regarded as a lottery if the activity which involves the element of skill *precedes* the moment of chance. All lotteries are subject to a permit from the Swedish Gaming Board (*Sw. Lotteriinspektionen*).

Permits are not awarded to commercial lotteries.

PRIZE DRAWS – CAN A PROMOTION BE RUN WHERE THERE IS AN ELEMENT OF CHANCE IN THE SELECTION OF THE WINNER AND WHERE A PRIZE IS AWARDED?

LA: Only lawful if a permit from the Swedish Gaming Board (*Sw. Lotteriinspektionen*) has been obtained.

Only certain entities are allowed in the Swedish gambling and lottery market, these entities being public benefit organizations, the horse racing industry and the Swedish state. Commercial entities are in principle excluded from the Swedish gambling and lottery market, with the exception of a certain level of entertainment gambling, i.e. gaming with low-value bets and low-value prizes. Such gambling may be carried out by private entities.

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SELECTION OF WINNERS AND REQUIREMENTS FOR AWARDING PRIZES

LA: for lotteries, for which a permit must be obtained, prizes may only be distributed in accordance with a set game plan and other specific requirements apply. Inspectors appointed by the Swedish Gaming Board (*Sw. Lotteriinspektionen*) shall supervise true lotteries, i.e. drawing of lots, guessing, betting and similar procedures, amusements at fairs and amusement parks.

MA: In the event that the competition is a Skills Competition, information shall be provided on:

- how the winner is designated
- where and when the names of the winners shall be presented and which of the winners will be notified in person.

It is recommended that the names of jury members are presented (if a jury is to determine the winner).

The outcome of the contest shall be presented in an appropriate manner. Merely notifying the winners personally is not sufficient.

The assessment of the entries must be impartial and the winner may not be selected arbitrarily.

RESTRICTIONS ON PRIZES AWARDED

LA: Prizes awarded in connection with gaming on “goods gaming machines” (ie. machines from which goods are awarded) may not be exchanged for other goods or cash by:

- the entity arranging the lottery,
- the entity in possession of the site where the lottery is provided,
- an entity carrying on business there, or
- agents of the persons referred to in 1-3.

There are specific regulations as to the value of top prizes, prizes in cash amounts etc. depending on the type of lottery, for example bingo games, lotteries communicated by means of electromagnetic waves, drawing of lots, etc.

MA: No specific restrictions if the arrangement is regarded as a Skills Competition, except that information about the number, value and nature of the prize must be given, and whether a cash alternative may be substituted for the prize.

REGISTRATION REQUIREMENTS AND FEES/TAXES PAYABLE

LA: Permits must be obtained from the Swedish Gaming Board. If a permit is obtained, fees are payable to the Swedish Gaming Board.

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Prizes in lotteries are in general not subject to income tax.

In general, the organizer will be subject to payment of a lottery tax.

MA: Prizes in a skill based contest may be subject to income tax for the winners.

The organizer of a skill based contest may be subject to payroll tax.

OTHER KEY SPECIFIC LOCAL REQUIREMENTS

LA: It is prohibited to engage in the marketing of or mediating lotteries for which no permit has been granted. Specific requirements may apply depending on type of lottery.

MA: If the arrangement is regarded as a Skills Competition, terms and conditions for the contest must be clear and easily accessible to the consumers and be drafted in Swedish.

If it is obligatory to purchase a product in order to enter the Skills Competition, clear information about the costs for the participation must be stated. If the costs may vary, an example of what it may cost should be given.

Generally, the main offer shall be as prominent as the offer to be part of the Skills Competition.

PENALTIES FOR NON-COMPLIANCE

LA: A fine or a maximum of two years' imprisonment (imprisonment is very rare) may be imposed on persons who unlawfully arrange a lottery or promote participation in gaming arranged outside Sweden.

MA: Violation of the MA may result in either a conditional fine or in a fine for disruptive marketing practices at 5,000 SEK – 5,000 000 SEK, but in any event not greater than 10% of the company's annual turnover. No fine will be imposed in minor cases.

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17. TURKEY

GOVERNING LAW/CODES

The prize promotions based on chance (draws) and skills are regulated under the Regulation of the Turkish General Directorate of National Lottery on Lotteries and Draws with Non-Cash Prizes (“Regulation”).

The Turkish Code of Obligations (“TCO”) also regulates prize promotions as publicly offering a reward in exchange for an action. In prize promotions described by the TCO, the promoter makes an announcement and declares that a prize will be given to those winning the contest.

SKILLS COMPETITIONS – CAN A PROMOTION BE RUN THAT IS BASED ON SKILL AND WHERE A PRIZE IS AWARDED?

Yes, but ensure the winner is picked on the basis of skill not chance. The requirements must be such that chance should not be involved in the competition; skill or qualification should be necessary in order to win whereby the winners are selected by the elimination method considering their relative success.

Article 4(m) of the Regulation provides that a contest is an organization or riddle, crossword, entertainment show and the like in which the winners are determined on the basis of success rating by way of elimination amongst the participants based on knowledge, skills or talent and as a result of which a real and/or monetary prize is given. Such contests will fall within the scope of the Regulation. In this case, permission must be obtained from the General Directorate of National Lottery to organize the contest.

PRIZE DRAWS – CAN A PROMOTION BE RUN WHERE THERE IS AN ELEMENT OF CHANCE IN THE SELECTION OF THE WINNER AND WHERE A PRIZE IS AWARDED?

Yes, the prize promotions based on chance (draws) are regulated under the Regulation. Commercial, social or charity organizations where the winners of the non-cash prizes are determined solely by chance and the right to entry is granted through purchase of a good or service is called a lottery and organizing a lottery is subject to the approval of the Directorate in all cases.

A prize promotion purely based on chance can be organized through sale of tickets, participation numbers etc. according to Article 4/(g) of the Regulation. However, prize promotions which aim to promote a good or a service, to increase market share or to sell a good or service are defined as commercial prize promotions and according to Article 4/(k) of the Regulation tickets, coupons etc. for entry to a commercial promotion should be provided free of charge.

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SELECTION OF WINNERS AND REQUIREMENTS FOR AWARDING PRIZES

The conditions for the awarding of prizes have to be transparent for participants. The promoter makes an announcement and declares that a prize will be given to those winning the contest.

Skills Competitions where the selection of winning entries is open to subjective interpretation must be judged by an independent judge or a panel with one independent member who is/are competent. The criteria and mechanism for judging entries must be made known before, or at time of entry.

RESTRICTIONS ON PRIZES AWARDED

None. However, the following cannot be awarded as prizes:

- weapons;
- tobacco-related products;
- anything contrary to public order.

REGISTRATION REQUIREMENTS AND FEES/TAXES PAYABLE

If the contest is under the scope of the Regulation, the promoter must obtain the approval of General Directorate of the National Lottery.

According to the General Communiqué No: 28 on Inheritance and Transfer Tax Law, receipt of prizes that are won as a result of a contest which exceed the exemption limit are subject to inheritance and transfer tax, vehicle buying tax, vehicle stamp duty, notary expenses, plate and inspection expenses, education contribution share, environmental pollution prevention fund, duty, customs tax, etc., which will depend on the value of the prize. The inheritance and transfer tax is 20% of the value.

The winner is normally responsible for the payment of taxes and duties.

The promoter is normally not responsible for the payment of taxes and duties.

There is no obligation on the promoter to notify entrants of the likely cost of the taxes. However, pursuant to the Regulation, the terms and conditions should mention that the winner shall be liable for the taxes and other legal requirements except the taxes included in the price of the good and/or service subject to the promotion.

OTHER KEY SPECIFIC LOCAL REQUIREMENTS

As mentioned above, it is advisable to make an application to the Directorate to confirm whether or not the prize promotion falls within the scope of the Regulation. Pursuant to Article 9 of the Regulation, the terms and conditions of participating in a draw must be enclosed with the application form submitted to the Directorate to obtain permission.

Therefore, in any case, the terms and conditions will have to be translated into Turkish.

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The wording of the Regulation is quite vague and the Directorate has the sole discretion to evaluate the terms and conditions of any contest, lottery, draw, etc. Therefore, in order to avoid any future complexities, an application should be made to the Directorate to obtain a clearance confirming that the promotion does not fall within the scope of the Regulation or a permission to organize a prize promotion, as the case may be.

In case the Directorate decides that the promotion falls within the scope of the Regulation, the promoter should provide a security amounting to more than 10% of the total market value of the prize.

The results have to be announced in a local newspaper in a city or district where the prize promotion is organized. If the promotion covers more than one city, the results have to be announced in a national newspaper.

PENALTIES FOR NON-COMPLIANCE

According to Articles 26 and 27, if the promoter makes the prize promotion without obtaining an approval, or fails to fulfil the requirements of the Regulation, a criminal complaint will be filed against the promoter. Additionally, the promoter will not be granted an approval to organize prize promotions for two years. Therefore the Directorate ex officio punishes the promoter without having the need to file a lawsuit. Still, the Directorate may also request the competent Public Prosecutor to file a criminal lawsuit.

If the prize promotion is organized as per the provisions of the TCO, and the promoter does not award the promised prize or does not comply with the provisions of the term and conditions, then the participants may sue the promoter within the meaning of the TCO.



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18. UAE – DUBAI

GOVERNING LAW/CODES

- Federal Law (3) of 1987 (the “Penal Code”)
- Federal Law (5) of 1985 (the “Civil Code”)
- Federal Law (24) of 2006 (the “Consumer Protection Law”)
- Commercial Permit Guidebook of the Department of Economic Development

AUTHORITY

Department of Economic Development (the “DED”)

SKILLS COMPETITIONS

Competitions that involve an element of skill are permitted provided that:

- (a) a permit is obtained for the campaign (instant prize fees paid as skills competition prizes are considered instant prizes);
- (b) participants do not pay to enter; and
- (c) criteria for awarding prizes are clearly defined.

PRIZE DRAWS – CAN A PROMOTION BE RUN WHERE THERE IS AN ELEMENT OF CHANCE IN THE SELECTION OF THE WINNER AND WHERE A PRIZE IS AWARDED?

Prize draws are permitted provided:

- (a) participants do not pay to enter; and
- (b) a permit is obtained from the DED for conducting the promotional campaign and its relevant draw.

SELECTION OF WINNERS AND REQUIREMENTS FOR AWARDING PRIZES

The draw itself must be conducted in the presence of a representative of the DED, even when taking place outside of Dubai or the United Arab Emirates. This requirement is compulsory and any draw that fails to meet this condition may be cancelled by the DED.

Prize winners should receive their prize within sixty (60) days from the final day of the promotional campaign or draw date. Any unclaimed prizes at the end of this period should be returned to the DED and when the prizes are vouchers, travel tickets or other paid coupons the same should be returned in the form of cheques.

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RESTRICTIONS ON PRIZES AWARDED

Prizes must be awarded as described in the marketing communication.

Consumers are protected under the Consumer Protection Law and so all prizes must be fit for purpose and conform with their advertised specification.

Prizes must be benefits, incentives or in-kind vouchers and may not be amounts of money.

Alcohol, pork products or any other product or service that is against Islamic Shari'a law cannot be awarded as a prize.

REGISTRATION REQUIREMENT AND FEES/TAXES PAYABLE

A permit is required for all types of prize promotion campaigns.

Fees vary according to campaign details (prize value, number of sites, etc.) and to whether it is related to draws or to instant prizes. A list of fees is provided by the DED for certain standard campaigns. For other types of campaigns, the DED will decide on the fees payable after reviewing the details of the specific campaign.

OTHER KEY SPECIFIC LOCAL REQUIREMENTS

- (a) The applicant must have a valid commercial licence in the Emirate of Dubai and have been carrying out its activities in Dubai under the licence for more than one month.
- (b) The terms and conditions of the draw/competition must be in the Arabic language. The terms and conditions should include as much detail as possible, relevant dates and other requirements (for example, the requirement to produce a passport or other document in order to receive a prize).
- (c) The term of the campaign should not exceed two months. In some exceptional cases promotional campaigns may run for a maximum period of one calendar year where the fees are calculated by the type of campaign, with the condition of having one draw every two months in the case of campaigns involving draws.
- (d) The requirements to obtain a permit for promotional campaigns vary between Emirates. This note deals with the Emirate of Dubai only.
- (e) Particular rules may apply when the draw falls during one of the Dubai shopping festivals such as DSF.

PENALTIES FOR NON-COMPLIANCE

There are a variety of fines which may be awarded by the DED for non-compliance, such as a fine for not having the DED representative present at the draw (AED 10,000), a fine for using or exploiting a Dubai Shopping Festival logo without permission (AED 20,000) and a fine for submitting false information to the DED (AED 20,000). Further, the campaign can be cancelled by the DED.

Gambling is forbidden under the Penal Code and the Civil Code. People who operate gambling establishments and participants can be fined and receive custodial sentences of up to ten years. As such it is important to consider the elements of each campaign to ensure it does not fall foul of this legislation.



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19. UNITED KINGDOM

GOVERNING LAW/CODES

- The UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing (“**CAP Code**”) (This code has been amended – the Twelfth edition is now in force and has been since 1 September 2010).
- The UK Code of Broadcast Advertising (“**BCAP Code**”).
- Consumer Protection from Unfair Trading Regulations 2008 (“**CPRs**”).
- Gambling Act 2005

Note: Prize promotions on broadcast media (TV and radio) are subject to significantly fewer rules and regulations (under the BCAP Code) than on non-broadcast media (under the CAP Code). This booklet reflects the more detailed requirements relating to non-broadcast media, however, we recommend that they also be applied to broadcast media.

SKILLS COMPETITIONS – CAN A PROMOTION BE RUN THAT IS BASED ON SKILL AND WHERE A PRIZE IS AWARDED?

Yes, but ensure:

(a) 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 prevent a significant proportion of potential entrants from taking part or prevents a significant proportion of entrants from receiving a prize;

AND

(b) terms are notified to entrant before purchase is made.

If a multiple choice format is used:

(a) there must be significant plausible alternatives to the correct answer;

AND

(b) the correct answer must not be obviously given close to the question.

PRIZE DRAWS – CAN A PROMOTION BE RUN WHERE THERE IS AN ELEMENT OF CHANCE IN THE SELECTION OF THE WINNER AND WHERE A PRIZE IS AWARDED?

Unlawful (potentially deemed an illegal lottery), unless:

(a) participants do not pay to enter (unless the promoter has the requisite lottery licence)

“Payment” includes: where the only route of entry is a premium rate phone line; paying more than usual rates for delivery of the prize; and paying for goods and services at an inflated rate which reflects the opportunity to take part in the promotion. Other notable benefits may constitute “**Payment**” (e.g. completion of a detailed questionnaire, providing valuable data for future marketing use).

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Note:

In Northern Ireland, a genuine, no-purchase route to entry must be provided.

SELECTION OF WINNERS AND REQUIREMENTS FOR AWARDING PRIZES

Prize Draws must be selected by a computer process producing verifiably random results, by an independent person or under supervision of an independent person.

Skills Competitions where the selection of winning entries is open to subjective interpretation must be judged by an independent judge or a panel with one independent member who is/are competent. The criteria and mechanism for judging entries must be made known before, or at time of entry.

Prize winners should receive their prizes within 30 days of the closing date or be told (before, or at time of entry) when they will receive their prizes if later. Winners should be informed individually and a list of winners should be available on request.

RESTRICTIONS ON PRIZES AWARDED

Prizes must be awarded as described in their marketing communications or reasonable equivalents.

Alcoholic drinks must not feature in promotions directed at under 18's.

Participants in instant-win promotions must get their winnings at once or must know immediately what they have won and how to claim without delay, unreasonable costs or administrative barriers.

REGISTRATION REQUIREMENTS AND FEES/TAXES PAYABLE

Not applicable

OTHER KEY SPECIFIC LOCAL REQUIREMENTS

A promoter's name and address must be stated unless it is obvious from the context.

Participants must be able to retain terms or easily access them throughout the promotion.

Changing terms and conditions during the promotion should be avoided at all costs.

Care to be taken regarding "hybrid schemes" (e.g. low skill threshold resulting in selection of winner based on pure chance), as these can be construed as lotteries.

Special care must be taken with promotions addressed to children and specific additional rules now apply.

PENALTIES FOR NON-COMPLIANCE

The Advertising Standards Authority publicises adjudications upheld against companies that breach the CAP code.

The majority of offences arising under the Gambling Act or CPR's are punishable by a fine of up to £5,000 or a prison term of up to 51 weeks. Sanctions are proportionate to the breach and routinely commence with requests to amend or stop non-compliant promotions. Immediate compliance often prevents more severe sanctions.

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20. UNITED STATES OF AMERICA

20.1 SUMMARY

GOVERNING LAW/CODES

In the United States, there are both federal and state laws which prohibit illegal lotteries and regulate the operation of prize promotions such as sweepstakes and skill contests. Operators should consider federal law and the laws of all 50 states when planning a prize promotion. Provided herein is a summary of federal and state law as well as the laws of the State of California.

AUTHORITY

At the federal level, the US Department of Justice is primarily responsible for enforcing criminal violations such as illegal lotteries. The US Postal Service is responsible for enforcing regulations regarding sweepstakes sent through the mail. The Federal Trade Commission can bring actions for unfair and deceptive trade practices relating to sweepstakes and contests. The Federal Communications Commissions can bring actions relating to sweepstakes and contest offerings over broadcast, cable or satellite television, or radio.

At the state level, the primary enforcement authorities are state Attorneys General. In addition, some states have consumer protection agencies that will enforce sweepstakes and contest laws.

SKILLS COMPETITIONS

In a skills competition, the winner must be picked based primarily on skill and not on chance to avoid being an illegal lottery. An illegal lottery consists of three elements: (1) prize; (2) chance; and (3) consideration. In order to make a skill promotion legal, the element of chance must be eliminated.

PRIZE DRAWS

Prize draws in which there is an element of chance and a prize is awarded are generally permitted, but to avoid being an illegal lottery participants should not be required to provide any consideration to take part. Consideration can be found if payment, purchase, or a “substantial expenditure of effort” is required. If a purchase is required operators must also assess whether states would find that the non-monetary consideration triggers application of the lottery laws. To avoid the consideration issue operators can offer an alternative free method of entry. If participants must attend a sales location or visit a location, certain disclosures in prize notices and advertisements must be made. In addition, both federal and state laws require certain disclosures in the rules or advertising, such as no purchase necessary, the odds of winning, and other requirements.

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SELECTION OF WINNERS AND REQUIREMENTS FOR AWARDING PRIZES

Many states prohibit the deceptive and misleading practice of informing consumers they have won a prize if that is not in fact true. States also have requirements regarding reporting the winners to state officials at the end of the promotion and making a list of the winners available to all entrants for a period of time. Some states also regulate the time period in which prizes must be awarded.

RESTRICTIONS ON PRIZES AWARDED

There are certain industries where sweepstakes are prohibited or strictly regulated either by state law or specific industry regulations, including the alcohol, tobacco, dairy, banking, and insurance industries. Many states require that the advertised prizes be awarded.

REGISTRATION REQUIREMENTS AND FEES/TAXES PAYABLE

Certain states require registration and/or bonding of prize promotions when the total value of the prizes exceeds a certain amount. Some prize promotion operations exclude residents in these states from participating in the promotion in lieu of registering.

OTHER KEY SPECIFIC LOCAL REQUIREMENTS

In addition to compliance with state sweepstakes laws, prize promotion operators must also take note of privacy and telemarketing laws if they plan to contact entrants in relation to the promotion or for subsequent marketing purposes. If a promotion will be conducted using a social media platform, operators must also ensure that they comply with the platform's rules for the operation of the promotion.

PENALTIES FOR NON-COMPLIANCE

Penalties vary by state and generally include jail time and/or civil fines. Some states allow civil actions to be brought by individual consumers.

20.2 FEDERAL

GOVERNING LAW/CODES

Racketeer Influenced and Corrupt Organizations Act ("RICO")

Section 5(a) of the Federal Trade Commission Act

Federal Deceptive Mail Prevention and Enforcement Act ("DMA")

CAN-SPAM Act of 2003

Telemarketing Sales Rule ("TSR")

Telephone Consumer Protection Act ("TCPA")

Children's Online Privacy Protection Act ("COPPA")

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AUTHORITY

U.S. Department of Justice
Federal Trade Commission (“FTC”)
Federal Communications Commission (“FCC”)
US Postal Inspection Service

SKILLS COMPETITIONS

A skill contest is a puzzle, game, competition, or other contest in which a prize is awarded or offered, the outcome depends predominately on the skill of the contestant, and a purchase, payment, or donation is required to enter. The DMA requires that mailings for skills contests include a clear and conspicuous statement which discloses all terms and conditions and provides a name and address where the sponsor can be reached. Additionally, the mailings must disclose certain information such as the number of rounds or levels, the cost to enter each round, the maximum cost to enter all rounds, the estimated number of entrants who may win, the qualifications of the judges, the method used in judging, the date prizes will be awarded and the value and nature of each prize. **39 U.S.C. § 3001(k)(3)(B).**

PRIZE DRAWS

The DMA requires that sweepstakes mailings include statements that disclose, among other things, that a purchase is not necessary to enter and will not improve the chances of winning, a name and address where the sponsor can be contacted, the terms and conditions, the entry procedure, the estimated odds of winning each prize, the quantity and estimated retail value of every prize, and a statement of the payment schedules of any prize. **39 U.S.C. § 3001(k)(3)(A).**

SELECTION OF WINNERS AND REQUIREMENTS FOR AWARDING PRIZES

The DMA prohibits mailings which represent that an individual is a winner of a prize unless that individual has won such prize. **39 U.S.C. § 3001.**

RESTRICTIONS ON PRIZES AWARDED

Not applicable.

REGISTRATION REQUIREMENTS AND FEES/TAXES PAYABLE

Not applicable.

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OTHER KEY SPECIFIC LOCAL REQUIREMENTS

For prize promotions aimed at children, COPPA requires the operator of a website or mobile app to receive verifiable parental consent before collecting information from children under age 13.

The TSR and TCPA require express consent be obtained before contacting consumers on their cell phones or through the use of automated technology.

PENALTIES FOR NON-COMPLIANCE

The FTC can bring enforcement actions for unfair and deceptive trade practices under Section 5 of the FTC Act. Remedies can include injunctions, civil penalties, and audits.

Under the DMA, the US Postal Inspection Service can obtain temporary restraining orders and injunctions, as well as assess civil penalties up to \$2 million dollars.

The FCC can assess fines starting at \$4,000 for each violation of its contest rules.

20.3 STATE SUMMARY

GOVERNING LAW/CODES

Each state has different statutes and regulations which govern sweepstakes and skills competitions. Operators should consider the laws of all 50 states when planning a prize promotion.

AUTHORITY

The authority which regulates prize promotions varies by state. For example, in New York prize promotions are overseen by the Secretary of State, while in Florida they are regulated by the Department of Agriculture and Consumer Services.

SKILLS COMPETITIONS

State rules differ regarding how much chance is allowed in a skill contest, however, a majority of states apply the rule that it is not an illegal lottery so long as skill is the dominant factor in determining the winner. *Ellison v. Lavin*, 179 N.Y. 164 (1904); *State v. Stroupe*, 238 N.C. 34 (1953). Some states, such as Oregon, only require that a skills competition have a combination of skill and chance, but skill does not need to dominate the game. **Or. Rev. Stat. § 646.651**. Several states prohibit charging entry fees for skills contests.

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PRIZE DRAWS

Most states prohibit illegal lotteries. A legal sweepstakes avoids being an illegal lottery by removing the element of consideration, however, states define consideration in a variety of ways. Some states, such as Georgia, define consideration narrowly as the payment of money. Other states, such as Kansas and New Mexico, define consideration more broadly as “something of value” which can include the expenditure of effort and in some cases even the provision of personal information. **Ga. Code Ann. § 10-1-393(b)(16)(C); Kan. Stat. § 21-6403; N.M. Code R. § 12.2.2.7.**

A skill contest avoids being a lottery by removing the element of chance from the competition. The key here is making sure the winner of the contest is determined by skill and not chance.

SELECTION OF WINNERS AND REQUIREMENTS FOR AWARDING PRIZES

Many states prohibit representing that a person is a winner or finalist, or has been specially selected, or is otherwise among a limited group of persons with an enhanced likelihood of receiving a prize, if that is not in fact true, or if all persons solicited will receive the same prize. **N.Y. Gen. Bus. Law § 369-ee; Ark. Code Ann. §4-102-105.** Some states such as Florida and New York, require that the state be provided with a list of the names and addresses of winners who have received prizes over a certain dollar amount. **Fla. Stat. § 849.094; N.Y. Gen. Bus. Law § 369-e.**

RESTRICTIONS ON PRIZES AWARDED

In several states it is illegal to fail to award the prizes which are offered. **R.I. Gen. Laws § 11-50-5; Neb. Rev. Stat. § 9-701.**

REGISTRATION REQUIREMENTS AND FEES/TAXES PAYABLE

Not all states require registration for a sweepstakes. However, if a prize promotion offers a prize which is greater than \$5000 in Florida or New York, the operator must register with the state and obtain a surety bond in advance of the promotion. **Fla. Stat. § 849.094(3); N.Y. Gen. Bus. Law § 369-e.** If a prize promotion offers a real property prize in Hawaii, the promotion must register a \$10,000 bond with the State. **Haw. Rev. Stat. § 481B-1.6.** Prize promotions which promote a retail business must be registered in Rhode Island if the total value of the prizes exceeds \$500. **R.I. Gen. Laws § 11-50-1.**

OTHER KEY SPECIFIC LOCAL REQUIREMENTS

Many states have unique local requirements which can affect a prize promotion. For example, in Florida charitable organizations may not operate a game promotion. **Fla. Stat. § 849.094.** In Oregon, alcoholic beverages cannot be given as a prize for any contest or game of chance or skill. **Or. Admin. R. 845-006-0345.**

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PENALTIES FOR NON-COMPLIANCE

In most states a promotion that is deemed a lottery is a criminal violation and punishable by imprisonment and fines. In Massachusetts, for example, an illegal lottery can result in fines of not more than \$2,000 or imprisonment up to 1 year. **General Laws of Massachusetts 271, § 15.** In many states, the state Attorney General can also seek a permanent restraining order or bring criminal charges for violations of the lottery laws. **Utah Code Ann. § 13-28-8; Ga. Code Ann. §§ 16-12-21, 10-1-393(b)(16)(N).**

Penalties for violations of consumer protection laws range from fines of \$100 per day in Utah to fines of \$10,000 per violation in Colorado if the violation is committed against an elderly person. **Utah Code Ann. § 13-28-7; Col. Rev. Stat. Ann. § 6-1-112.** In some states individual consumers can file a lawsuit for violations of the prize promotion laws or consumer protection laws. **Ark. Code Ann. § 4-102-103; Ga. Code Ann. §§ 10-1-399, 10-1-393(b)(16)(O).**

20.4 CALIFORNIA

GOVERNING LAW/CODES

California Business & Professions Code §§ 17539.1- 17539.35.

California Penal Code § 330, et seq.

AUTHORITY

California Department of Consumer Affairs

Office of the Attorney General

SKILLS COMPETITIONS

To qualify as a contest the game must require a combination of skill and chance, but skill does not need to dominate the game. **Haskell v. Time, Inc., 857 F. Supp. 1392 (E.D. Cal. 1994).** Operators of a skills contest must clearly and conspicuously disclose the rules, regulations, terms and conditions of the contest, the maximum number of games which may be necessary to complete the contest and determine winners, the maximum amount of money which a participant may be asked to pay, and the dates upon which the contest will terminate, and how ties will be decided. **Cal. Bus. & Prof. Code § 17539.1.**

PRIZE DRAWS

California prohibits prize draws where the participants must pay something of value as a term of entry. **Cal. Bus. & Prof. Code § 17539.3; People v. Cardas, 137 Cal. App. Supp. 788 (1933).**

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SELECTION OF WINNERS AND REQUIREMENTS FOR AWARDING PRIZES

In California, an operator must award and distribute all prizes “of the value and type represented.” **Cal. Bus. & Prof. Code § 17539.1**. Additionally, at the conclusion of a contest, its conductor must send, upon request by any contestant, the names of all winners, the prize won by each and, if applicable, the correct solution and the winning solution (if different). **Cal. Bus. & Prof. Code § 17539.2**.

RESTRICTIONS ON PRIZES AWARDED

Alcoholic beverage companies cannot award “prizes of value” in a sweepstakes. In order to avoid being a “prize of value” the prize limit is 25 cents for beer-related contests, \$1 for wine, and \$5 for distilled spirits. **Cal. Bus. & Prof. Code § 25600; *People ex rel. Dept. of Alcoholic Beverage Control v. Miller Brewing Co.*, 104 Cal.App.4th 1189, 1198 (App. 3d Dist. 2002) (citing Cal. Code Regs. tit. 4, § 106)**.

REGISTRATION REQUIREMENTS AND FEES/TAXES PAYABLE

There are no registration requirements in California.

OTHER KEY SPECIFIC LOCAL REQUIREMENTS

Use of the word “lucky” to describe an entry form or the use of simulated checks, currency, or items of value are prohibited unless they bear the words “SPECIMEN-NON-NEGOTIABLE” clearly and conspicuously. **Cal. Bus. & Prof. Code, § 17539.1(a)(11), (13)**.

PENALTIES FOR NON-COMPLIANCE

Violations of Cal. Bus. & Prof. Code § 17539.1 constitute unfair business practices and are likely enforceable in a civil action under Cal. Bus. & Prof. Code § 17200. That law also provides for injunctions and civil penalties not to exceed \$2,500 per violation. The penalties for engaging in illegal gambling, such as the operation of an illegal lottery, are a fine between \$100 and \$1000 and imprisonment in county jail not exceeding 6 months, or both. **Cal. Pen. Code § 330**.

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