

GALA
GLOBAL ADVERTISING LAWYERS ALLIANCE

Sweepstakes & Contests: A Global Legal Perspective





ABOUT GALA

The Global Advertising Lawyers Alliance (GALA) is the leading network of advertising lawyers in the world. With firms representing about 90 countries, each member has the local expertise and experience in advertising, marketing and promotion law that will help your campaign achieve its objectives, and navigate the legal minefield successfully.

GALA is a uniquely sensitive global resource whose members maintain frequent contact with each other to maximize the effectiveness of their collaborative efforts for their shared clients. GALA provides the premier worldwide resource to advertisers and agencies seeking solutions to problems involving the complex legal issues affecting today's marketplace.

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INTRODUCTION

We are very pleased to share with you the Global Advertising Lawyers Alliance guide to conducting sweepstakes and contests around the world. With the ever-increasing importance of social media for advertisers and marketers, sweepstakes and contests continue to be an important way to engage with consumers globally. We hope that this book – the most comprehensive ever published on the subject -- will help make that job a bit easier.

In this book, we present key issues for advertisers and marketers to consider when conducting sweepstakes in more than fifty-five countries, across six continents. We cover topics such as which types of games are legally permissible, which countries require registration, restrictions on the types of prizes that may be offered, disclosure requirements, and many others.

While this book is no substitute for consulting counsel in the relevant markets, it should help you begin to consider the myriad of issues that need to be faced when conducting sweepstakes and contests around the world.

Special thanks to Catherine Bate from Miller Thomson, GALA's Canadian member, for editing this book. We also want to thank Stacy Bess, GALA's Executive Director, for all of her work in helping us to publish this.

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ARGENTINA

Are chance-based games (i.e., random draw promotions, instant win games) generally permissible?

Yes.

Are skill-based contests (i.e., essay contests, photo contests, user-generated content contests) generally permissible?

Yes.

Is any type of registration or filing required to offer a chance-based game and/or a skill-based contest? If so, what are the costs and deadlines associated with such registration or filing?

Authorization of the National Lottery is required when contests, prize draws, or competitions are advertised by means of mass-communication media, and when: (a) the winners are totally or partially determined by chance (i.e. random draws); (b) the final aim is the development of a promotional activity for their services or products; and (c) it involves prizes greater than Argentinean Pesos \$6.666 (approximately USD \$ 400). To obtain the authorization of the National Lottery, the organizer must be a local company or have a branch office registered before the Public Registry of Commerce of the City of Buenos Aires (IGJ), in accordance with Article 118 of Law N° 19.550. Current registration fees are: Annual authorization: \$ 4.000 (approx. USD \$250); Per promotion: \$2.000 (approx. USD \$120).

The applicant cannot organize promotions until the annual authorization has been approved by the National Lottery. National Lottery has 60 days (calendar days) to issue the annual authorization request. Note that it is possible to hire the services of a local organizer who already has the annual authorization granted. The local organizer will then be responsible for complying with all requirements to launch the promotion in Argentina.

The applicant must submit all documentation required for the authorization of each promotion at least five (5) working days in advance of the promotion's start date. This documentation includes: (a) a copy of the official rules in Spanish; (b) payment of the applicable fee; and (c) a copy of the annual authorization.

Bear in mind that at least the 5% of the amount of prizes has to go to charity.

It is worth mentioning that the registration costs and authorization requirements for developing sweepstakes and promotions are regulated on a local level by each province. Nevertheless, only some provinces have applicable regulations in place. Sweepstakes can, therefore, be run without registration in all provinces, and organizers may exclude those provinces that require additional authorizations and payments.

Are promotions (chance-based or skill-based) in which someone is required to purchase the product in order to enter permitted? If a purchase is required, must a non-purchase method of entry be offered?

The Free Trade Act (FTA) forbids the promotion or organization of contests, competitions or raffles of any nature in which participation is totally or partially subject to the purchase of a product or the hiring of a service. Consequently, non-purchase method of entry must be offered in order to avoid the FTA prohibition, offering free entrants participants the same chance to win as purchase entrants participants have.

Are there other forms of "consideration" which are prohibited in connection with entry into a chance-based game (e.g., posting a photo on Instagram, tweeting a response to a call-to-action, completion of a survey, taking a quiz and be required to answer questions correctly to be entered, watching a short video)?

Other forms of "consideration" in connection with entry into a chance-based game are not specifically regulated by law. Chance-based games conducted through social media or other platforms must comply with terms or restrictions of each platform (e.g. Twitter, Facebook, Snapchat).

Are promotions in which the winner(s) are determined in whole or in part by public voting permitted?

Yes.

If a chance-based game or skill-based contest is open to residents of several countries, must the random draw/winner determination process occur in your country or can it be conducted in another country? If the selection process must occur in your country, is there an exception for promotions taking place solely online?

There is no prohibition against conducting the random draw/winner determination process in another country, but the process must comply with local legislation. A notary public must supervise every drawing in which winners are selected, attesting to its transparency and normal conduct (Resolution of the National Lottery Number 157/98, section 16). Under Decree Resolution N ° 1153/97, the names of the prize winners shall be published within ten (10) days, counted from the end of the promotion, by the same means used to promote the contest/promotion.

If a chance-based game or skill-based contest is open to residents of several countries, is it permissible to combine all entries from all countries to determine the winners for a single prize pool or must there be a separate prize pool for residents of your country?

It is permissible to combine all entries from all countries to determine the winners for a single prize pool, but it is mandatory to disclose the mathematical odds of winning a prize that local entrants have.

Are there any restrictions on the type, nature or value of the prizes (e.g., travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

No.

Is there a tax liability associated with prizes? If yes, who is responsible for the taxes, winner or sponsor? Are there any other costs or fees, such as duties and customs fees, imposed on prize awards?

The winner, if resident in Argentina, shall report the amount received from the sponsor to the Argentine tax authorities and pay income tax on it. If the sponsor is not a resident of Argentina, it will not be required to act as a withholding agent for the Argentine government. Only residents in Argentina may be required to act as such.

Note that a tax of 31 % on 90 % of the amount of the prize is applicable to chance-based contests. Some provinces may apply additional taxes in their jurisdictions.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (i.e., in any and all media, now or hereafter devised, worldwide in perpetuity)? Can such ownership exist in perpetuity? Can copyright be transferred electronically or must the transfer occur in writing?

In Argentina, authors have moral rights over their works, to be recognized as authors, to the integrity of its works and also to control the destination of said works. So, even if the Official Rules stipulate an assignment of the entries, those entries shall only be used in connection with the promotion.

Although it is advisable to include a copyright assignment, it should not be extended to every participant, but only to winners and should be limited for a certain period of time. Otherwise, a court could find that the organizer did not pay for the assignment and that the participant should receive some kind of compensation or benefit, to be paid by the sponsor.

Finally, case law precedents show that assignments of copyright are usually interpreted restrictively, so that the transfer of an element of copyright would be the exception, and the retention of such right by the original copyright owner would be the rule.

Is it generally permissible to require that a winner sign a liability and/or publicity release in order to receive a prize?

Yes.

Must the Official Rules and advertising materials (including website) be provided in the native language? Or must the Official Rules and website only be provided in the native language if the promotion is advertised/promoted in that language (e.g., if all advertising is in English, can the Official Rules and website only be in English)?

If the promotion is open to Argentinean residents, the Official Rules and advertising materials must be provided in Spanish.

Are there restrictions on the use of personal information collected from entrants?

Pursuant to the Argentinean Data Protection Act (Nº 25.326), participants have a right of access to, modification and withdrawal of their personal data. Participants also have the right of opposition to the data collection, under certain circumstances. Entrants may also access, withdraw, and correct their personal data. Sponsor must clearly inform participants which personal information is being collected and for what purposes. The participant's express consent to use his/her personal information is required by law.

If the chance-based game or skill-based contest is solely online and no promotion takes place in your country, is it subject to the laws of your country?

Yes. If the contest/promotion is open to Argentinean residents, then local laws will apply to it.

Are there key cases and/or regulatory decisions involving promotions of which a company should be aware?

A consumer claim was filed against AMX Argentina S.A., the Argentine subsidiary of the Mexican mobile company Claro. A consumer claimed that she had participated in a promotion, in which a Mini Cooper was offered. What was not clear was that the promotion was only to win the right to participate in a raffle for the Mini Cooper.

The Plaintiff filed a complaint against AMX Argentina S.A., claiming breach of contract. The complaint stated that on November 2, 2008, the Defendant had sent a text message to her mobile phone inviting her to participate in a trivia contest for winning a brand new Mini Cooper. According to the message received, she had to send a text message with the word "mini" to the number "333", and AMX Argentina S.A. would charge her \$2.99 per message. The promotion consisted of answering questions sent by the Defendant, and texting back the response through different text messages.

After answering the questions and having received messages from the Defendant confirming the correct responses, on November 3, 2008 the company informed her that she had succeeded in amassing 39.500 points in the process, the highest number of points in the promotional game. Consequently, the Plaintiff considered herself to be the winner and attempted to claim the prize (the Mini Cooper). After calling a customer service number, the company explained to her that what she had won was the right to participate in a raffle for a Mini Cooper car conducted by the National Lottery.

In the first instance decision, the judge held that no mention was made by the company within the text messages sent to the client to the existence of terms and conditions applicable to the promotion. Moreover, he held that this was evidence of misleading advertising.

The judge decided in favor of the Plaintiff obliging the Defendant to deliver a Mini Cooper car, but rejected the claims for moral damages, as well as punitive damages. The judge pointed out in his decision that none of the text messages sent to the client had any reference to the existence of terms and conditions, required in any promotion. Finally, the judge decided that the messages sent by AMX, communicating the promotion to clients, were misleading advertising.

Are there any other important issues a company should consider or be aware of when structuring a chance-based game/skill-based contest that will be open to residents of your country?

Argentina is subdivided into twenty-three provinces (*provincias*) and one autonomous city, City of Buenos Aires. Even though the provinces and the City of Buenos Aires exist under a federal system, they have their own constitutions, and local regulations. A sponsor must be aware of the applicable legislation for the provinces included within the scope of the promotion/contest.



AUSTRALIA

Are chance-based games (i.e., random draw promotions, instant win games) generally permissible?

Yes, games of chance (or trade promotion lotteries) are generally permissible and are subject to the lottery legislation in each state and territory of Australia.

Are skill-based contests (i.e., essay contests, photo contests, user-generated content contests) generally permissible?

Yes, games of skill or skill-based contests are generally permissible.

Is any type of registration or filing required to offer a chance-based game and/or a skill-based contest? If so, what are the costs and deadlines associated with such registration or filing?

There are no registration or filing requirements for skill-based contests.

There are four states or territories in Australia where permits for the conduct of a game of chance may be required. They are: (a) New South Wales (**NSW**); (b) South Australia (**SA**); (c) Australian Capital Territory (**ACT**); and (d) the Northern Territory (**NT**). Exceptions can apply in certain circumstances. For example, NT does not require a permit if another state or territory has already issued a permit. The lottery departments in each state and territory also impose their own conditions and have different filing costs and processing times for permit applications.

The official fees and permit offices' processing times are as follows:

ACT

The fee to apply for a trade promotion permit in the ACT depends on the prize value:

Prize Value in ACT (AUD\$)	Fee (AUD\$)
\$1,000 or less	\$69
\$1,001 to \$2,500	\$132
\$2,501 to \$5,000	\$196
\$5,001 to \$10,000	\$284
\$10,001 to \$50,000	\$547
\$50,001 to \$100,000	\$782
\$100,001 to \$200,000	\$1,560
greater than \$200,000	\$3,128

Applications will generally be assessed within seven (7) working days by the ACT permit office subject to all necessary information and correct fees received.

No permit is required in the ACT if the total prize pool is AU\$3,000 or less.

NSW

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

Prize Value in NSW (AUD\$)	Fee if application is filed online (AUD\$)	Fee if application is filed via other method (AUD\$)
\$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

Applications will generally be assessed within two (2) working days by the NSW permit office subject to all necessary information and correct fees received.

SA

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

Prize Value (AUD\$)	Standard fee (AUD\$)	Premium Fee (AUD\$)
< \$10,000	\$184	\$369
\$10,001 to \$50,000	\$675	\$1,350
\$50,001 to \$100,000	\$1,179	\$2,353
\$100,001 to 200,000	\$2,022	\$4,043
\$200,001 or more	\$3,707	\$7,414

Applications will generally be assessed within fourteen (14) working days (or within five (5) working days if a premium fee is paid) by the SA permit office subject to all necessary information and correct fees received.

No permit fee is required in SA if the total prize pool is AU\$5,000 or less.

NT

As mentioned above, the NT does not require a permit to be obtained if a permit has been obtained in another state or territory for the promotion and/or the prize pool does not exceed AU\$5,000. In contrast, if no other permits are being obtained and the total prize pool value exceeds AU\$5,000 (i.e., 'major' trade lotteries), then a NT permit is required.

There is no fee to obtain a permit for 'major' trade promotion lotteries.

Applications will generally be assessed within ten (10) working days by the NT permit office subject to all necessary information received.

Are promotions (chance-based or skill-based) in which someone is required to purchase the product in order to enter permitted? If a purchase is required, must a non-purchase method of entry be offered?

Yes, proof of purchase promotions (in which a participant is required to purchase a good or service as a condition of entry) is permissible in relation to both games of chance and skill-based contests. No alternative non-purchase method of entry is required.

Are there other forms of "consideration" which are prohibited in connection with entry into a chance-based game (e.g., posting a photo on Instagram, tweeting a response to a call-to-action, completion of a survey, taking a quiz and be required to answer questions correctly to be entered, watching a short video)?

Although proof of purchase promotions are permissible, a sponsor is not permitted to charge a participant a fee to enter a chance-based promotion. Entry must be free.

The lottery departments in each state and territory may also impose their own restrictions on certain entry methods. For example, in NSW entry into a trade promotion lottery cannot require the consumption of more than one alcoholic drink, nor can the outcome of a trade promotion lottery be dependent on the consumption of more than one alcoholic drink.

Further, certain social media sites may have their own terms and conditions of use that must be followed by businesses using those social media platforms to run their promotion. For example, Facebook prohibits promotions that require use of personal timelines and friend connections to administer the promotion. For example "share on your Timeline to enter" or "share on your friend's timeline to get additional entries" and "tag your friends in this post to enter" are prohibited. Facebook also prohibits sponsors requiring entrants to "like" a page as a condition of entry.

Are promotions in which the winner(s) are determined in whole or in part by public voting permitted?

Yes.

If a chance-based game or skill-based contest is open to residents of several countries, must the random draw/winner determination process occur in your country or can it be conducted in another country? If the selection process must occur in your country, is there an exception for promotions taking place solely online?

If the promotion is a skill-based contest there are no rules about where the judging or determination of the winner must take place.

However, for games of chance NSW requires that the draw must take place in Australia. The other Australian states and territories are silent about where the draw needs to take place.

There is no exception in NSW for games of chance promotions taking place solely online. However, from a jurisdictional point of view a game of chance promotion by a non-Australian resident sponsor that allows NSW residents (or Australian residents who reside in NSW) to enter the promotion, but is not directed to or does not target NSW residents is unlikely to fall within NSW's jurisdiction.

If a chance-based game or skill-based contest is open to residents of several countries, is it permissible to combine all entries from all countries to determine the winners for a single prize pool or must there be a separate prize pool for residents of your country?

For skill-based contests, it is permissible to combine all entries from all countries to determine the winners for a single prize pool.

For games of chance, there are no legislated restrictions on the nationality of winners and it is permissible to combine all entries from all countries to determine the winners for a single prize pool. However, as noted above the draw would have to take place in Australia.

In addition, certain states and territories require the sponsor to be resident in Australia and possess an Australian Business Number, or ABN.

Are there any restrictions on the type, nature or value of the prizes (e.g., travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

There is no cap on the value of prizes, either for games of chance or skill-based contests.

The lottery departments in each state and territory impose their own restrictions on the type and nature of prizes. Prohibited prizes include tobacco products, firearms, ammunition, dangerous weapons, explosives and cosmetic and surgical procedures. Age and quantity restrictions also apply to prizes that include alcohol.

In some states and territories the lottery departments will refuse to approve an application where the prizes are considered to be unlawful or otherwise inappropriate. Also, if a prize involves travel, all relevant information regarding the travel and what it covers (including accommodation) must be specified in the Official Rules.

Is there a tax liability associated with prizes? If yes, who is responsible for the taxes, winner or sponsor? Are there any other costs or fees, such as duties and customs fees, imposed on prize awards?

Generally, no. However, if a prize is won as an incident of the winner's income producing or business activities, then the prize in cash or in kind may be assessable. Any tax so assessed would be payable by the winner.

A goods and services tax or GST may also apply to a sponsor if the sponsor is making a taxable supply. A

taxable supply will apply if all of the following conditions are satisfied:

- the supply of the prize is for consideration;
- the supply of the prize is made in the course of the furtherance of the sponsor's enterprise that it carries on;
- the supply is connected with Australia; and
- the sponsor is registered for GST or is required to be registered for GST.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (i.e., in any and all media, now or hereafter devised, worldwide in perpetuity)? Can such ownership exist in perpetuity? Can copyright be transferred electronically or must the transfer occur in writing?

Yes, for both games of chance and skill-based contests it is generally permissible for the sponsor to own and keep the physical entries submitted.

However, because the Australian *Copyright Act 1968* requires an assignment of copyright to be in writing and signed by the owner of copyright, purported assignments of copyright in the Official Rules without a corresponding signature from the copyright owner entrant are legally ineffective. Exclusive licences are also required to be in writing and signed by the owner of copyright. In order to accommodate these restrictions it is common practice in Australia for entrants to grant a perpetual and irrevocable non-exclusive licence to reproduce, publish, adapt and communicate to the public the copyright work.

Is it generally permissible to require that a winner sign a liability and/or publicity release in order to receive a prize?

Yes.

Must the Official Rules and advertising materials (including website) be provided in the native language? Or must the Official Rules and website only be provided in the native language if the promotion is advertised/promoted in that language (e.g., if all advertising is in English, can the Official Rules and website only be in English)?

For games of chance, the Official Rules and advertising materials (including website) must be in English.

For skill-based contests there is no requirement to provide the "Official Rules" or advertising materials in any particular language. However, for the Official Rules to be legally binding they must be able to be understood by the entrants and if the Official Rules and advertising materials are not in English then as a matter of contract law, the Official Rules may not be enforceable against Australian entrants (unless the Australian entrant understood the foreign language in which the Official Rules and advertising material was presented).

Are there restrictions on the use of personal information collected from entrants?

Yes, for both games of chance and skill-based contests, the Australian *Privacy Act 1988* governs the collection, use and disclosure of personal information. As a general rule personal information should only be used for the primary purpose for which it was collected (unless consent has been obtained to use the information for other purposes). The primary purpose of collection may include the conduct of the promotion, the administration of prizes and for marketing and promotional purposes.

If the chance-based game or skill-based contest is solely online and no promotion takes place in your country, is it subject to the laws of your country?

No, as a general rule, if a game of chance or skill-based contest is not promoted to or targeted towards Australian residents and the game is not conducted in Australia it is unlikely to fall within the jurisdiction of the state and territory lottery legislation and federal *Australian Consumer Law (ACL)*.

However, information or advertising material may be considered to be published in Australia, even though it was posted on a foreign website by a non-Australian resident entity. Australian case law confirms that publication occurs in the place where the material is downloaded and not where it was posted the question

of whether a game of chance or skill-based contest is promoted or being conducted in Australia by virtue of it being downloaded and accessed in Australia by an Australian resident is objectively assessed based on all the relevant facts and circumstances.

Are there key cases and/or regulatory decisions involving promotions of which a company should be aware?

There are no key cases or regulatory decisions involving promotions that are relevant, however it is important for companies to keep in mind that as far as games of chance are concerned state and territory lottery departments change their policies from time to time and what may have been prohibited at one stage may no longer be prohibited at a later stage. In relation to the jurisdiction of the *Australian Consumer Law* being extended to non-resident foreign corporations, see *Australian Competition and Consumer Commission v Valve Corporation (No 3)[2016] FCA 196*.

Are there any other important issues a company should consider or be aware of when structuring a chance-based game/skill-based contest that will be open to residents of your country?

Companies should be aware that civil and criminal penalties may apply for repeated or serious breaches of the state and territory lottery legislation, and the *Australian Consumer Law* so always get advice first.

AUSTRIA

Are chance-based games (i.e., random draw promotions, instant win games) generally permissible?

Yes, chance-based games are generally permissible in Austria.

Are skill-based contests (i.e., essay contests, photo contests, user-generated content contests) generally permissible?

Yes, skill-based contests are generally permissible in Austria.

Is any type of registration or filing required to offer a chance-based game and/or a skill-based contest? If so, what are the costs and deadlines associated with such registration or filing?

No, registration or filing to offer a chance-based game or a skill-based contest is not required.

Are promotions (chance-based or skill-based) in which someone is required to purchase the product in order to enter permitted? If a purchase is required, must a non-purchase method of entry be offered?

Yes, promotion in which someone is required to purchase a product are generally permitted. A non-purchase method of entry generally is not required. Exceptions exist if promotions are qualified as aggressive.

Are there other forms of “consideration” which are prohibited in connection with entry into a chance-based game (e.g., posting a photo on Instagram, tweeting a response to a call-to-action, completion of a survey, taking a quiz and be required to answer questions correctly to be entered, watching a short video)?

A consideration required for an entry into a chance based game could lead to the application of gambling laws, which would make the promotion illegal. This also may apply for considerations which do not consist of monetary payments but have a certain monetary value.

Are promotions in which the winner(s) are determined in whole or in part by public voting permitted?

Yes, promotions in which the winner is determined by public voting are permitted.

If a chance-based game or skill-based contest is open to residents of several countries, must the random draw/winner determination process occur in your country or can it be conducted in another country? If the selection process must occur in your country, is there an exception for promotions taking place solely online?

No, it is not necessary for the random draw/ winner determination process to be conducted in Austria.

If a chance-based game or skill-based contest is open to residents of several countries, is it permissible to combine all entries from all countries to determine the winners for a single prize pool or must there be a separate prize pool for residents of your country?

Yes, it is permissible to combine all entries from all countries to determine the winners for a single prize pool.

Are there any restrictions on the type, nature or value of the prizes (e.g., travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

Generally, there are no restrictions on the type, nature or value of prizes. In exceptional cases, an excessive value of a prize could lead to the promotion being qualified as an illegal aggressive sales practice.

Is there a tax liability associated with prizes? If yes, who is responsible for the taxes, winner or sponsor? Are there any other costs or fees, such as duties and customs fees, imposed on prize awards?

Yes, there is a tax liability associated with chance-based games. The sponsor is responsible for the tax. Prizes imported from outside the European Union may be subject to customs duties.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (i.e., in any and all media, now or hereafter devised, worldwide in perpetuity)? Can such ownership exist in perpetuity? Can copyright be transferred electronically or must the transfer occur in writing?

Generally rights, including copyright, can be transferred to the sponsor with the consent of the participant as long as such granting of rights is reasonable and adequate. Transfer of copyrights to be used worldwide in perpetuity may be considered inadequate and, therefore, invalid. Generally, copyright can be transferred electronically.

Is it generally permissible to require that a winner sign a liability and/or publicity release in order to receive a prize?

Yes, it is generally permissible to require that a winner sign a liability and/or publicity release in order to receive a prize. The validity of liability and/or publicity releases, however, will be subject to imperative laws, in particular to consumer protection laws. A contradiction of such laws may lead to the invalidity of releases.

Must the Official Rules and advertising materials (including website) be provided in the native language? Or must the Official Rules and website only be provided in the native language if the promotion is advertised/promoted in that language (e.g., if all advertising is in English, can the Official Rules and website only be in English)?

Generally, there is no obligation to use the German language in the Official Rules or in advertising materials. However, using a foreign language could have the effect that the Official Rules may be deemed invalid due to lack of transparency. Furthermore, the application of the Official Rules requires that the entrant is made aware of them in the language generally used in the promotion.

Are there restrictions on the use of personal information collected from entrants?

Yes, there are restrictions on the use of personal information collected from entrants. Generally, the use of personal information requires the entrant's consent. Furthermore, the restrictions of the Data Protection Act must be observed.

If the chance-based game or skill-based contest is solely online and no promotion takes place in your country, is it subject to the laws of your country?

Yes, the prize draw will be subject to Austrian law if the prize draw is also addressed to Austrian consumers.

Are there key cases and/or regulatory decisions involving promotions of which a company should be aware?

No.

Are there any other important issues a company should consider or be aware of when structuring a chance-based game/skill-based contest that will be open to residents of your country?

Generally, chance-based games and skill-based contests are permissible in Austria as long as they are not qualified as aggressive or as misleading. This also applies for game and contests which require the prior purchase of a product. Misleading statements in the promotion or an aggressive character due to an excessive prize value can make the promotion illegal. Official Rules are always subject to consumer protection laws which are imperative and may lead to the invalidity of inadequate or non-transparent clauses.

 BELGIUM 

Are chance-based games (i.e., random draw promotions, instant win games) generally permissible?

No, as a rule chance-based games are prohibited, but exceptions to the prohibition exist.

Are skill-based contests (i.e., essay contests, photo contests, user-generated content contests) generally permissible?

Yes, skill-based contests are generally permissible.

Is any type of registration or filing required to offer a chance-based game and/or a skill-based contest? If so, what are the costs and deadlines associated with such registration or filing?

No, neither registration nor filing is required to offer promotional games and contests.

Are promotions (chance-based or skill-based) in which someone is required to purchase the product in order to enter permitted? If a purchase is required, must a non-purchase method of entry be offered?

Skill-based promotional contests in which someone is required to purchase the product in order to enter are permitted. A non-purchase method of entry must not be offered. The opposite counts for chance-based games.

Are there other forms of “consideration” which are prohibited in connection with entry into a chance-based game (e.g., posting a photo on Instagram, tweeting a response to a call-to-action, completion of a survey, taking a quiz and be required to answer questions correctly to be entered, watching a short video)?

No, these sort of activities do not stand in the way of organizing a chance-based game.

Are promotions in which the winner(s) are determined in whole or in part by public voting permitted?

These promotions can qualify as permitted promotions, under basically the same requirements as those without public voting.

If a chance-based game or skill-based contest is open to residents of several countries, must the random draw/winner determination process occur in your country or can it be conducted in another country? If the selection process must occur in your country, is there an exception for promotions taking place solely online?

The determination process can take place in another country.

If a chance-based game or skill-based contest is open to residents of several countries, is it permissible to combine all entries from all countries to determine the winners for a single prize pool or must there be a separate prize pool for residents of your country?

Combining entries from several countries to determine the winner for a single prize is not explicitly prohibited.

Are there any restrictions on the type, nature or value of the prizes (e.g., travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

There are no restrictions on prizes awarded in promotional games and contests.

Is there a tax liability associated with prizes? If yes, who is responsible for the taxes, winner or sponsor? Are there any other costs or fees, such as duties and customs fees, imposed on prize awards?

Yes, the winner is liable for taxes, but the sponsor can come into the picture under some circumstances. No other duties apply.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (i.e., in any and all media, now or hereafter devised, worldwide in perpetuity)? Can such ownership exist in perpetuity? Can copyright be transferred electronically or must the transfer occur in writing?

This can be contractually arranged. Specific drafting care is required. Electronic consent can under circumstances suffice. Specific guidance is advised.

Is it generally permissible to require that a winner sign a liability and/or publicity release in order to receive a prize?

Yes.

Must the Official Rules and advertising materials (including website) be provided in the native language? Or must the Official Rules and website only be provided in the native language if the promotion is advertised/promoted in that language (e.g., if all advertising is in English, can the Official Rules and website only be in English)?

Official Rules, regardless of the medium, have to be provided in a language, easily comprehensible for participants. This will, in most instances, require use of local languages.

Are there restrictions on the use of personal information collected from entrants?

Yes.

If the chance-based game or skill-based contest is solely online and no promotion takes place in your country, is it subject to the laws of your country?

Yes.

Are there key cases and/or regulatory decisions involving promotions of which a company should be aware?

No.

Are there any other important issues a company should consider or be aware of when structuring a chance-based game/skill-based contest that will be open to residents of your country?

No.

 BOLIVIA 

Are chance-based games (i.e., random draw promotions, instant win games) generally permissible?

Yes, chance-based games are generally permissible in Bolivia.

Law 060 on “Lottery Games and Gaming” defines chance-based games in its article 6. The authority in charge of regulating and enforcing the norms on gaming in Bolivia is named the “Autoridad de Fiscalización y Control Social del Juego” (hereafter, “Gaming Authority”). Article 7 of Law 060 includes “random draw” as a mechanism to participate in “Business Promotions”. “Business Promotions” are those activities intended to increase the sales or attract customers in exchange of prizes in money, in kind, or in services granted through random draw or chance, as long as access to the game is not conditioned on a payment for the right to participate.

Are skill-based contests (i.e., essay contests, photo contests, user-generated content contests) generally permissible?

Yes, Business Promotions including skilled-based contests are generally permissible and fairly common in Bolivia, and are generally allowed by the Gaming Authority.

Under article 2. a. of regulation Nr. 01-00003-15 of the Gaming Authority, named “Rules to grant Business Promotions authorizations”, the definition of Business Promotions is the following: “Business Promotions include the commercialization of assets and services by granting prizes through raffles, games of chance, and **any other way of access to a prize** which is not conditioned on a payment for the right to participate, developed in a maximum period of a year.”

Thus, skill-based contests may qualify as Business Promotions under the broad definition of this regulation.

Is any type of registration or filing required to offer a chance-based game and/or a skill-based contest? If so, what are the costs and deadlines associated with such registration or filing?

Yes, it is necessary to obtain authorization of the Gaming Authority in order to offer chance-based or skill-based Business Promotions. The requesting party must file a project of the Business Promotion development, including all relevant information. After these documents are filled, the Gaming Authority has to grant or deny the authorization for launching the Business Promotion in the next 5 business days.

Are promotions (chance-based or skill-based) in which someone is required to purchase the product in order to enter permitted? If a purchase is required, must a non-purchase method of entry be offered?

Yes, such promotions are permitted and are fairly common in Bolivia. In such cases, the payment made by the participant is considered to be a payment for the product and not for the right to participate in the Business Promotion.

Are there other forms of “consideration” which are prohibited in connection with entry into a chance-based game (e.g., posting a photo on Instagram, tweeting a response to a call-to-action, completion of a survey, taking a quiz and be required to answer questions correctly to be entered, watching a short video)?

No. Under art. 3 of the above-mentioned regulation, the forms of considerations allowed are diverse and open-ended. There are no specific kinds of consideration forbidden, except for the mere payment of money.

Are promotions in which the winner(s) are determined in whole or in part by public voting permitted?

There are no specific restrictions regarding such a way of determination of the winner.

If a chance-based game or skill-based contest is open to residents of several countries, must the random draw/winner determination process occur in your country or can it be conducted in another country? If the selection process must occur in your country, is there an exception for promotions taking place solely online?

Under art. 18 of the regulation, the random draw/ winner determination process does not necessarily have to occur in Bolivia. However, following the above-mentioned article, an original or legalized copy of the notary act of the determination of the winner must be sent to the Gaming Authority.

If a chance-based game or skill-based contest is open to residents of several countries, is it permissible to combine all entries from all countries to determine the winners for a single prize pool or must there be a separate prize pool for residents of your country?

There are no specific regulations regarding this point. However, the gaming tax that will be applicable will be determined based on the prize pool offered in Bolivia. As a result, it is to the sponsor's advantage to limit the size of the prize pool offered to Bolivian residents.

Are there any restrictions on the type, nature or value of the prizes (e.g., travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

There are no restrictions on the type, nature or value of the prizes. However, the value of the prizes must be declared in the filing made by the requesting party, and gaming taxes must be paid on the basis of the declared amount.

Is there a tax liability associated with prizes? If yes, who is responsible for the taxes, winner or sponsor? Are there any other costs or fees, such as duties and customs fees, imposed on prize awards?

Law 060 sets forth the following tax regime for gaming:

Gaming Tax: Must be paid by those who carry out raffles or chance based games and business promotions.

In the case of raffles and chance-based games, the payable amount is 30 % of the gross income excluding the VAT

In the case of business promotions, the payable amount is 10% of the value of the prize. If the prize is not in money but in kind, the tax must be applied to the market value of the prize.

Tax on gaming participation: Must be paid by those who participate in raffles or chance based games.

The payable amount is 15 % of the price of the sale, excluding the VAT.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (i.e., in any and all media, now or hereafter devised, worldwide in perpetuity)? Can such ownership exist in perpetuity? Can copyright be transferred electronically or must the transfer occur in writing?

There are no specific restrictions under the regulations governing Business Promotions. In practice, it is common that skill-based contests request the participants to agree to assign all their monetary rights to the sponsor, and this is allowed under the Bolivian Copyright Law. However, under law the copyright in itself will remain with the creator of the entry. It remains unclear whether such ownership can exist in perpetuity. Copyright may not be transferred electronically; it must occur in writing.

Is it generally permissible to require that a winner sign a liability and/or publicity release in order to receive a prize?

Yes, it is generally permissible to require winners to sign liability and publicity releases in order to receive a prize. This requirement, however, must be declared when the sponsor files a request for authorization.

Must the Official Rules and advertising materials (including website) be provided in the native language? Or must the Official Rules and website only be provided in the native language if the promotion is advertised/promoted in that language (e.g., if all advertising is in English, can the Official Rules and website only be in English)?

There are no specific regulations in the norms applicable to Business Promotions. However, Law 453 regarding consumers' rights states in art. 14, that providers of services or products must "provide information in Spanish". Therefore, it might be inferred that the Official Rules and advertising materials must be provided in Spanish, particularly if the business promotion is targeting Bolivian consumers. If the promotion is carried outside of Bolivia (or online), this restriction seems to be pointless. There is, unfortunately, no jurisdiction on the subject that would help us interpret this restriction.

Are there restrictions on the use of personal information collected from entrants?

No, there are no specific restrictions.

If the chance-based game or skill-based contest is solely online and no promotion takes place in your country, is it subject to the laws of your country?

There are no specific regulations on this point, but under art. 2 of Law 060 (scope of application), it might be understood that such games and contests would not be subject to the laws of Bolivia.

Are there key cases and/or regulatory decisions involving promotions of which a company should be aware?

No, there are no key cases or regulatory decisions to report.

Are there any other important issues a company should consider or be aware of when structuring a chance-based game/skill-based contest that will be open to residents of your country?

Generally, it is important to consider that the applicable laws and regulations are fairly recent, and they aim to be broad and inclusive, meaning that there are few practices excluded from the applicability of the norm. In case of doubt, the Gaming Authority has shown that it is in favor of an inclusive interpretation of the norm.

 BRAZIL 

Are chance-based games (i.e., random draw promotions, instant win games) generally permissible?

Decree Law No. 70,951/72, regulating Law 5,768/71, regulates promotions involving free distribution of prizes (contests, drawings and gift certificates). Thus, drawings are generally permissible in Brazil.

Gambling, on the other hand, is prohibited in Brazil pursuant to Decree Law no. 3,688/1941, which defines gambling as "game of chance" and provides three different scenarios in which a given activity falls under such definition:

- 1 - Exclusive or preponderant dependence on the luck factor for winning or losing the game;
- 2 - Horse racing in places lacking the necessary authorizations;
- 3 - Betting in other types of sports.

There are no express legal references to betting other than in relation to sports betting, but case law unanimously indicate that betting in games of chance is prohibited.

Are skill-based contests (i.e., essay contests, photo contests, user-generated content contests) generally permissible?

Yes.

Is any type of registration or filing required to offer a chance-based game and/or a skill-based contest? If so, what are the costs and deadlines associated with such registration or filing?

All promotions involving the free distribution of prizes (contests, sweepstakes and gift certificates) require authorization by the Brazilian National Savings Bank (known in Brazil as Caixa Econômica Federal – “CEF”) prior to being implemented in Brazil.

Authorization request fees vary according to the value of the prize to be awarded, as follows:

Value of the prize	Value of the fee
up to R\$1,000.00	R\$ 27.00
R\$1,000.01 – 5,000.00	R\$ 133.00
R\$ 5,000.01 – 10,000.00	R\$ 267.00
R\$ 10,001.01 – 50,000.00	R\$ 1,333.00
R\$ 50,000.01 – 100,000.00	R\$ 3,333.00
R\$ 100,000.01 – 500,000.00	R\$ 10,667.00
R\$ 500,000.01 – 1,667,000.00	R\$ 33,333.00
More than 1,667,000.01	R\$ 66,667.00

Upon granting of the authorization, applicant companies shall pay a fee for prize awarding. Such fee corresponds to 10% (ten per cent) of the total amount authorized for the promotion, which includes the total sum of the amount of the prizes to be awarded.

Authorization requests must be filed before CEF within 40 (forty) to 120 (one hundred and twenty) days prior to the beginning of promotions. CEF has 30 (thirty) days, counted as of the date of the request (provided that no required document is missing), to either approve the promotion or request additional information.

Are promotions (chance-based or skill-based) in which someone is required to purchase the product in order to enter permitted? If a purchase is required, must a non-purchase method of entry be offered?

Yes, it is permitted to require the purchase of a product and in this case a non-purchase method is not necessary.

Are there other forms of “consideration” which are prohibited in connection with entry into a chance-based game (e.g., posting a photo on Instagram, tweeting a response to a call-to-action, completion of a survey, taking a quiz and be required to answer questions correctly to be entered, watching a short video)?

The distribution of prizes through sweepstakes and contests cannot be subject to the payment of admission fee, as a general rule. However, posting a photo on Instagram, tweeting a response to a call-to-action, completion of a survey, taking a quiz and be required to answer questions correctly to be entered, watching a short video, etc., are acceptable.

Are promotions in which the winner(s) are determined in whole or in part by public voting permitted?

Yes.

If a chance-based game or skill-based contest is open to residents of several countries, must the random draw/winner determination process occur in your country or can it be conducted in another country? If the selection process must occur in your country, is there an exception for promotions taking place solely online?

The random draw/winner determination process can occur in other countries, but local law must be observed when the promotion is open to Brazilian residents.

If a chance-based game or skill-based contest is open to residents of several countries, is it permissible to combine all entries from all countries to determine the winners for a single prize pool or must there be a separate prize pool for residents of your country?

Yes, it is permissible to combine all entries from all countries to determine the winner.

Are there any restrictions on the type, nature or value of the prizes (e.g., travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

The following may be awarded as prizes: (i) goods manufactured in Brazil or regularly imported; (ii) public debit titles approved by the Ministry of Finance; (iii) home apartments located in Brazil in urban zone; (iv) tourism trips; and (v) scholarships.

The following cannot be awarded as prizes: medicines, weapons and ammunition, explosives fireworks, alcoholic beverages, tobacco and its derivatives and any other product that might be included in this list in the future by the Ministry of Finance.

Is there a tax liability associated with prizes? If yes, who is responsible for the taxes, winner or sponsor? Are there any other costs or fees, such as duties and customs fees, imposed on prize awards?

Yes, a 20% income tax is due, which must be calculated in accordance with the value of the prize and paid by the sponsor.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (i.e., in any and all media, now or hereafter devised, worldwide in perpetuity)? Can such ownership exist in perpetuity? Can copyright be transferred electronically or must the transfer occur in writing?

It is generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights, which may be granted by the participant electronically. Such ownership, however, will be limited by the applicable "public domain" term under Brazilian Copyright Law (Law 9,610/98) and it must be noted that in Brazil copyright assignments and licenses are subject to a restrictive interpretation. In this sense, all types of use, medias and formats must be identified in the assignment or license.

Is it generally permissible to require that a winner sign a liability and/or publicity release in order to receive a prize?

Yes. It is important to note, however, that according to the Brazilian Consumer Defense Code (Law 8,078/90): (i) abusive practices towards consumers are prohibited and unenforceable; and (ii) consumers are entitled to fully recover actual and moral damages caused by defective services, with an express prohibition of any contractual provisions that prevent or mitigate the indemnity obligation provided for in the Brazilian Consumer Defense Code.

Must the Official Rules and advertising materials (including website) be provided in the native language? Or must the Official Rules and website only be provided in the native language if the promotion is advertised/promoted in that language (e.g., if all advertising is in English, can the Official Rules and website only be in English)?

The Official Rules, advertising materials and website must be in Portuguese.

Are there restrictions on the use of personal information collected from entrants?

Yes, Brazil turned into a strict country regarding data protection after the Internet Act (Law 12,965/2014) was enacted, which is applicable to the Internet environment.

It is also worth noting that, similarly to what happens in the U.S., and opposed to the European approach, Brazil does not have a comprehensive and specific data protection framework, although the Brazilian Federal Constitution, the Brazilian Civil Code and the Consumer Defense Code contain general provisions on privacy and on protection of personal information.

One of the requirements to be observed by the sponsor of the promotion is that a specific consent must be collected from the participants for the use, transfer and storage of personal data.

If the chance-based game or skill-based contest is solely online and no promotion takes place in your country, is it subject to the laws of your country?

If the contest is in any way open to consumers located in Brazil, local laws apply.

Are there key cases and/or regulatory decisions involving promotions of which a company should be aware?

Pursuant to Decree Law No. 70,951/72, contests that are exclusively cultural, artistic, sportive or recreational shall not require prior authorization from CEF, provided that there is no subordination to any kind of chance element or payment by participants. Additionally, participants and winners cannot be required to acquire or use any product, right or service.

However, the interpretation of what consists a contest that is purely cultural, artistic, sportive or recreational, has been, until 2013, subject to conflicting opinions within CEF itself. Ministry of Finance's Normative Ruling no. 422 of July 18, 2013 resolved the issue by considerably limiting the possibilities of running contests without CEF's prior authorization. As an example, if the promotion is in any way linked to a trademark, product or service, prior authorization from CEF is required.

Are there any other important issues a company should consider or be aware of when structuring a chance-based game/skill-based contest that will be open to residents of your country?

There are several issues to be considered, and assistance by a local specialist lawyer is advisable. As an example, authorizations are granted by CEF to Brazilian legal entities only, that are engaged in the industrial, commercial and real estate businesses. The authorization request can also be filed by an association of a Brazilian and a foreign company, provided that the Brazilian is responsible before CEF for all legal purposes.

 BULGARIA 

Are chance-based games (i.e., random draw promotions, instant win games) generally permissible?

Yes, chance-based games are generally permissible under the Bulgarian legislation.

As long as they do not qualify as “gambling” under the Gambling Act (“GA”), such games are regarded as a form of advertising activity. However, chance based games are not regulated as advertising activity in a single legal instrument, but the regulation is contained in different laws and regulations. The most important rules to be complied with are contained in the Protection of Competition Act (“PCA”) and the Consumers Protection Act (“CPA”). The National Ethical Standards for Advertising and Commercial Communication in Bulgaria, issued by the National Council for Self-Regulation, might also apply to the extent that the promotional games are regarded as a form of commercial communication.

On the other hand, any game or activity involving wagering a bet whereupon a profit could be gained or a loss could be incurred qualifies as a form of “gambling” and is regulated by the provisions of the Gambling Act (“GA”). The term “bet” is legally defined as any payment of money, directly or in any other form, for participation in a gambling game with the aim to obtain a profit.

Promotional games of chance may formally qualify as gambling game where enrolment mechanics involve “investment” in money or assets on the part of eligible customers, which could be lost. Generally, promotional chance-based game does not qualify as gambling as long as it is organized with the purpose to promote the product and/or services of particular producer and/or distributor and the participant does not lose its “investment” (the product or service s/he has purchased).

Are skill-based contests (i.e., essay contests, photo contests, user-generated content contests) generally permissible?

Yes, skill-based contests as a form of advertising activity are generally permissible.

As mentioned above, it is regulated by various laws, and many of the important requirements are set in the PCA. The PCA does not differentiate between various forms of promotional games (game of chance, game of skills, prize contests), so the basic requirements for non-misleading communication and limitations on the value of prizes described herein are applicable to all forms of promotional games.

Skill-based contests, where the selection of the winner is not related to a chance, are specifically excluded from the application of the GA. Where participants pay an entrance fee to form a prize pool, such price has to be distributed between them. However, the exemption in question does not apply to online contests.

Additional rules on the organization of promotional games of skills are provided for by the Bulgarian Contracts and Obligations Act (“COA”). Pursuant to art. 368 of the COA, promotional games of skills are considered to be a type of contract where one of the parties (the sponsor) publicly offers an award in consideration of performance a specific task, thus once the task is completed the performing party acquires a right to receive the award as per the original promise.

Under the COA, all skill-based contests must comply with the following requirements:

1. If the award offer is announced publicly (via the print or electronic medias or otherwise), the prize must be awarded to the participant(s) who completed the task in accordance with the announced conditions.
2. It should be explicitly stated that only the best participant wins. If this is not specified the award must be split in equal parts between all eligible participants that have completed the task, or in accordance to their contribution (if applicable).
3. If the offer states that the best participant wins and more than one participant perform the task in identical way or with the same result, the award should be split in equal shares between them, unless another procedure is expressly prescribed in the original offer.

Where the prize is awarded after a lucky draw between all participants who completed the relevant task,

the promotional game would not qualify as a game of skill, but rather as a “game of chance”.

Is any type of registration or filing required to offer a chance-based game and/or a skill-based contest? If so, what are the costs and deadlines associated with such registration or filing?

No, the Bulgarian legislation does not require a specific registration for organizers/sponsors of chance-based games or skill-based contests.

On the other hand, where the chance-based game or skill-based contest can be classified as gambling, under the GA the prior permission is required of the State Gambling Commission (“SGC”). The SGC is the state regulatory authority in the field of gambling. The total state fee payable to the SGC for issuance of a license to a legal entity to organize and conduct gambling games is within the range of BGN 7,000 (approx. EUR 3,500) to BGN 70,000 (approx. EUR 35,000), depending on type of the game. The GA prescribes 60 days period for verification of the documents of an applicant for gambling license, which might be extended by additional 30 days in case of factual or legal complexity.

Are promotions (chance-based or skill-based) in which someone is required to purchase the product in order to enter permitted? If a purchase is required, must a non-purchase method of entry be offered?

Promotions (chance-based or skill-based) requiring the purchase of a product in order to enter are permitted, but they must comply with the requirements of the PCA. The PCA imposes a limitation on the value of the prizes that can be offered in a promotional game where participation (the chance of winning a prize) is tied to purchase of a particular product and/or use of service. In fact, Art. 36, Sec. 3 of the PCA prohibits the sale of goods or services if accompanied by an offer or promise of something, the receipt of which depends on: resolving problems, puzzles, questions, riddles; collection of a series of coupons, etc.; games of fortune with cash or object prizes, the value of which significantly exceeds the price of the product or service sold. The Bulgarian Commission on Protection of Competition (“CPC”), the principal authority supervising the application of the PCA, has ruled that the value of the prize “significantly exceeds” the price of the goods or service sold, where the value of the prize exceeds more than 100 (one hundred) times the price of the respective product or service. In any case the value of the prize should not exceed the sum of 15 (fifteen) minimum monthly wages (at present - BGN 6,900, approx. EUR 3,527).

The existence of an alternate method of entry (i.e., apart from the purchase of the respective product/service) would not exempt the game from the statutory limitations. CPC case law indicates that the limitations cannot be circumvented even if alternative means for participation have been provided, and irrespective of the fact that it could be proven by statistical data that the majority of participants have opted for the alternative non-purchase method. Thus, every promotional game where at least one of the entry options requires purchase of a product or use of a service, should comply with the limitations on prizes.

If the participation in a promotional game (respectively - the chance of winning a prize) is not conditional on purchasing a particular product or service, no restrictions would apply with respect to the value of the prizes.

Are there other forms of “consideration” which are prohibited in connection with entry into a chance-based game (e.g., posting a photo on Instagram, tweeting a response to a call-to-action, completion of a survey, taking a quiz and be required to answer questions correctly to be entered, watching a short video)?

No, there are no forms of “consideration” which are prohibited, as long as the form of consideration does not include the purchase of a particular product and/or service. All forms of entry into a chance-based game (as the described in the question) are permissible.

Are promotions in which the winner(s) are determined in whole or in part by public voting permitted?

Yes, promotions in which the winner(s) are determined in whole or in part by public voting are generally

permitted. There are no specific requirements for such type of games, but the conditions under which the winner shall be selected, and what criteria the “jury” in the public voting should follow, are considered important elements of the Official Rules.

If a chance-based game or skill-based contest is open to residents of several countries, must the random draw/winner determination process occur in your country or can it be conducted in another country? If the selection process must occur in your country, is there an exception for promotions taking place solely online?

Under Bulgarian legislation there is no requirement that the random draw or other winner determination process in a chance-based game or skill-based contest take place in Bulgaria. However, if participation in a promotional game is open to Bulgarian residents and it is actively promoted on the territory of Bulgaria, the organizer/sponsor should comply with the requirements of the applicable Bulgarian legislation.

If a chance-based game or skill-based contest is open to residents of several countries, is it permissible to combine all entries from all countries to determine the winners for a single prize pool or must there be a separate prize pool for residents of your country?

There is no specific requirement to determine separate prize pool for Bulgarian residents under Bulgarian legislation, wherefore combining the entries should be deemed to be permissible.

Are there any restrictions on the type, nature or value of the prizes (e.g., travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

As indicated in the answer to question 4 above, the PCA imposes a limitation on the value of the prizes that can be offered in a promotional game where participation (the chance of winning a prize) is tied to the purchase of a particular product and/or service. Art. 36, Sec. 3 of the PCA prohibits the sale of goods or services if accompanied by an offer or promise of something, the receipt of which depends on: resolving problems, puzzles, questions, riddles; collection of a series of coupons, etc. – promotional games with cash or object prizes, the value of which significantly exceeds the price of the product or service sold.

Where participation in the promotional game is not tied to the purchase of a particular product and/or service, there are no restrictions to the value of the prize. However, the organizer should make sure that the prize is not unsuitable for the eligible participants in the promotional game. For example, if the participation is open to minors, the prize should not be alcoholic or tobacco products. In addition, the prize should not be an object the use whereof is limited or prohibited by the law, for example weapons or drugs.

Is there a tax liability associated with prizes? If yes, who is responsible for the taxes, winner or sponsor? Are there any other costs or fees, such as duties and customs fees, imposed on prize awards?

Art. 35, para. 2 of the Taxes on Income of Individuals Act (“TIIA”) provides that cash and object prizes from promotional games should be treated as additional personal income and consequently added to the aggregate income of the winner and subject to the standard flat income tax rate of 10%. From the beginning of 2016, the TIIA requires that organizers/sponsors of promotional games calculate and withhold this tax when providing a prize to an individual and further issue to that person a document certifying the value of the prize and the amount of the tax withheld. The organizer/sponsor should also declare and pay all taxes withheld by it by the end of the month following the quarter, when the prize was provided.

Pursuant to Art. 13, Sec. 1, para. 21 of the TIIA, “object prizes of negligible value” received from participation in promotional games of chance are exempt from personal income tax. The Supplementary Provision of the Act clarifies that an “object prize of negligible value” is a non-monetary prize with a value not exceeding BGN 30 (approx. EUR 15).

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (i.e., in any and all media, now or hereafter devised, worldwide in perpetuity)? Can such ownership exist in perpetuity? Can copyright be transferred electronically or must the transfer occur in writing?

The sponsor may own copyright in the submissions if the works/performances are considered to be made under commission, whereby IP rights arise directly for the sponsor - i.e. the sponsor becomes the initial owner of all economic rights and all moral rights except for the author's rights to claim recognition for his authorship and to claim his name, nickname or other identification sign to be properly indicated each time the work is used. However, in order to qualify as a work/performance made under commission, the submitted material should have been created specifically for the contest, i.e. it should be new (not existing prior to the contest). Furthermore, the rules on commissioning normally require that the authors receive remuneration for their work. In the event of a contest, the prize for the winners should serve as such remuneration otherwise additional consideration may be required to ensure sufficient remuneration.

If the regime for works/performances made under commission is not applicable, the sponsor should ensure a license agreement is in place with the creator of the materials, by virtue of which the contest participant should authorize the sponsor to use the relevant material. The broadest grant of rights may be without limitation in the manner of use, purpose and territory. The rights cannot be licensed in perpetuity; the maximum term for a license permitted under Bulgarian law is 10 years. Further, note that the author may claim additional compensation if the original is deemed disproportionate to the profits generated by the sponsor through the use of licensed materials. The rights may be granted on non-exclusive or exclusive basis, the latter meaning that the author may not use the materials in the manner, for the term and on the territory covered by the license agreement.

In order to be valid, the license of exclusive rights is required to be in writing, whereas no special form is prescribed for validity of license of non-exclusive rights.

Is it generally permissible to require that a winner signs a liability and/or publicity release in order to receive a prize?

The organizer/sponsor could require the winner to sign a liability and/or publicity release but cannot make the receipt of the prize conditional upon the execution such document, unless the requirement has been included into the announced Official Rules and other communication regarding the game.

It should be noted that the COA prohibits the release for damages suffered due to a gross negligence and/or unlawful misconduct.

Must the Official Rules and advertising materials (including website) be provided in the native language? Or must the Official Rules and website only be provided in the native language if the promotion is advertised/promoted in that language (e.g., if all advertising is in English, can the Official Rules and website only be in English)?

The CPA explicitly requires the labels, instruction to use, etc. of any product or service offered in Bulgaria to be in Bulgarian language. In addition, the CPC requires that any form of advertising of a product and/or services be clear and not have the potential to mislead the customers. Based on these statutory requirements, we believe that in the case of a promotional game related to a specific product and/or service, its Official Rules should be in the Bulgarian language.

Where the promotional game is not related to a specific product and/or service, there is no specific rule, but if the game is actively promoted in Bulgaria, then it is advisable that the Official Rules be provided in Bulgarian in order to minimize the risk of imposition of a sanction due to a broader interpretation of the above rules by a competent authority.

Are there restrictions on the use of personal information collected from entrants?

Yes. Collection and preprocessing of personal data is regulated by the Bulgarian Protection of Personal Data Act ("PPDA"). It requires that, before any personal data is collected, the respective person to be

informed about: (i) the official registration of the person collecting the personal data as a personal data controller; (ii) the purpose of collection of the personal data; (iii) the categories of third persons to which the personal data could be disclosed; (iv) where the personal data may be transferred; and (v) the procedure for access by participants to their personal data collected by the organizer, and procedure for receipt of requests for correction and/or deletion of such personal data. The participants must provide explicit consent for collection and processing of their personal data.

The free transfer of personal data is permissible in the EU without any further consent of the data subjects. PPDA provides that personal data of Bulgarian citizens could be transferred to non-EU countries, only where that country grants adequate level of protection of personal data on its territory, and that is confirmed by the Bulgarian Commission on Protection of Personal Data, or by the European Commission, or if the express informed consent to the data subjects of obtained in advance.

Are there key cases and/or regulatory decisions involving promotions of which a company should be aware?

The CPC has long record in investigating and sanctioning organizers of promotional games. As discussed above, the most relevant statutory requirement is art. 36, Sec. 3 of the PCA which prohibits the sale of goods or services, if accompanied by an offer or promise of something the receipt of which depends on: resolving problems, puzzles, questions, riddles; collection of a series of coupons, etc.; games of fortune with cash or object prizes, the value of which significantly exceeds the price of the product or service sold.

The CPC decisional practice is available in Bulgarian on its website: www.cpc.bg.

Are there any other important issues a company should consider or be aware of when structuring a chance-based game/skill-based contest that will be open to residents of your country?

Requirements under the PCA:

1. The promotion should not be organized in a way that involves non-objective comparison with the product/service of a competitor.
2. The promotion and the way it is organized should not mislead potential and actual participants.

Requirements under CPA

1. The promotion should not be structured in a misleading way. Misleading effect would be deemed present where in its entire factual context and taking account of all its features and circumstances, the official rules and/or other communication related to the game omit material information that the average consumer needs, according to the context, to take an informed transactional decision. Furthermore, a promotional game would be deemed misleading where it: (i) does not disclose all material information, or (ii) provides material information in an unclear or ambiguous manner, or (iii) provides such information in an untimely manner, or (iv) does not identify the commercial intent of the campaign.
2. The game mechanics should not be aggressive. A promotional game would be deemed "aggressive" where, due to harassment, coercion, physical force or undue influence, it impairs or is likely to impair the freedom of choice or conduct of an average consumer with respect to their choice to buy a product or service or to enroll in the game, thereby causing a transactional decision that the consumer would not have taken otherwise.
3. Minors:
 - In all cases where the game is open to participation to minors greater care and restraint should be exercised.
 - For participation of 14 years old and younger parental consent is required. Personal data should not be processed without a verified parental consent (unless it is necessary to secure parental consent to reward a prize or premium).
 - Prizes should be suitable for minors.
 - Promotional activities should be clearly distinguishable as targeting minors.
 - Promotional activities should not suggest that possession or use of the promoted product will provide to the child physical, psychological or social advantages over other children.

Promotions for specific products (alcoholic products, tobacco, etc.):

- The sponsor/organizer must make sure that minors (person younger than eighteen years old) cannot participate in promotions related to alcoholic beverages, tobacco products or genetically modified products.

In addition, the sponsor of skill-based contests should be aware that once an eligible participant provides the correct answer or performs correctly the task described in the public announcement, the sponsor cannot refuse to provide the prize or terminate the game without a good cause. Any unjustified refusal or termination will qualify as a breach of contract giving rise to sponsor's liability towards the winner, who could sue for the value of the prize plus any additional damages (if any).

The Official Rules of a game of chance should be publicly available to anyone interested during the whole period of the promotion. There is no statutory prescribed minimal content, but according to case law it is recommended that the official rules specify:

- o Name and address of the sponsor and organizer (if different – i.e. PR agency);
- o Territorial coverage of the promotion;
- o Period of time in which the game is open for participation;
- o Promotional mechanics – i.e. conditions for enrolment and procedure for selection of winner(s);
- o Description of the prizes or premiums, including number and individual value;
- o The date of draw/s;
- o The manner of announcing/notifying the winners;
- o Conditions for receipt of the prizes;
- o A statement that a minor below the age of 14 years may participate in the promotion only subject to the parent's consent (if open to minors);
- o A statement that if the winner is between 14 and 16 years, the award can be received only with the parent's consent (if open to minors);
- o The manner in which the official rules are made available, together with possible other information regarding the promotion;
- o The manner in which complaints can be filed and which procedure will be followed in such an event;
- o A data privacy notification in case personal data is collected and processed by the sponsor/organizer, including information about the official registration of sponsor/organizer as a personal data controller in accordance with the provisions of the PPDA, and description of the procedure for access by participants to their personal data collected by the sponsor/organizer and procedure for receipt of requests for correction and/or deletion of such personal data.

The Official Rules of a skill-based game must include the above described information and specific rules on:

- o The task which participants must accomplish or the skills which they must demonstrate;
- o The mode of assessing performance (e.g. best participant wins);
- o The rules for resolving cases of tied results.

 CANADA 

Are chance-based games (i.e., random draw promotions, instant win games) generally permissible?

Yes, chance-based games are generally permissible provided that there is a component of skill (e.g. a mathematical skill-testing question included in the selection of the winner(s)). It is generally prohibited to award property by means of pure chance without a government-issued lottery licence.

Are skill-based contests (i.e., essay contests, photo contests, user-generated content contests) generally permissible?

Yes.

Is any type of registration or filing required to offer a chance-based game and/or a skill-based contest? If so, what are the costs and deadlines associated with such registration or filing?

Yes, there are filing and security requirements in the province of Quebec that vary depending on the total prize value. The filing fees range from 0.5 - 10% of the total value, and the timelines for filing can be up to 30 days in advance of contest launch (i.e. before it is made public, whether by being open to entries or advertising, whichever comes first). Post-promotion reporting to the Quebec regulator is also required.

Are promotions (chance-based or skill-based) in which someone is required to purchase the product in order to enter permitted? If a purchase is required, must a non-purchase method of entry be offered?

It is generally permissible to require someone to purchase a product to enter as one means of entry into a promotion, so long as a non-purchase method of entering is also provided. The non-purchase method of entering must provide the same chances of winning as the purchase method. Note that there some allowance to force purchase in a pure skill competition where the prize to be awarded is goods, wares or merchandise but, if seeking to structure a competition of this nature, advice should be sought regarding the specifics of the promotion to ensure compliance.

Are there other forms of “consideration” which are prohibited in connection with entry into a chance-based game (e.g., posting a photo on Instagram, tweeting a response to a call-to-action, completion of a survey, taking a quiz and be required to answer questions correctly to be entered, watching a short video)?

No, not specifically. However, if significant investment of time or other consideration is required it could be considered to be equivalent to a purchase. To date, enforcement has focused on cases involving monetary consideration.

Are promotions in which the winner(s) are determined in whole or in part by public voting permitted?

Yes. However, note that the results of a public vote may be considered selection on the basis of chance, even pure chance, and not skill.

If a chance-based game or skill-based contest is open to residents of several countries, must the random draw/winner determination process occur in your country or can it be conducted in another country? If the selection process must occur in your country, is there an exception for promotions taking place solely online?

The selection process may occur outside of Canada.

If a chance-based game or skill-based contest is open to residents of several countries, is it permissible to combine all entries from all countries to determine the winners for a single prize pool or must there be a separate prize pool for residents of your country?

Yes, it is permissible to combine all entries from all countries to determine the winners for a single prize pool.

Are there any restrictions on the type, nature or value of the prizes (e.g., travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

No, provided that there are no restrictions or regulations generally on the goods (e.g. tobacco, alcohol, etc.).

Is there a tax liability associated with prizes? If yes, who is responsible for the taxes, winner or sponsor? Are there any other costs or fees, such as duties and customs fees, imposed on prize awards?

Generally, prizes won in the course of a promotion do not incur tax liability. Winners of prizes related to employment, or winners of annuities, may be subject to certain taxes. Canadian residents may also be subject to taxes imposed by or upon sponsors in other jurisdictions (e.g. United States withholding taxes).

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (i.e., in any and all media, now or hereafter devised, worldwide in perpetuity)? Can such ownership exist in perpetuity? Can copyright be transferred electronically or must the transfer occur in writing?

Yes, it is permissible for the sponsor to claim the rights in a submission however: (i) moral rights can be waived, but not transferred to the sponsor; and (ii) any assignment should be in writing to be enforceable. A broad statement in the Official Rules respecting sponsor's claim of intellectual property rights included in an entry is likely unenforceable without separate authorization in writing from the entrants or winner. Electronic signatures could constitute transfer "in writing" in certain circumstance. It would not be prohibited to claim ownership in perpetuity, although moral rights and copyright in most works is limited to the life of the author plus fifty years.

Is it generally permissible to require that a winner sign a liability and/or publicity release in order to receive a prize?

Yes, however sponsors should be mindful of restrictions under applicable privacy law that may limit the scope of publicity releases. There are also restrictions on permissible limits of liability, particularly under the laws of Quebec. Both the liability release and publicity release should be identified as a condition of being declared a winner in the Official Rules.

Must the Official Rules and advertising materials (including website) be provided in the native language? Or must the Official Rules and website only be provided in the native language if the promotion is advertised/promoted in that language (e.g., if all advertising is in English, can the Official Rules and website only be in English)?

If eligibility is open to residents of Quebec, then the contest rules, platform, and advertising materials must be provided in French. Note that there are also many Canadians outside of Quebec whose first language is French.

Are there restrictions on the use of personal information collected from entrants?

Yes. Use of personal information must be limited to the purposes disclosed at the time of collection. Canada also has strict anti-spam legislation ("CASL"), which imposes strict penalties for sending commercial electronic messages (e.g. email, text or certain social media communications) without consent as prescribed by the regulations.

If the chance-based game or skill-based contest is solely online and no promotion takes place in your country, is it subject to the laws of your country?

If Canadians are eligible to enter, yes.

Are there key cases and/or regulatory decisions involving promotions of which a company should be aware?

There has been no significant recent enforcement in this area.

Are there any other important issues a company should consider or be aware of when structuring a chance-based game/skill-based contest that will be open to residents of your country?

No.

CHILE

Are chance-based games (i.e., random draw promotions, instant win games) generally permissible?

Chilean law distinguishes between gambling games and games of skills, the former being those in which results depend mostly on chance, and the latter referring to games in which the physical or mental abilities of the players have a predominant role.

As a general rule, Chilean law considers gambling games, those in which a certain amount of money is risked in a wager, to be illegal (article 1.466 Civil Code) and can only be exceptionally authorized by law (article 63 Nº 19 Chilean Constitution).

Are skill-based contests (i.e., essay contests, photo contests, user-generated content contests) generally permissible?

Yes.

Is any type of registration or filing required to offer a chance-based game and/or a skill-based contest? If so, what are the costs and deadlines associated with such registration or filing?

No registration or filing is required. However, the general terms and duration of the promotion must be disclosed to the consumer (article 35 of the Consumer Protection Act). Further, when the promotion consists of participating in contests and prizes, the deadline for claiming them must be available to the public. The results of the contest must be adequately shown, as well (article 36 of the Consumer Protection Act). Finally, while the law does not require recording the general terms before a notary public, this is a common practice in Chile and doing so is recommended.

Are promotions (chance-based or skill-based) in which someone is required to purchase the product in order to enter permitted? If a purchase is required, must a non-purchase method of entry be offered?

Yes, promotions in which a purchase is required are permitted, and a non-purchase method of entry does not need to be offered as long as it is a skill-based game (since chance-based games are not allowed).

Are there other forms of “consideration” which are prohibited in connection with entry into a chance-based game (e.g., posting a photo on Instagram, tweeting a response to a call-to-action, completion of a survey, taking a quiz and be required to answer questions correctly to be entered, watching a short video)?

No forms of consideration are prohibited for skill-based contests, but do notice that chance-based contests (gambling contests) are not permitted. In any case, it should be noted that general existing regulation for the protection of copyrights and other rights, for example pictures or videos used for entry purposes, are applicable.

Are promotions in which the winner(s) are determined in whole or in part by public voting permitted?

Yes.

If a chance-based game or skill-based contest is open to residents of several countries, must the random draw/winner determination process occur in your country or can it be conducted in another country? If the selection process must occur in your country, is there an exception for promotions taking place solely online?

The winner determination process can occur in any country as long the results are adequately disclosed along with their proper authentication.

If a chance-based game or skill-based contest is open to residents of several countries, is it permissible to combine all entries from all countries to determine the winners for a single prize pool or must there be a separate prize pool for residents of your country?

Yes, it is possible to combine all entries from all countries to determine the winners.

Are there any restrictions on the type, nature or value of the prizes (e.g., travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

No, but the prize must be clearly stated along with the deadline for claiming it. The costs involved for claiming the prize and the person or organization responsible for its payment should be clearly stated, as well.

Is there a tax liability associated with prizes? If yes, who is responsible for the taxes, winner or sponsor? Are there any other costs or fees, such as duties and customs fees, imposed on prize awards?

Cash prizes will be subject to income tax that will have to be paid by the winner. If the prize is abroad, it will depend on what the general terms state in order to know who must pay applicable duties and customs fees. Do notice, however, that it is preferable that all costs related for claiming the prize are included. If not, the winner could file a claim against the corresponding local authority based on the fact that the prize being offered is unattainable given, for example, the need of accommodation and travel facilities in order to claim it.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (i.e., in any and all media, now or hereafter devised, worldwide in perpetuity)? Can such ownership exist in perpetuity? Can copyright be transferred electronically or must the transfer occur in writing?

Yes, it is possible for the sponsor to own the entries as long as it is stated in the general terms and the participant expressly agrees to those terms. The ownership can exist in perpetuity. Copyright must be transferred in writing whether by means of a public deed or a private document duly authorized by a notary public and duly registered.

Is it generally permissible to require that a winner sign a liability and/or publicity release in order to receive a prize?

Yes, as long as it was previously stated in the Official Rules.

Must the Official Rules and advertising materials (including website) be provided in the native language? Or must the Official Rules and website only be provided in the native language if the promotion is advertised/promoted in that language (e.g., if all advertising is in English, can the Official Rules and website only be in English)?

While no specific regulation states that the rules and the advertising must be in Spanish, as a general principle (article 32 of the Consumers Protection Act) any diffusion of products or services should be in Spanish.

Are there restrictions on the use of personal information collected from entrants?

Yes, an express authorization in writing must be given by the data subject for processing such information (article 4 of the Data Protection Act).

If the chance-based game or skill-based contest is solely online and no promotion takes place in your country, is it subject to the laws of your country?

Yes, please be advised that in practical terms, if a complaint is made by a local Chilean participant, the Chilean Consumer Protection authorities will act under the jurisdiction of Chilean Courts to enforce Chilean Consumer Protection Law.

Are there key cases and/or regulatory decisions involving promotions of which a company should be aware?

While this is a broad question, no hallmark cases exist for this particular subject.

Are there any other important issues a company should consider or be aware of when structuring a chance-based game/skill-based contest that will be open to residents of your country?

Contests organized for the promotion of certain food products (i.e. those with a composition over a certain level of calories, sodium, fat and/or sugar) are not allowed when the consumption of such products is focalized on children. Moreover, commercial hooks for these kind of products are forbidden (article 6° of the Food Composition and Advertising Act).

CHINA

Are chance-based games (i.e., random draw promotions, instant win games) generally permissible?

In general, chance-based games are permissible in China. However, there are some restrictions. For example, a variety of deceptive practices are prohibited for “lottery-attached sales” (meaning contests for which the contestant must buy a ticket or a product), such as misrepresenting prize value or type, causing an insider to win, or arranging for different prize values or prize probabilities for different areas under the same contest. In addition, the maximum allowable prize for any such “lottery-attached sale” is RMB 5,000.

Are skill-based contests (i.e., essay contests, photo contests, user-generated content contests) generally permissible?

Yes, skill-based contests are generally permissible in China.

Is any type of registration or filing required to offer a chance-based game and/or a skill-based contest? If so, what are the costs and deadlines associated with such registration or filing?

China does not require any registration or filing for these kinds of contests.

Are promotions (chance-based or skill-based) in which someone is required to purchase the product in order to enter permitted? If a purchase is required, must a non-purchase method of entry be offered?

Promotions requiring purchase are allowed.

Are there other forms of “consideration” which are prohibited in connection with entry into a chance-based game (e.g., posting a photo on Instagram, tweeting a response to a call-to-action, completion of a survey, taking a quiz and be required to answer questions correctly to be entered, watching a short video)?

No specific consideration items are prohibited for promotions like these under Chinese law, but do bear in mind that any invitation/requirement to use a service that is banned in China, like Twitter or Facebook, could be problematic both practically speaking and in terms of the government’s perception of the sponsor.

Are promotions in which the winner(s) are determined in whole or in part by public voting permitted?

Yes, it is permitted in China.

If a chance-based game or skill-based contest is open to residents of several countries, must the random draw/winner determination process occur in your country or can it be conducted in another country? If the selection process must occur in your country, is there an exception for promotions taking place solely online?

The selection process does not need to occur in China.

If a chance-based game or skill-based contest is open to residents of several countries, is it permissible to combine all entries from all countries to determine the winners for a single prize pool or must there be a separate prize pool for residents of your country?

This issue is not addressed by any applicable laws, and we are not aware of any such restriction on combining the pools.

Are there any restrictions on the type, nature or value of the prizes (e.g., travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

If purchase is required, then the award may not exceed RMB 5000. If purchase is not required, there is no limit.

Is there a tax liability associated with prizes? If yes, who is responsible for the taxes, winner or sponsor? Are there any other costs or fees, such as duties and customs fees, imposed on prize awards?

There is a tax liability associated with prizes, with the paying party determined by the promotion type. For lottery-attached sales, the winner is responsible for any taxes on the prize. In contrast, if the sponsors offering a giveaway to customers with the purchase of a product, then the tax on the value of the giveaway

is paid by the sponsor.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (i.e., in any and all media, now or hereafter devised, worldwide in perpetuity)? Can such ownership exist in perpetuity? Can copyright be transferred electronically or must the transfer occur in writing?

Copyright can be owned/acquired by the sponsor via a written (including electronic) agreement, such as click-wrap contest rules.

Is it generally permissible to require that a winner sign a liability and/or publicity release in order to receive a prize?

A general release is not prohibited. However, under Chinese contract law, any exclusion clause that exempts a party's liability for personal injury or property damage resulting from gross negligence or willful misconduct will be invalid. As such, a sponsor can have a release, but it will not be fully enforceable in all cases.

Must the Official Rules and advertising materials (including website) be provided in the native language? Or must the Official Rules and website only be provided in the native language if the promotion is advertised/promoted in that language (e.g., if all advertising is in English, can the Official Rules and website only be in English)?

There is no requirement under Chinese law. However, for both communication and enforceability reasons, Chinese documentation is advisable. It would be plausible for a Chinese contestant to argue that contest rules/restrictions do not, or should not, apply to him/her if the contest was promoted to Chinese users/customers but without any Chinese documentation that a Chinese contestant could read and understand.

Are there restrictions on the use of personal information collected from entrants?

China has numerous rules on personal information protection. By way of example, one of the more general regulations is the Provisions on the Protection of Personal Information of Telecommunication and Internet Users, which provides that sponsors may not collect personal information of entrants other than what is necessary for the game/contest, nor use the information for any other purpose. In addition, the personal information of entrants collected or used in the course of a game/contest by the sponsor must be kept in strict confidence, and may not be divulged, tampered with or damaged, and may not be sold or illegally provided to others. There are also rules/guidelines regarding the storage and transfer of data, including transfer abroad. In brief summary, any transfers of Chinese user/contestant data outside of China should receive prior consent (e.g. through the contest rules).

If the chance-based game or skill-based contest is solely online and no promotion takes place in your country, is it subject to the laws of your country?

In general, if the contest takes place only online, is not connected to any other related activities happening in China (such as promotion), and is deployed via companies and servers not located in China, then it would not be within Chinese jurisdiction. However, there are two scenarios to be aware of:

1. It is possible that a Chinese court would accept jurisdiction in a lawsuit regarding the contest brought by a Chinese contestant alleging some kind of harm to that contestant. Obviously, service of process and enforcement would be challenging, as would be establishing the legitimacy of jurisdiction in the first place, but the possibility cannot be ruled out.
2. All content available in China is subject to certain content restrictions. If the content contains or refers to illegal content, it could be blocked, and the promoter and any affiliates could suffer collateral damage.

Are there key cases and/or regulatory decisions involving promotions of which a company should be aware?

There have been no ground breaking cases in this area. A typical case would be the following: Easyhome, a housewares company in Shenyang, had a promotion promising a Mercedes Benz as the first prize, and other cars as second prizes. However, upon the conclusion of the contest, it was discovered that the prize was just the right to use the car, not to actually own it, which fact was not at all clear from the promotional materials. The company's acts obviously constituted false propaganda and unfair competition, which shall face administrative penalty by state industrial and commercial administration.

Are there any other important issues a company should consider or be aware of when structuring a chance-based game/skill-based contest that will be open to residents of your country?

Clear disclosure of all the rules, conditions and prizes is the most important current issue. Contests and other creative promotions are now very common in China, and both the authorities and the public are becoming much more sophisticated about the various ways in which these promotions can be deceptive or skewed in the company's favor. Thus, if there is any ambiguity or miscommunication, the likelihood of complaints, made publicly or directed to the authorities, is high.

COLOMBIA

Are chance-based games (i.e., random draw promotions, instant win games) generally permissible?

Yes.

Are skill-based contests (i.e., essay contests, photo contests, user-generated content contests) generally permissible?

Yes.

Is any type of registration or filing required to offer a chance-based game and/or a skill-based contest? If so, what are the costs and deadlines associated with such registration or filing?

For all skill-based contests no registration is necessary.

However, it is not the case for chance-based games, in which there are two possibilities:

- If the game has direct monetary interest.

In this case, the company interested must request an authorization to the competent authority, with at least 30 working days.

The costs related to such authorization are approximately of 15% of the total value of the prizes.

- If the game excluded from the application of the law, which applies exclusively to:

- ✓ Games of chance of traditional, familiar and scholar character.
- ✓ Promotional games made by operators of games of chance.
- ✓ Raffles to finance the fire department.
- ✓ Promotional games of the departmental charities and capitalization companies.

The company interested must request a declaration of exception, which is the declaration by the competent authority that the game does not have direct monetary interest and does not require an authorization.

A bond must be obtained to guarantee the prizes. The amount of the bond is the total value of the prizes.

Are promotions (chance-based or skill-based) in which someone is required to purchase the product in order to enter permitted? If a purchase is required, must a non-purchase method of entry be offered?

Promotions (chance-based or skill-based) in which someone is required to purchase the product in order to enter are permitted.

If a purchase is required, it is not necessary for there to be a non-purchase method of entry.

Are there other forms of “consideration” which are prohibited in connection with entry into a chance-based game (e.g., posting a photo on Instagram, tweeting a response to a call-to-action, completion of a survey, taking a quiz and be required to answer questions correctly to be entered, watching a short video)?

In principle, there are no other forms of “consideration” that are prohibited.

Nonetheless, it is important to note that all participants must be of legal age or duly authorized by their parents or judicial representative. People with a judicial declaration of interdiction cannot participate directly in a chance-based game.

Are promotions in which the winner(s) are determined in whole or in part by public voting permitted?

Yes.

If a chance-based game or skill-based contest is open to residents of several countries, must the random draw/winner determination process occur in your country or can it be conducted in another country? If the selection process must occur in your country, is there an exception for promotions taking place solely online?

The random draw/winner determination process does not have to occur in Colombia.

If the drawing takes place in Colombia, it must be attended by a delegate appointed by the administrative authority in charge of the contest supervision of the place where it is performed.

The drawing and the awarding of prizes must be recorded by minutes which must be sent to the competent authority within five (5) days from the event.

If a chance-based game or skill-based contest is open to residents of several countries, is it permissible to combine all entries from all countries to determine the winners for a single prize pool or must there be a separate prize pool for residents of your country?

Where the promotion is located in Colombia, it would be permissible to combine all entries from all countries to determine the winners for a single prize pool. If the promotion is not located in Colombia, it would depend on the laws of the other jurisdiction(s).

Are there any restrictions on the type, nature or value of the prizes (e.g., travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

The prizes must be given to the participants. Hence, where permission is needed, the Official Rules have to establish what happens in case the winner cannot obtain such permission. For example, in case the prize is a trip outside the country, there has to be a rule in case the winner cannot obtain the required visa.

In a chance-based promotion, each prize cannot exceed in value one hundred and sixty (160) monthly legal wages, that is COP\$110,312,800 which is approximately USD\$38,000. Also, cash prizes are not permitted.

In a skill-based promotion, there is not limitation on the amount and cash prizes.

Is there a tax liability associated with prizes? If yes, who is responsible for the taxes, winner or sponsor? Are there any other costs or fees, such as duties and customs fees, imposed on prize awards?

If any prize value exceeds approximately USD\$1,200, there is a tax of 10% of the amount of the prize due to windfall tax and it must be paid by the winner. However, the sponsor must apply a 20% withholding tax to the monetary awards. The refund, if applicable, must be claimed by the winner at the moment of filing his or her income tax return.

However, under the Consumer's Protection Law, responsibility for the taxes must be stated in the Official Rules of the promotion. If it is not stated, the sponsor would be responsible, even if the winner is the one obliged to pay.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (i.e., in any and all media, now or hereafter devised, worldwide in perpetuity)? Can such ownership exist in perpetuity? Can copyright be transferred electronically or must the transfer occur in writing?

It is permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights. The rights are limited according to the law in which the right is exercised and the type of work, within a certain time frame.

In Colombia, copyright lasts the length of the life of the author plus eighty years. If the author has transferred or assigned the copyrights during his/her life, the protection would last: (i) the length of the life of the author

plus twenty five years more if the current owner is a natural person; or (ii) the length of fifty years since the publication if the current owner is a company or legal entity.

Any act of transfer or assignment of copyrights, whether partial or total, must be done in written. Furthermore, to be binding on third parties, said documents must be registered at the copyright office, with the formalities set forth in the Law.

Is it generally permissible to require that a winner sign a liability and/or publicity release in order to receive a prize?

It is permissible if it is established in the Official Rules.

Must the Official Rules and advertising materials (including website) be provided in the native language? Or must the Official Rules and website only be provided in the native language if the promotion is advertised/promoted in that language (e.g., if all advertising is in English, can the Official Rules and website only be in English)?

The Official Rules and advertising materials (including website) must be provided in Spanish (the official language). They can also be in other languages, but they must be in Spanish, as well.

Are there restrictions on the use of personal information collected from entrants?

Yes. To collect personal information the entity must fulfill all the requirements of the Law 1581 of 2012, and its regulatory decrees, which deals with the ownership and management of information in databases.

If the chance-based game or skill-based contest is solely online and no promotion takes place in your country, is it subject to the laws of your country?

Colombian law does not have extraterritorial application. Hence, it would only apply to chance-based games or skill-based contests located in Colombia.

Are there key cases and/or regulatory decisions involving promotions of which a company should be aware?

This is not a highly litigated area and there are no precedents that supersede any regulation.

Are there any other important issues a company should consider or be aware of when structuring a chance-based game/skill-based contest that will be open to residents of your country?

Besides the mere regulatory issues, in Colombia, the Consumer's Protection Law requires that all the information provided to consumers must be clear, truthful, adequate, timely, verifiable, understandable, accurate and appropriate. Moreover, the information provided within the Official Rules must be complete and detailed in terms of mode, time and place.

 COSTA RICA 

Are chance-based games (i.e., random draw promotions, instant win games) generally permissible?

Yes. Chance-based games are permissible as long as they are conducted for the purposes of promoting sales, and if they are free. Otherwise, they risk being qualified as an illegal lottery.

Are skill-based contests (i.e., essay contests, photo contests, user-generated content contests) generally permissible?

Yes.

Is any type of registration or filing required to offer a chance-based game and/or a skill-based contest? If so, what are the costs and deadlines associated with such registration or filing?

No. There are certain rules that must be complied with in all promotions and contests. However, there is no prior filing or bonding required. All legal controls are ex-post.

Are promotions (chance-based or skill-based) in which someone is required to purchase the product in order to enter permitted? If a purchase is required, must a non-purchase method of entry be offered?

Yes. They are permitted as long as the product is sold at its regular price, and no premium or extra fee is paid for participating in the promotion. In these circumstances, no alternative method of entry is required.

Are there other forms of “consideration” which are prohibited in connection with entry into a chance-based game (e.g., posting a photo on Instagram, tweeting a response to a call-to-action, completion of a survey, taking a quiz and be required to answer questions correctly to be entered, watching a short video)?

No, there are none.

Are promotions in which the winner(s) are determined in whole or in part by public voting permitted?

Yes. There are no legal restrictions prohibiting these type of promotions.

If a chance-based game or skill-based contest is open to residents of several countries, must the random draw/winner determination process occur in your country or can it be conducted in another country? If the selection process must occur in your country, is there an exception for promotions taking place solely online?

The draw or winner determination may occur in another country. However, it must comply with the formalities and requirements of Costa Rican laws. Otherwise, it may be deemed to be invalid.

If a chance-based game or skill-based contest is open to residents of several countries, is it permissible to combine all entries from all countries to determine the winners for a single prize pool or must there be a separate prize pool for residents of your country?

Yes. This is permitted as long as it is clearly disclosed in the rules of the promotion. Also, the local formalities and rules must be complied with, even if the promotion is open to residents of other countries.

Are there any restrictions on the type, nature or value of the prizes (e.g., travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

Generally, no. In some cases, cash prizes have been objected to by the operator of the National Lottery, who claim that they are the only ones allowed to offer such prizes. However, these objections are based on their interpretation of the law, and have not been generally agreed upon.

Is there a tax liability associated with prizes? If yes, who is responsible for the taxes, winner or sponsor? Are there any other costs or fees, such as duties and customs fees, imposed on prize awards?

There are no tax liabilities associated with prizes in general. Some prizes, however, require the payment of transfer taxes and registration fees when they are registered in the name of the winners (i.e.: cars, properties, etc.). Sponsors usually pay those fees.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (i.e., in any and all media, now or hereafter devised, worldwide in perpetuity)? Can such ownership exist in perpetuity? Can copyright be transferred electronically or must the transfer occur in writing?

In principle, this is allowed. However, it is always a good practice to obtain specific and signed consent from the winners before delivering the prizes.

Is it generally permissible to require that a winner sign a liability and/or publicity release in order to receive a prize?

Yes. It is permissible and customary to do so.

Must the Official Rules and advertising materials (including website) be provided in the native language? Or must the Official Rules and website only be provided in the native language if the promotion is advertised/promoted in that language (e.g., if all advertising is in English, can the Official Rules and website only be in English)?

Yes. Spanish language is required. Other languages may be used concurrently but, in the case of a discrepancy, the Spanish version will prevail.

Are there restrictions on the use of personal information collected from entrants?

Yes. Collection and use of personal information is subject to data protection laws.

If the chance-based game or skill-based contest is solely online and no promotion takes place in your country, is it subject to the laws of your country?

Yes. All promotions that are open to Costa Rican residents are subject to Costa Rican laws, regardless of where the promotion takes place.

Are there key cases and/or regulatory decisions involving promotions of which a company should be aware?

There have been several decisions by the Consumer Protection Agency, which have interpreted various aspects of the regulations. They have helped clarifying issues like the way and time to communicate the Official Rules, the validity of certain restrictions, and other relevant issues.

Are there any other important issues a company should consider or be aware of when structuring a chance-based game/skill-based contest that will be open to residents of your country?

The regulations in general are sensible and along the same line as most foreign countries. However, there are certain local requirements and formalities that must be met and, if neglected, may generate penalties even in cases where no damages are caused.

CROATIA

Are chance-based games (i.e., random draw promotions, instant win games) generally permissible?

Yes.

Are skill-based contests (i.e., essay contests, photo contests, user-generated content contests) generally permissible?

Yes.

Is any type of registration or filing required to offer a chance-based game and/or a skill-based contest? If so, what are the costs and deadlines associated with such registration or filing?

In Croatia, chance-based games require registration with the Croatian Ministry of Finance, Tax Authorities. Skill-based contests do not require such registration. The costs are not particularly high. There is no official fee, and the costs relate mostly to legal costs depending on whether all the documents are prepared by the lawyer, including the Official Rules of the promotion. It usually takes up to one month for the Croatian Ministry of Finance, Tax Authorities to approve the promotion.

Are promotions (chance-based or skill-based) in which someone is required to purchase the product in order to enter permitted? If a purchase is required, must a non-purchase method of entry be offered?

Promotions (chance-based or skill-based) in which someone is required to purchase the product in order to enter are permitted. A non-purchase method of entry does not need to be offered.

Are there other forms of "consideration" which are prohibited in connection with entry into a chance-based game (e.g., posting a photo on Instagram, tweeting a response to a call-to-action, completion of a survey, taking a quiz and be required to answer questions correctly to be entered, watching a short video)?

No, there are not.

Are promotions in which the winner(s) are determined in whole or in part by public voting permitted?

Yes, they are.

If a chance-based game or skill-based contest is open to residents of several countries, must the random draw/winner determination process occur in your country or can it be conducted in another country? If the selection process must occur in your country, is there an exception for promotions taking place solely online?

If the promotion involves Croatians, then the random draw must be in Croatia. There are no provisions currently in force related to promotions taking place solely online.

If a chance-based game or skill-based contest is open to residents of several countries, is it permissible to combine all entries from all countries to determine the winners for a single prize pool or must there be a separate prize pool for residents of your country?

There must be a separate prize pool for residents of Croatia in such a case.

Are there any restrictions on the type, nature or value of the prizes (e.g., travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

Generally, the prizes cannot consist of cash.

Is there a tax liability associated with prizes? If yes, who is responsible for the taxes, winner or sponsor? Are there any other costs or fees, such as duties and customs fees, imposed on prize awards?

There is no tax that applies for prize games. 5% of the value of the prizes should be paid to the Red Cross.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (i.e., in any and all media, now or hereafter devised, worldwide in perpetuity)? Can such ownership exist in perpetuity? Can copyright be transferred electronically or must the transfer occur in writing?

It is permissible for the sponsor to own the entries submitted or to obtain a broad grant of rights. This can exist in perpetuity. Copyright can generally be transferred electronically.

Is it generally permissible to require that a winner sign a liability and/or publicity release in order to receive a prize?

Yes, it is generally permissible to require a winner to sign a liability and/or publicity release in order to receive a prize.

Must the Official Rules and advertising materials (including website) be provided in the native language? Or must the Official Rules and website only be provided in the native language if the promotion is advertised/promoted in that language (e.g., if all advertising is in English, can the Official Rules and website only be in English)?

This issue is not regulated nationally. When the rules have to be submitted to a national Croatian institution for approval, they have to be in Croatian.

Are there restrictions on the use of personal information collected from entrants?

Yes. This is regulated by the national data protection legislation.

If the chance-based game or skill-based contest is solely online and no promotion takes place in your country, is it subject to the laws of your country?

This issue is quite complex and depends on several factors. Under certain circumstances, Croatian nationals can be considered participating in a foreign award game or promotion, in which case the laws of our country do not apply.

Are there key cases and/or regulatory decisions involving promotions of which a company should be aware?

We are not aware of such cases and/or regulatory decisions.

Are there any other important issues a company should consider or be aware of when structuring a chance-based game/skill-based contest that will be open to residents of your country?

It is always advisable to consult a lawyer when any such activity is promoted in Croatia.

 CZECH REPUBLIC 

Are chance-based games (i.e., random draw promotions, instant win games) generally permissible?

Chance-based games are generally permissible because since 1st of January 2017 was entering into effect Act No. 186/2016 Coll., on gambling (hereinafter referred to only as the “Gaming Act”). The Gaming Act no longer contains the specific regulation of so-called consumer lotteries (chance-based games), which has been contained in the hitherto Act No. 202/1990 Coll., on lotteries and other similar games, and it also brings a new definition of the main subject of its regulation – gambling (so far referred to as “*lotteries or other similar games*”). Specifically, the Gaming Act contains in its Section 3 (1) the following new definition of gamble: “*Gamble means a game, bet or lottery ticket into which the better invests a bet with no guarantee of return of the same, while chance or an unknown circumstance decide fully or partially about their winning or losing in the game.*” It ensues from this definition that the Gaming Act only applies to such games, bets and lottery tickets (hereinafter collectively referred to only as the “game”) in which the following two basic features are cumulatively satisfied:

- 1) The better must invest a bet in such game the return of which is not guaranteed, and simultaneously,
- 2) Chance or an unknown circumstance decides fully or partially about the better’s winning or losing in the game.

A bet means a non-refundable payment voluntarily invested by a better (participant), which will be compared to the result of the gamble, including the following:

1. difference between the offered price of the goods or services and their usual price; usual price means the price set forth by the law regulating appraising of assets, and
2. an amount exceeding the price for calling or sending a text or multimedia message, as arising from the agreement entered into by and between the participant and the provider of electronic communication services.

It arises from this definition, inter alia, that for instance purchase of goods for a usual price should not be deemed a bet, or participation in a contest through the internet which is only accessible to the participant in the contest based on a mutual agreement (for instance, connection of a household based on an individual agreement with a contestant, connection in a public coffee shop, etc.), or participation in a contest through sending of an SMS message sent for a standard price arising from the official tariff/price list of the mobile operator with which the contestant has the corresponding agreement executed.

Are skill-based contests (i.e., essay contests, photo contests, user-generated content contests) generally permissible?

Yes, the skill-based contests are generally permissible.

Is any type of registration or filing required to offer a chance-based game and/or a skill-based contest? If so, what are the costs and deadlines associated with such registration or filing?

There is no registration or filing required to offer a skill-based contest.

Are promotions (chance-based or skill-based) in which someone is required to purchase the product in order to enter permitted? If a purchase is required, must a non-purchase method of entry be offered?

Yes, the purchase the product is permitted. No, a non-purchase method of entry is not required.

Are there other forms of “consideration” which are prohibited in connection with entry into a chance-based game (e.g., posting a photo on Instagram, tweeting a response to a call-to-action, completion of a survey, taking a quiz and be required to answer questions correctly to be entered, watching a short video)?

Yes, no bet can be required. A bet means a non-refundable payment voluntarily invested by a better (participant), which will be compared to the result of the gamble, including the following:

1. difference between the offered price of the goods or services and their usual price; usual price means the price set forth by the law regulating appraising of assets, and
2. an amount exceeding the price for calling or sending a text or multimedia message, as arising from the agreement entered into by and between the participant and the provider of electronic communication services.

Are promotions in which the winner(s) are determined in whole or in part by public voting permitted?

Yes.

If a chance-based game or skill-based contest is open to residents of several countries, must the random draw/winner determination process occur in your country or can it be conducted in another country? If the selection process must occur in your country, is there an exception for promotions taking place solely online?

The random draw/winner determination process can be conducted in another country.

If a chance-based game or skill-based contest is open to residents of several countries, is it permissible to combine all entries from all countries to determine the winners for a single prize pool or must there be a separate prize pool for residents of your country?

Yes, it is permissible to combine all entries from all countries to determine the winners for a single prize pool.

Are there any restrictions on the type, nature or value of the prizes (e.g., travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

There are no restrictions.

Is there a tax liability associated with prizes? If yes, who is responsible for the taxes, winner or sponsor? Are there any other costs or fees, such as duties and customs fees, imposed on prize awards?

Yes, there is a tax liability associated with the prizes: 15% tax where prize value is more than CZK 10,000 (approximately USD \$400). The sponsor is primarily responsible for the taxes.

There are no other costs of fees imposed on prize awards.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (i.e., in any and all media, now or hereafter devised, worldwide in perpetuity)? Can such ownership exist in perpetuity? Can copyright be transferred electronically or must the transfer occur in writing?

Yes, it is generally permissible.

No, the economic (copyright) rights shall run for the life of the author and 70 years after his death.

If the licence is granted as an exclusive licence, the agreement must be in writing.

Is it generally permissible to require that a winner sign a liability and/or publicity release in order to receive a prize?

Yes, if it is set out in the Official Rules.

Must the Official Rules and advertising materials (including website) be provided in the native language? Or must the Official Rules and website only be provided in the native language if the promotion is advertised/promoted in that language (e.g., if all advertising is in English, can the Official Rules and website only be in English)?

Generally yes, where the game/contest is aimed at the Czech consumers.

Are there restrictions on the use of personal information collected from entrants?

Yes. The free consent must be obtained under the conditions of Data Protection Act and the registration of the sponsor must be completed at the Data Protection Office.

If the chance-based game or skill-based contest is solely online and no promotion takes place in your country, is it subject to the laws of your country?

There is no specific regulation.

Are there key cases and/or regulatory decisions involving promotions of which a company should be aware?

Yes, there are cases and regulatory decisions regarding the definition of the random selection.

Are there any other important issues a company should consider or be aware of when structuring a chance-based game/skill-based contest that will be open to residents of your country?

No.

DENMARK

Are chance-based games (i.e., random draw promotions, instant win games) generally permissible?

Yes.

Chance-based games are regulated in the Marketing Practices Act § 9, according to which the conditions must be easily understandable and accessible for the consumer and important details must not be omitted. This means that the terms and conditions must include the following details:

1. Who can participate;
2. How to participate;
3. The full prize value,;
4. The selection procedure;
5. The time for the winner to be announced;
6. Where the winner will be announced;
7. Conditions for delivery or pick up;
8. Any expiration date in relation to the prize; and
9. Geographical or other limitations, including the number of prizes

Are skill-based contests (i.e., essay contests, photo contests, user-generated content contests) generally permissible?

Yes.

The same rules, as listed above, apply.

Is any type of registration or filing required to offer a chance-based game and/or a skill-based contest? If so, what are the costs and deadlines associated with such registration or filing?

No, not for skilled-based competitions.

For chance-based games or games that involve a combination of skill and chance, a registration with the Tax Authorities is needed, since the sponsor is liable for paying a tax to the Danish State for the prizes. If the sponsor is a resident from outside the EU, the sponsor must engage a company resident within the EU to register with the Tax authorities.

Furthermore, lotteries require government permission. Lotteries are subject to a monopoly in Denmark, and normally only non-profit lotteries for the common good are permitted.

Are promotions (chance-based or skill-based) in which someone is required to purchase the product in order to enter permitted? If a purchase is required, must a non-purchase method of entry be offered?

Yes, but the full costs in connection with the purchase and entry together with all conditions must be clearly stated. It is therefore not enough to state the costs separated from the conditions. A non-purchase method does not have to be offered.

Are there other forms of “consideration” which are prohibited in connection with entry into a chance-based game (e.g., posting a photo on Instagram, tweeting a response to a call-to-action, completion of a survey, taking a quiz and be required to answer questions correctly to be entered, watching a short video)?

If the form of entry entails any marketing of the company or the company's products etc. it must be clearly stated that this is done as part of the company's marketing. The consumer must be informed about this requirement so he is able to act accordingly.

Other than that – no.

Are promotions in which the winner(s) are determined in whole or in part by public voting permitted?

Yes, if this type of selection procedure is clearly stated in the Official Rules.

If a chance-based game or skill-based contest is open to residents of several countries, must the random draw/winner determination process occur in your country or can it be conducted in another country? If the selection process must occur in your country, is there an exception for promotions taking place solely online?

It can be conducted in another country, if it is clearly stated in the Official Rules.

If a chance-based game or skill-based contest is open to residents of several countries, is it permissible to combine all entries from all countries to determine the winners for a single prize pool or must there be a separate prize pool for residents of your country?

Yes, it is permissible to combine all entries from all countries to determine the winners for a single prize pool, if this is clearly stated in the Official Rules.

Are there any restrictions on the type, nature or value of the prizes (e.g., travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

No, but it must be clearly stated if there is any costs connected with receiving the prize, and which costs are included in the prize (e.g. when travelling outside the country).

Is there a tax liability associated with prizes? If yes, who is responsible for the taxes, winner or sponsor? Are there any other costs or fees, such as duties and customs fees, imposed on prize awards?

This depends on whether the competition is skill-based, chance-based, or a combination of both.

If the competition is entirely skill-based, the winner is responsible for paying the taxes and this could be reflected in the Official Rules. The winner will then have to include the prize in his or her tax report.

If the competition is partly or fully chance-based, the sponsor will be liable for the tax, which will in return be much lower.

There are no other costs associated with the competition.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (i.e., in any and all media, now or hereafter devised, worldwide in perpetuity)? Can such ownership exist in perpetuity? Can copyright be transferred electronically or must the transfer occur in writing?

According to the Danish Act on Copyright section 53, the copyright holder may wholly or partially assign his rights. However, section 53 is subject to the limitations that, in general, the author of a work shall have the right to be identified by name as the author or in accordance with the requirements of proper usage, on copies of the works as well as if the work is made available to the public. According to section 2, the work must not be altered nor made available to the public in a manner or in a context which is prejudicial to the author's literary or artistic reputation or individuality. Finally, the author is entitled to remuneration for the resale of copies of works of art.

However, in general, all these rights may be assigned to the extent it is clearly stated in the Official Rules.

Transfer may take place electronically, to the extent such transfer can be proven.

Ownership can only exist as long as the copyright exists – ultimately 70 years after the death of the artist. However if the copyrighted work is not published or otherwise exploited within 3 years of assignment, the author may claim the title to the work back.

Is it generally permissible to require that a winner sign a liability and/or publicity release in order to receive a prize?

Yes, this is generally permissible to request it. However, depending on the content of the liability and/or publicity release – if it is very far-reaching - , the winner may not be bound by the release/declaration.

Must the Official Rules and advertising materials (including website) be provided in the native language? Or must the Official Rules and website only be provided in the native language if the promotion is advertised/promoted in that language (e.g., if all advertising is in English, can the Official Rules and website only be in English)?

There is no explicit requirement that the Official Rules and advertising materials be provided in Danish. However, according to the Danish Marketing Practices Act, the rules must be clear and understandable. This means, if the rules are very complex and depending on the target group, translation into Danish sometimes is recommended.

Are there restrictions on the use of personal information collected from entrants?

Yes. If the company responsible for the data is based in Denmark and the information is processed within the European Union or if the company responsible for the data is based outside the EU and the data is processed in a specific way in Denmark, the use of personal information is restricted and subjected to the Danish Act on Processing of Personal Data. This means that it is not permissible to further transfer such information to a third party without express permission, which should be obtained in advance, and it is furthermore not permissible to keep such data for a longer period of time than necessary to suit the purpose of the collection of the data.

If the chance-based game or skill-based contest is solely online and no promotion takes place in your country, is it subject to the laws of your country?

If the contest (skill-based and/or chance-based) is targeted at entrants in Denmark, or even if entrants from Denmark may participate, the contest will be subject to Danish law, unless it originates from a country within the European Union, in which case the law of the sending country may apply instead according to the EU E-commerce Directive.

Are there key cases and/or regulatory decisions involving promotions of which a company should be aware?

The supreme court case U.2014.876H (Noma vs. Homecenter). The online advertising agency Homecenter was offering a sweepstakes and a first prize including "a dinner for two at the world's best restaurant, NOMA". The use of Noma's trademark, without their consent, was found to be a violation of Noma's rights according to the Danish Trademark Act and the Danish Marketing Practices Act.

Are there any other important issues a company should consider or be aware of when structuring a chance-based game/skill-based contest that will be open to residents of your country?

Companies should generally be aware of the Danish Marketing Practices Act section 9 when structuring a contest in Denmark. According to section 9(1) a sales promotion, including by means of gifts with purchase, trading stamps, discount or loyalty schemes, prize competitions and the like, must be presented in such way that the terms of offer are clear, unambiguous and easily available to the consumer, and in general no material information may be omitted, including information on the value of any additional services likely to materially distort the economic behavior of consumers.

 DOMINICAN REPUBLIC 

Are chance-based games (i.e., random draw promotions, instant win games) generally permissible?

Yes.

Are skill-based contests (i.e., essay contests, photo contests, user-generated content contests) generally permissible?

Yes.

Is any type of registration or filing required to offer a chance-based game and/or a skill-based contest? If so, what are the costs and deadlines associated with such registration or filing?

Yes, if the chance-based game and/or the skill-based contest grants a prize to its winner, the registration of the Rules is required.

The government fee is USD \$12.00, and the registration request must be filed at least 21 days before the contest starts. The registration is obtained within 5 days, if no observation is issued by the local authority.

Are promotions (chance-based or skill-based) in which someone is required to purchase the product in order to enter permitted?

Yes.

If a purchase is required, must a non-purchase method of entry be offered?

No.

Are there other forms of “consideration” which are prohibited in connection with entry into a chance-based game (e.g., posting a photo on Instagram, tweeting a response to a call-to-action, completion of a survey, taking a quiz and be required to answer questions correctly to be entered, watching a short video)?

No.

Are promotions in which the winner(s) are determined in whole or in part by public voting permitted?

Yes.

If a chance-based game or skill-based contest is open to residents of several countries, must the random draw/winner determination process occur in your country or can it be conducted in another country? If the selection process must occur in your country, is there an exception for promotions taking place solely online?

It can be conducted in another country.

If a chance-based game or skill-based contest is open to residents of several countries, is it permissible to combine all entries from all countries to determine the winners for a single prize pool or must there be a separate prize pool for residents of your country?

It is permissible to combine all entries from all countries to determine the winners for a single prize.

Are there any restrictions on the type, nature or value of the prizes (e.g., travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

No.

Is there a tax liability associated with prizes? If yes, who is responsible for the taxes, winner or sponsor? Are there any other costs or fees, such as duties and customs fees, imposed on prize awards?

Yes, depending on the prize. Liability for the taxes depends of what the Official Rules state; either the sponsor or the winner is responsible. Duties or customs fees will depend on the prize.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (i.e., in any and all media, now or hereafter devised, worldwide in perpetuity)? Can such ownership exist in perpetuity? Can copyright be transferred electronically or must the transfer occur in writing?

No. It is not generally permissible for the sponsor to own the entries. The sponsor could only use the material to announce the winner. Any grant must occur in writing, and cannot exist in perpetuity. The maximum period of use is 18 months.

Is it generally permissible to require that a winner sign a liability and/or publicity release in order to receive a prize?

Yes.

Must the Official Rules and advertising materials (including website) be provided in the native language? Or must the Official Rules and website only be provided in the native language if the promotion is advertised/promoted in that language (e.g., if all advertising is in English, can the Official Rules and website only be in English)?

The Official Rules must be in the native language. .

Are there restrictions on the use of personal information collected from entrants?

Yes. It is only admissible to use the information of the winner for announcing such winner.

If the chance-based game or skill-based contest is solely online and no promotion takes place in your country, is it subject to the laws of your country?

If the chance-based game or skill-based contest is offered to local contestants, it is subject to the local laws.

Are there key cases and/or regulatory decisions involving promotions of which a company should be aware?

No. There are not any key cases and/or regulatory decisions involving promotions, given that since the implementation of resolution No. 009.2011, which regulates the Contests, Raffles and Promotions in Dominican Republic, a company must apply all the recommendations made by the local authority before obtaining the registration of the rules of the promotion.

Are there any other important issues a company should consider or be aware of when structuring a chance-based game/skill-based contest that will be open to residents of your country?

The Rules must be accessible to contestants and in the local language.

Express written consent and authorization for using the image and other rights of the contestants/winner should be obtained. The use of the image of contestants is limited to the winners for the purpose of announcing such winners, for a limited time of 18 months. It is not possible to use the image of the contestants without consent and the Official Rules must specify where the image will be used.

Any modification of the Official Rules must be submitted for approval to the local authority before its implementation.

It is not possible to take an action that is not stated in the Official Rules (e.g. it is not possible to reserve all rights).

For the issues not stated in the Official Rules, the supplementary local law applies.

All Official Rules of a promotion/contest that grant a prize to the winner must be registered at the local authority and the registration number must be shown with the Official Rules.



DUTCH CARIBBEAN



Are chance-based games (i.e., random draw promotions, instant win games) generally permissible?

Yes, but in general a permit from the government is required and conditions can be attached to such a permit. No permit is required if it is organized or held by, and to the benefit of, commercial matters or companies to stimulate the sale or to increase turn over, and if payment of a monetary amount is not set as a condition to participate.

Are skill-based contests (i.e., essay contests, photo contests, user-generated content contests) generally permissible?

Yes.

Is any type of registration or filing required to offer a chance-based game and/or a skill-based contest? If so, what are the costs and deadlines associated with such registration or filing?

In principle, a permit must be obtained for a chance-based game before the game is offered. However, no permit is required if this is organized or held by, and to the benefit of, commercial matters or companies to stimulate the sale or to increase turn over, and if payment of a monetary amount is not set as a condition to participate.

In general no registration/filing is required for a skill-based contest.

Are promotions (chance-based or skill-based) in which someone is required to purchase the product in order to enter permitted? If a purchase is required, must a non-purchase method of entry be offered?

No permit is required if the promotion is organized or held by, and to the benefit of, commercial matters or companies to stimulate the sale or to increase turn over.

Are there other forms of “consideration” which are prohibited in connection with entry into a chance-based game (e.g., posting a photo on Instagram, tweeting a response to a call-to-action, completion of a survey, taking a quiz and be required to answer questions correctly to be entered, watching a short video)?

In principle, that is not the case.

Are promotions in which the winner(s) are determined in whole or in part by public voting permitted?

Yes.

If a chance-based game or skill-based contest is open to residents of several countries, must the random draw/winner determination process occur in your country or can it be conducted in another country? If the selection process must occur in your country, is there an exception for promotions taking place solely online?

There are no regulations on these matters.

If a chance-based game or skill-based contest is open to residents of several countries, is it permissible to combine all entries from all countries to determine the winners for a single prize pool or must there be a separate prize pool for residents of your country?

There is no regulation on this matter.

Are there any restrictions on the type, nature or value of the prizes (e.g., travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

Such restrictions could be set as a condition in the government permit.

Is there a tax liability associated with prizes? If yes, who is responsible for the taxes, winner or sponsor? Are there any other costs or fees, such as duties and customs fees, imposed on prize awards?

Yes, the winner is responsible for payment of taxes. Additional duties and customs fees may also be imposed.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (i.e., in any and all media, now or hereafter devised, worldwide in perpetuity)? Can such ownership exist in perpetuity? Can copyright be transferred electronically or must the transfer occur in writing?

Yes, it is generally permissible for the sponsor to own the entries submitted or to obtain a broad grant of rights. Such ownership can exist in perpetuity. It is recommended for this to take place in writing. Electronic transfer is possible if the transferred rights and contracting parties are clearly identified, this mentions the place and date of signing, and contains the signatures of parties.

Is it generally permissible to require that a winner sign a liability and/or publicity release in order to receive a prize?

Yes.

Must the Official Rules and advertising materials (including website) be provided in the native language? Or must the Official Rules and website only be provided in the native language if the promotion is advertised/promoted in that language (e.g., if all advertising is in English, can the Official Rules and website only be in English)?

It is recommended to have the Official Rules and advertising materials in an official language (Dutch/English for St. Maarten, Saba and St. Eustatius; Dutch/Papiamentu for Aruba, Curacao, Bonaire, though English is widely spoken in the latter mentioned islands).

Are there restrictions on the use of personal information collected from entrants?

Yes, this is subject to privacy legislation. For example, personal information must be used for the purpose mentioned (the purpose must be justified and described clearly); only personal information that is strictly necessary may be used; personal information must be kept confidential and appropriate technical and organizational measures must be taken to safeguard the personal information.

If the chance-based game or skill-based contest is solely online and no promotion takes place in your country, is it subject to the laws of your country?

That could possibly be the case if there are other factors that indicate that the website targets our country.

Are there key cases and/or regulatory decisions involving promotions of which a company should be aware?

It is recommended to follow internationally accepted rules of good practice regarding promotions.

Are there any other important issues a company should consider or be aware of when structuring a chance-based game/skill-based contest that will be open to residents of your country?

It is recommended to follow internationally accepted rules of good practice regarding promotions.

ECUADOR

Are chance-based games (i.e., random draw promotions, instant win games) generally permissible?

Chance based games in Ecuador can be divided between:

1. Chance-based games in which stakes (betting/gambling/purchasing tickets) are involved.
Chance-based games with the risk of losing money or anything in its representation (i.e. sold tickets), where winning or losing depends only and exclusively on chance are prohibited by law, with the exception of the National Lottery and raffles that take place in civic or religious festivities fairs and/or events.
2. Chance-based promotions.
Chance-based promotions without stakes, such as the ones related to the purchase of a product/service or related to a client loyalty contest are permitted. Nevertheless, these chance-based promotions are prohibited in the following cases:
 - a. When the prizes consist in whole or in part in: money, coupons, payment orders, foreign currency or any equivalent document.
 - b. When the award system applied, or the prize plays with, the National Lottery numbers.
 - c. When the award system is not mechanic (i.e., it is omitted or replaced by electronic or computerized systems).
 - d. When the award system offers prizes to the “numbers” that are close to the “winning number” or end in the same numbers (terminals).

Are skill-based contests (i.e., essay contests, photo contests, user-generated content contests) generally permissible?

Yes.

Is any type of registration or filing required to offer a chance-based game and/or a skill-based contest? If so, what are the costs and deadlines associated with such registration or filing?

Yes, an authorization or a simple filing is required depending on the case:

1. If it is a chance-based game in which stake is involved, then an authorization must be filed and granted before the beginning of the game;
2. If it is a chance-based promotion or a skill-based contest, a simple filing of a notification of the game to the authorities is required.

The Official filing fee is US \$50.00.

The value of the prizes must be temporarily deposited as a bank guarantee in national currency (US Dollars), as a form of security, until the game/contest is over and the winner receives the prize. If the organizer is not domiciled or operating in Ecuador and the game is organized abroad, this requirement does not apply.

Authorities recommend that the authorization applications be filed at least 4 weeks before the game/contest begins in order to fulfill all the requirements in advance.

Are promotions (chance-based or skill-based), in which someone is required to purchase the product in order to enter, permitted? If a purchase is required, must a non-purchase method of entry be offered?

Yes, it is permitted in both chance-based and skill-based promotions, as long as there is no extra payment required (besides the price of the product) to enter the promotion. In chance-based games, see the first answer above. It is not necessary to offer a non-purchase method.

Are there other forms of “consideration” which are prohibited in connection with entry into a chance-based game (e.g., posting a photo on Instagram, tweeting a response to a call-to-action, completion of a survey, taking a quiz and be required to answer questions correctly to be entered, watching a short video)?

No, other than the ones specified in the answer to the first question above.

Are promotions in which the winner(s) are determined in whole or in part by public voting permitted?

Yes.

If a chance-based game or skill-based contest is open to residents of several countries, must the random draw/winner determination process occur in your country or can it be conducted in another country? If the selection process must occur in your country, is there an exception for promotions taking place solely online?

The random draw/winner determination process can be conducted in another country as long as it complies with all the requirements and authorizations of our national legislation, despite where the determination process takes place. Online promotions may present exceptions on a case-by-case basis.

If a chance-based game or skill-based contest is open to residents of several countries, is it permissible to combine all entries from all countries to determine the winners for a single prize pool or must there be a separate prize pool for residents of your country?

A single prize pool is permissible as long as the game/contest complies with all the requirements and authorizations of our national legislation, despite the nationality of the winner.

If the organizer is not domiciled or operating in Ecuador and the game is organized abroad, there may be some exceptions to the requirements; this must be analyzed on a case-by-case basis.

Are there any restrictions on the type, nature or value of the prizes (e.g., travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

In a chance-based game where stakes are involved, prizes may not consist in whole or in part in: money, coupons, payment orders, foreign currency or any equivalent document. In a chance-based promotion without stakes, our legislation does not specify any prohibitions regarding prizes. In skill-based contests, our legislation does not specify any prohibitions regarding prizes.

Is there a tax liability associated with prizes? If yes, who is responsible for the taxes, winner or sponsor? Are there any other costs or fees, such as duties and customs fees, imposed on prize awards?

If the organizers of the game/contest receive a profit, they must pay the flat rate tax for corporate profits (around 22 to 25% of the profit, according to a yearly modified table).

The winners must pay the flat rate tax of 15% of the value of each prize they receive, in money or in kind, for each US dollar that exceeds the income tax exemption for the corresponding year (USD\$11,290 for the year 2017). The organizers must act as the tax withholding agent of this amount and make sure that when the prize is given to the winner it includes this additional cost.

If the organizer is not domiciled or operating in Ecuador and the game is organized abroad, this requirement does not apply and the winner must pay the corresponding income tax independently.

As mentioned above, there is an Official filing fee of US\$50 (fifty US Dollars) for the authorization or simple filing of the game. The value of the prizes must be temporarily deposited as a bank guarantee in national currency, as a form of security, until the game/contest is over and the winner receives the prize. If the organizer is not domiciled or operating in Ecuador and the game is organized abroad, this requirement does not apply.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (i.e., in any and all media, now or hereafter devised, worldwide in perpetuity)? Can such ownership exist in perpetuity? Can copyright be transferred electronically or must the transfer occur in writing?

Copyrights in Ecuadorian legislation are subdivided in moral and economic rights.

Authors, simply by virtue of the act of creating an original work, have inalienable and perpetual moral rights that cannot be transferred (i.e. authorship, integrity of the work).

The economic rights can be transferred on behalf of the sponsor, they must be transferred in writing and clearly refer to each right separately (diffusion, reproduction, distribution, etc.).

The term of protection for economic copyrights extends to 70 years after the death of the author, therefore ownership of these rights cannot exist in perpetuity.

Is it generally permissible to require that a winner sign a liability and/or publicity release in order to receive a prize?

Yes, but there are no specific regulations on this subject. It is very important for any condition (in this case signing a liability and/or publicity release) to be noted in the terms and conditions of the contract (i.e. Official Rules) before the beginning of the game/contest. The organizer of the game/contest cannot oblige the winner to sign the liability/publicity release after they have won by keeping the prize from the winner. Not awarding the prize can carry a fine that doubles the value of the prize and is even criminally prosecuted for 3 to 6 years in prison.

Must the Official Rules and advertising materials (including website) be provided in the native language? Or must the Official Rules and website only be provided in the native language if the promotion is advertised/promoted in that language (e.g., if all advertising is in English, can the Official Rules and website only be in English)?

Yes, the Official Rules must be provided in the native Ecuadorian language (Spanish). The advertisement broadcasted in Ecuador must comply with national advertising regulations.

Are there restrictions on the use of personal information collected from entrants?

Personal information, such as names and e-mail addresses, can only be used when the owners have provided consent to do so, and mishandling of personal information, such as using it without consent, may even be criminally prosecuted.

When personal information is used for advertising purposes, an “opt out” option must be available for the entrants in order for them to be able to remove their personal information when desired.

If the chance-based game or skill-based contest is solely online and no promotion takes place in your country, is it subject to the laws of your country?

If the organizer is not domiciled or operating in Ecuador and the game is organized abroad, there may be some exceptions to the requirements. Online games/contests must be analyzed on a case-by-case basis.

Are there key cases and/or regulatory decisions involving promotions of which a company should be aware?

Non specifically, but it is important to consider the following regulating bodies:

The Law for Sales by Lot and its Regulation.

The Organic Law of Communication and its Regulation.

The Organic Law of Consumer Protection.

Are there any other important issues a company should consider or be aware of when structuring a chance-based game/skill-based contest that will be open to residents of your country?

All basic rules and principles are stated and explained above.

FINLAND

Are chance-based games (i.e., random draw promotions, instant win games) generally permissible?

Yes, chance-based games organized for promotional purposes are allowed in Finland, provided that they fulfill the requirements laid down in the Finnish Consumer Protection Act (38/1978, as amended, the "CPA") and on the assumption that they are not considered "lotteries" under the Finnish Lotteries Act (1047/2001, as amended).

The CPA applies to the offering, selling and marketing of consumer goods and services by businesses to consumers. Chance-based games directed to consumers must thus comply with the general marketing rules of the CPA. The marketing must, *inter alia*, not be unfair or against good practice, the information provided must not be misleading, and aggressive methods should not be used.

Are skill-based contests (i.e., essay contests, photo contests, user-generated content contests) generally permissible?

Yes, skill-based contests are generally allowed in Finland. Finnish law does not differentiate between promotional chance-based games and skill-based contests (hereinafter together referred to as "promotional games and contests"). Therefore, skill-based contests are permitted under the same conditions as chance-based games.

Is any type of registration or filing required to offer a chance-based game and/or a skill-based contest? If so, what are the costs and deadlines associated with such registration or filing?

No registration or filing is required.

Are promotions (chance-based or skill-based) in which someone is required to purchase the product in order to enter permitted? If a purchase is required, must a non-purchase method of entry be offered?

As a main rule, it is permitted to organize promotional games and contests which may be entered only by purchasing a product or submitting a bid. Offering a non-purchase method of entry is not necessary.

Promotional games and contests are allowed provided that they are not considered lotteries under the Lotteries Act. The scope of application of the Lotteries Act covers all activity: (i) in which there is a charge for participation; (ii) that includes prizes of monetary value; and (iii) that is at least to some extent dependent on chance. A promotional game or contest that meets all of these requirements is considered a lottery. The Lotteries Act provides for an exclusive rights system, in which only certain monopolistic operators are allowed to organize lotteries in Finland.

A chance-based game is likely to be considered a lottery if entry is subject to a charge, and the charge is something else than purchasing a product or service or submitting a bid, or if the charged price is higher for the participants in the chance-based game than for other customers. Customary costs for entering a promotion (e.g. the cost of sending a post card or making a normal-priced phone call) are generally not considered a charge in the sense of the Lotteries Act, as far as the organizer does not gain any benefit from them.

The Finnish Competition and Consumer Authority ("FCCA") has declared that if the promotion is targeted to children, promotional games and contests requiring a purchase are not permitted at all, even if there is a way of entry which does not require a purchase.

Are there other forms of "consideration" which are prohibited in connection with entry into a chance-based game (e.g., posting a photo on Instagram, tweeting a response to a call-to-action, completion of a survey, taking a quiz and be required to answer questions correctly to be entered, watching a short video)?

Promotional games and contests must comply with the general marketing rules of the CPA. Hence, promotional games and contest must not be inappropriate, against good practice or otherwise unfair from the consumer's point of view.

Although not explicitly prohibited, the FCCA recommends that participation in promotional games and contests must not be dependent on the provision of the consumer's personal data for electronic direct marketing. According to the Finnish Information Society Code (917/2014, as amended), consumers must be offered an active method (such as a check box) for indicating approval of the receipt of electronic marketing messages, and must always have the opportunity to subsequently withdraw the direct marketing authorization. If an electronic direct marketing authorization is required for entering a promotional game or contest, instructions on how to withdraw the authorization must be clear, understandable and easily accessible for consumers.

Also, the FCCA has stated that so-called "Tell A Friend" marketing may not be used in connection with a promotional game or contest, as it is comparable to direct online marketing and thus would require an advance consent, which in practice is impossible to manage by the organizer due to the nature of this marketing method.

Are promotions in which the winner(s) are determined in whole or in part by public voting permitted?

Yes.

If a chance-based game or skill-based contest is open to residents of several countries, must the random draw/winner determination process occur in your country or can it be conducted in another country? If the selection process must occur in your country, is there an exception for promotions taking place solely online?

The random draw or the winner determination process may be conducted in another country. It nevertheless follows from the CPA that the organizer of the promotional game or contest clearly in advance must inform how the winner is determined.

If a chance-based game or skill-based contest is open to residents of several countries, is it permissible to combine all entries from all countries to determine the winners for a single prize pool or must there be a separate prize pool for residents of your country?

Entries from all different countries may be combined in a single prize pool. It nevertheless follows from the CPA that the organizer of the promotional game or contest clearly in advance must inform that the winner is drawn from a single prize pool.

Are there any restrictions on the type, nature or value of the prizes (e.g., travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

Finnish law does not contain any restrictions in regard to the type, nature or value of the prize. However, the more valuable the prize, the more the risk increases that the promotional game or contest could be held to influence the consumer's purchase decision in an unfair way and therefore risk being held inappropriate.

Generally, prizes are expected to meet a certain level of appropriateness. Guns, explosives or live animals should therefore not be used as prizes in promotional games. Some products also require more factuality and reliability than others, such as credit, health and medicinal products and services. The Market Court e.g. held in its ruling MT 2000:004 that a company's marketing material promising a chance to win an eye operation was against good practice.

The prize must also be suitable for the target group. The age of the target group must be taken into special account. When a promotional game is directed at minors, the prize cannot consist of a product prohibited from children, such as a movie suitable only for adults.

In the marketing, the organizer of the promotional game or contest must provide consumers with sufficient information about the prize. If necessary due to the character of the prize, it is recommendable to inform consumers about what the prize does not include (e.g. if the prize is a vacation but does not include travel expenses to the airport).

Is there a tax liability associated with prizes? If yes, who is responsible for the taxes, winner or sponsor? Are there any other costs or fees, such as duties and customs fees, imposed on prize awards?

The taxpayer and the applicable tax depends on whether the promotion is organized as a chance-based game or a skill-based contest.

Chance-based games. The organizer of a promotional chance-based game must pay lottery tax in pursuance with each prize draw, if the combined amount of distributed winnings exceeds EUR 166.66 in a calendar month. According to the instructions given by the Finnish Tax Administration, the tax base is the value of the prize determined either by the combined amount of the prize or the supply price (VAT included). The applicable tax rate is 30 per cent. The prize is tax-free for the winner.

Skill-based contests. When a promotional game or contest is based on skills or knowledge, the prize is regarded as taxable income of the winner. When organizing such competition, the organizer must clearly inform that the winner will have to pay taxes on the prize. Income tax is withheld in advance, and if the combined amount of annually distributed winnings exceeds EUR 100, the organizer must perform an annual declaration to the Finnish Tax Administration. The organizer is not liable to pay social security tax or other corresponding payments.

If the prize awarded in a promotional game or contest is sent from outside the fiscal territory of the EU, the prize must be cleared through Customs and the winner must pay VAT, excise duty and customs duty for the prize.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (i.e., in any and all media, now or hereafter devised, worldwide in perpetuity)? Can such ownership exist in perpetuity? Can copyright be transferred electronically or must the transfer occur in writing?

It is generally permissible for the organizer of the promotional game or contest to own the entries submitted and/or to obtain a broad grant of rights. Under the Finnish Copyright Act (404/1961), a copyright, or a right related to copyright, such as a photographic picture, may be transferred entirely or partially. The moral rights of the author may however be waived by him only in regard to use limited in character and extent (and thus not in any and all media). Further, unless explicitly agreed upon, the person to whom the copyright or related right has been transferred may not alter the work or transfer the copyright or related right to others. The organizer of the promotional game or contest must hence ensure that the necessary details regarding the copyright assignment are clearly stated in the official rules of the promotion. In Finland, works protected by copyright subsist until 70 years have elapsed from the year of the author's death, while the right to a photographic picture is in force until 50 years have elapsed from the end of the year during which the photographic picture was made. Hence, copyright or related rights do not last perpetually. A copyright or a related right can be assigned electronically.

Special attention is required in regard to minors. In accordance with the Guardianship Services Act (442/1999), minors have the right to decide on the proceeds of their own work, also in regard to copyright. It is, however, recommendable to obtain the guardian's permission for usage of a work created by a minor.

Is it generally permissible to require that a winner sign a liability and/or publicity release in order to receive a prize?

Requiring the winner to sign a *liability release* is, as such, allowed under Finnish law. However, the CPA and the Finnish Product Liability Act (694/1990) contain mandatory rules regarding liability for damages which cannot be deviated from by contractual terms. Also, pursuant to the CPA, a business must not use contract terms which are deemed unfair from the consumer's point of view. The organizer's factual possibility to limit its liability is hence restricted.

Requesting the winner to sign a *publicity release* is generally permitted, in case this has been clearly accounted for in advance in the rules of the promotion and the terms are considered fair. Similarly, a publicity release that is only presented to the winner after he or she has been elected must not contain any

new or surprising clauses. Under Finnish law, it is necessary to obtain a person's prior permission in order to use his or hers name or photo in marketing material. Special attention is once again required in regard to minors. Pursuant to the Supreme Court ruling KKO 1989:62, the guardian's consent is required when using a name or photo of a minor in marketing.

Must the Official Rules and advertising materials (including website) be provided in the native language? Or must the Official Rules and website only be provided in the native language if the promotion is advertised/promoted in that language (e.g., if all advertising is in English, can the Official Rules and website only be in English)?

The official rules and the advertising material can be in English provided that they are clear and understandable to the consumer.

The CPA provides that the rules for entering a promotional game or contest must be *clear* and *understandable*. Hence, especially if the terms and conditions are particularly lengthy, complicated or difficult to understand, or if the targeted group includes children, it is recommendable that the organizer provides the rules in the official languages (i.e. in Finnish and Swedish).

Are there restrictions on the use of personal information collected from entrants?

In collecting personal information, the organizer of a promotional game or contest must comply with the general rules concerning personal data as stipulated in the Finnish Personal Data Act (523/1999, as amended). Under the Personal Data Act, the processing of personal information must, inter alia, be appropriate and justified in the operations of the controller, the purpose of the processing must be clearly defined before collecting the information and the personal information must not be used in a manner incompatible with the defined purpose. Also, the data controller must draw up a description of the personal data file which shall be kept available for everyone.

As mentioned above, special caution must be taken if the consumer is required to provide his or her personal data for the purpose of electronic direct marketing as a prerequisite for participation in the promotional game or contest. Children are in a special position in this respect, as permission for electronic direct marketing may not be requested at all for promotional games or contests directed at children under the age of 15. For 15-to-17-year-olds, direct marketing can be used only for products that they can purchase independently.

If the chance-based game or skill-based contest is solely online and no promotion takes place in your country, is it subject to the laws of your country?

The closer connection the promotion has with Finland, the more likely it is to be considered subject to Finnish law. If Finland is mentioned or referred to, or if the promotion is in Finnish, it is most certainly subject to Finnish law. The Market Court held in its ruling MT 1987:13 that the CPA was applicable to television commercials shown on satellite channels visible in Finland, when marketing with similar content simultaneously occurred in national media, even though the TV commercials were in English and in no way directed towards Finnish people. In its ruling MAO 26/04, the Market Court further stated that the fact that the marketing material was in English did not mean that it was only targeted to foreigners. The applicability of the CPA can thus be completely ruled out only if the promotion is technically closed for Finnish people.

Are there key cases and/or regulatory decisions involving promotions of which a company should be aware?

Promotional games and contests may not be the main focus of the marketing, i.e., the sales promotion may not be built entirely upon a promotional game or contest as this may influence the consumer in an improper and inappropriate way to make a purchase decision that he or she would not have made without hopes of winning. In its ruling MT 2002:007, the Market Court considered that toys handed out with meals were overemphasized in the marketing material and the activity was considered unfair. However, if the purpose of the prize draw or competition is to improve the company's image (and not to promote a certain product or service), it is generally permitted to highlight the role of the game or contest in the marketing.

Aggressive methods, such as harassment, coercion or other forms of undue influence that may lead to a situation in which a consumer makes a decision that he or she would not have made otherwise, are

prohibited. In its ruling MAO 256/08, the Market Court considered the marketing to be against good practice when the organizer did not inform the winners that the event they were invited to in order to collect their prizes was a presentation and sales event for shares of the company. Under the Government Decree 601/2008, it is furthermore prohibited to give a consumer the impression that he or she will win or has won something if no prize exists or claiming the prize is not free.

Furthermore, the marketing material must not include false or misleading information. The Market Court stated in its ruling MT:1996:012 that none of the parts of the marketing should give the consumer the impression that participation in a promotional prize draw requires the consumer to purchase a product if it is also possible to participate free of charge.

Lastly, the Market Court has in several of its cases established that stricter rules apply in regard to the identification of marketing and the organization of promotional games when the target group is children or young people. In its recent decision (KKV/2729/14.08.01.05/2014) the Consumer Ombudsman considered a promotional game in the form of a mobile game to be against good practice, when it was targeted to consumers aged 15 years and older, but was as easily accessible for younger people.

Are there any other important issues a company should consider or be aware of when structuring a chance-based game/skill-based contest that will be open to residents of your country?

The organizer must make sure that the Official Rules of the promotion and the marketing material contains the information required by law. Pursuant to the CPA, the rules for entering a promotional prize draw or competition must be *clear, understandable* and *easily available*. The commercial purpose and on whose behalf the marketing is implemented must be evident from the marketing material. It must contain all relevant information applicable to the promotional game or contest. In case a promotional game or contest is advertised in a context where the consumer cannot participate in the game outright, e.g. in television or outdoor advertising, it is nevertheless sufficient that the organizer provides information of where further information can be found (e.g. by referring to a webpage).

In order to meet the legal requirements stipulated for promotional games and contests, it is recommendable that the marketing material contains at least the following information:

- Organizer
- Rules of the promotional game or contest
- Instructions for participation
- Start and end time
- Grounds for decision for skill-based contests
- When and how the prize draw takes place
- How the winner is informed of the prize
- Data privacy details (e.g. publication of the name of the winner)
- Sufficient information about the prize, including restrictions and conditions regarding usage of the prize
- Copyright issues
- Possible tax consequences

FRANCE

Are chance-based games (i.e., random draw promotions, instant win games) generally permissible?

Commercial operations based on chance are submitted to different rules depending on whether they are offered to consumers or professionals.

When they are offered to consumers, they are licit *per se* (under Section L121-1 and seq. of the consumer Code : “promotional lotteries”) provided that they do not constitute an unfair commercial practice.

In such type of promotions, the reimbursement of the connection fees as well as the filing of the set of Rules with a process server (*huissier*) are not compulsory requirements.

When they are offered to professionals, they are submitted to Sections L322-1 and seq. of the French Interior Security Code, which prohibits the commercial operations meeting the four following criteria (“lotteries”):

- A public offer,
- The hope of a gain,
- The element of chance (draw), and
- A payment or a financial sacrifice.

And according to Section L322-2-1 of the Interior Security Code, a financial sacrifice exists even when a reimbursement of a payment is offered to the participant.

Games of chance destined to professionals are thus more strictly regulated in France than games of chance/commercial lotteries destined to consumers.

Are skill-based contests (i.e., essay contests, photo contests, user-generated content contests) generally permissible?

As mentioned above, Section L322-1 of the Interior Security Code prohibits the public offer, upon payment (or with any other form of financial contribution) of games based on chance which create the hope of a gain¹.

According to Section L322-2-1 of the Interior Security Code, this prohibition covers games based on the skills of the players (the “General Rule”). The implementation of the General Rule in France has led to different interpretations from practitioners as briefly detailed below :

- **Interpretation n° 1** (*broad interpretation of the scope of Section L322-2-1 of the Interior Security Code*): the General Rule prevents the organization of any type of contests/skill-based games (including photos contests, user generated content contests...etc.) when same are subject to a payment, irrespective of the fact that a reimbursement is offered at a later stage (such as the reimbursement of the internet connection fees or the reimbursement of the stamp used to enter the contest);
- **Interpretation n°2** (*restrictive interpretation of the scope of Section L322-2-1 of the Interior Security Code*): the General Rule only aims at prohibiting paid-for games based on chance in which skill is also necessary to win (such as the paid-for offers of poker tournaments), since the General Rule has been implemented in a Section of the Security Interior Code dedicated to “games of chance, casinos and lotteries” (not referring to “contests”).

The background of the implementation of the General Rule can also be used to confirm this interpretation. the General Rule has been implemented in opposition against a court of appeal

¹ Commercial promotions/games of chance offered to the consumers are allowed in France, under conditions, as set by Sections L 121-1 and seq. of the consumer Code.

decision (Court of appeal of Toulouse, March 17, 2014) which decided that poker paid-for online tournaments are not prohibited *per se* under Section L322-1 of the Interior Security Code because skills plays a role in the determination of the winner; *i.e.*; the court of appeal of Toulouse, considering that poker tournaments are not only based on chance (skills is also necessary to win), has held that the paid-for poker tournaments were not subject to the general prohibition of paid-for games of chance, as set by Section L322-1 of the Interior Security Code.

The French legislator thus decided to have Section L322-2-1 of the Interior Security Code added in order to confirm the fact that when paid-for games of chance do need the recourse to skills, same are prohibited under Section L322-1 of the Interior Security Code.

A recent decision of the Court of appeal of Paris dated January 28, 2016 can be interpreted as confirming the **interpretation n°2**², so that one can argue that contests (games based on skills only, such as photos contests, user generated content contests) are licit *per se* provided that certain general principles are complied with (*e.g.*, prohibition against misleading advertising and unfair commercial practices; prohibition against offering certain prizes, such as alcoholic beverages; etc.).

Is any type of registration or filing required to offer a chance-based game and/or a skill-based contest? If so, what are the costs and deadlines associated with such registration or filing?

For Games of Chance: since December 20, 2014, this type of promotion is no longer subject to registration or filing requirements. While the filing of the Rules with a *huissier* is no longer required by French law, such a filing is recommended in order to have an “official” version of the Rules filed with a process server, to the benefit of the proper information of the consumer, but also to have official evidence of the Rules in the event a dispute is brought by a consumer.

For Contests: the filing of the set of Rules has never been a compulsory requirement, even if recommended, for the reasons set forth above.

Are promotions (chance-based or skill-based) in which someone is required to purchase the product in order to enter permitted? If a purchase is required, must a non-purchase method of entry be offered?

For Games of Chance destined to consumers: since December 20, 2014, this type of promotional operations is no longer subject to requirements such as the reimbursement of the stamps or the connection fees. As a result, the implementation of an alternate method of entry is no longer required. But, where the promotion operates through a purchase, the value of the prize should be reasonable *vis-à-vis* the product purchased in order not to “*substantially distort the economic behavior of the average consumer*” as stated in the Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market (implemented by French law).

When chance-based games target professionals (not consumers), same must be free (the offer of the reimbursement of the connection fees or of the stamp used to enter does not prevent the games from being deemed an illicit paid-for lottery under Section L322-1 of the Interior Security Code).

For Contests: based on the Interpretation n°2 detailed above, the requirement to make a purchase to enter the contest is not prohibited.

Are there other forms of “consideration” which are prohibited in connection with entry into a chance-based game (e.g., posting a photo on Instagram, tweeting a response to a call-to-action, completion of a survey, taking a quiz and be required to answer questions correctly to be entered, watching a short video)?

² According to the Court of appeal of Paris, « Section L322-2-1 of the Interior Security Code only aims at reiterating that paid-for games of chance using the skills of the players are prohibited *per se* ».

There are no specific restrictions, provided that data protection principles are complied with (if applicable), and that the commercial practice is not deemed unfair or misleading, or otherwise contrary to applicable law.

Are promotions in which the winner(s) are determined in whole or in part by public voting permitted?

Yes.

If a chance-based game or skill-based contest is open to residents of several countries, must the random draw/winner determination process occur in your country or can it be conducted in another country? If the selection process must occur in your country, is there an exception for promotions taking place solely online?

The random draw/winner determination can be conducted in another country.

If a chance-based game or skill-based contest is open to residents of several countries, is it permissible to combine all entries from all countries to determine the winners for a single prize pool or must there be a separate prize pool for residents of your country?

Yes, it is permissible to combine all entries from all countries to determine the winners for a single prize pool, but this must be clearly explained in the Official Rules made available to the entrants at the time of the entry.

Are there any restrictions on the type, nature or value of the prizes (e.g., travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

There are no specific restrictions, except the prohibition against offering certain type of items prizes (e.g., alcoholic beverages, tobacco products, drugs, etc.).

Is there a tax liability associated with prizes? If yes, who is responsible for the taxes, winner or sponsor? Are there any other costs or fees, such as duties and customs fees, imposed on prize awards?

There are no tax implications for a sponsor in connection with the organization of a prize draw/contest in France. The sponsor does not have to pay any tax in connection with the organization of a prize draw/contest (no tax is assessed on the value of the prize offered).

Further, as a general rule under French tax law, the prizes/gains awarded to the winner in a game of chance are not taxable.

Finally, where the prize is sent from abroad by the sponsor to the winner located in France, there may be customs rules (and fees) payable by the Sponsor. This will depend on the nature and on the value of the prize at stake.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (i.e., in any and all media, now or hereafter devised, worldwide in perpetuity)? Can such ownership exist in perpetuity? Can copyright be transferred electronically or must the transfer occur in writing?

The assignment of copyright in the content submitted by the entrant is possible, provided that certain requirements are met. In particular, moral rights cannot be waived and the assignment of the patrimonial rights cannot be perpetual. The assignment of the copyright must be for a limited duration. Typically, the rules might state "for the duration of the copyright" (i.e., as a general rule 70 years from the death of the author).

In addition, while the assignment of copyright is generally made in writing, this can be carried out electronically. In such cases, consider a specific pop-up window, containing, either: (i) the rules with a specific assignment clause, or (ii) a dedicated assignment clause appearing at the time of the registration, in addition to a box to be ticked by the entrant. This aims at evidencing the clear and informed consent of the entrant to the assignment of the copyright in the submission materials.

Is it generally permissible to require that a winner sign a liability and/or publicity release in order to receive a prize?

Such a document could raise issues, in particular as regards the limitation of liability. Under French law, criminal and tort liability cannot be limited contractually. In addition, a French consumer will have the choice of the jurisdiction if he/she wants to bring an action against the sponsor. Further, the sponsor must bring an action before French courts in a case of dispute against a French consumer.

Moreover, as a general principle, a French consumer who entered into a contract with a foreign entity should not be deprived from the protection of the mandatory provisions of French law, notably of French consumer protection law, if this consumer has his habitual residence in France and if he has been reached in France by the foreign entity to enter into the agreement.

Finally, as regards publicity releases, French judges have held that linking the acceptance of a prize with the use of the winner's personal information, such as a photograph, is an abusive clause which should not be enforced.

Must the Official Rules and advertising materials (including website) be provided in the native language? Or must the Official Rules and website only be provided in the native language if the promotion is advertised/promoted in that language (e.g., if all advertising is in English, can the Official Rules and website only be in English)?

The *Loi Toubon*, requiring the presentation of the any advertising, made in France/towards French people, in the French language, is likely to apply to any promotion targeting French people, so that the Official Rules/Terms and Conditions of such a promotion should be translated into the French language.

Are there restrictions on the use of personal information collected from entrants?

Yes. The use of the personal data collected in connection with a promotion must be limited to the purposes described to the data subjects, in the form used to collect the data, or in the Official Rules made available at the time of the entry (administration of the promotion, direct canvassing by e-mail, if the entrant opted-in...etc.).

In addition, several other items of information must be provided to the data subject at the time of the data collection; *i.e.* :

- 1- the name of the data controller, who is in charge of the processing of the data,
- 2- the purpose of the processing of data,
- 3- whether or not the answer to the questions is compulsory (*e.g.*, through the use of an asterisk), and the consequences, if any, of a lack of answer to the questions,
- 4- the recipients of the data,
- 5- the duration of the retention of the data (or the criteria used to determine such a duration),
- 6- right of access to and rectification of their data,
- 7- right to oppose the collection of their data for legitimate purposes,
- 8- the name of the person or the service where such right can be exercised,
- 9- the consequences of the death on the personal data, must be provided to the data subject at the time of the data collection, and
- 10- whether their data are going to be transferred outside the European Union.

A filing with the French data protection agency may also be required if the data is deemed collected/processed in France.

If the chance-based game or skill-based contest is solely online and no promotion takes place in your country, is it subject to the laws of your country?

As far as personal data is concerned, it should be noted that the French data protection agency considered that :

“Where the data controller organizes the means used for the collection and processing of the data, whether through a form - already filled in or not - or via an e-mail message to be answered by the participant, the data controller controls such processing means destined to deliberately collect personal data ;

Consequently, the collection form (whether to be filled in, or already filled in) or the fact that the personal data are sought from the data subject via an e-mail message, qualifies as processing means and as such the data controller located outside the EU must comply with Section 5-1.2° of the law of January 6, 1978, i.e., appoint a representative in France who will perform on its behalf the necessary filing”.

This analysis leads to the conclusion that, where a data controller located outside France does reach/ask (i.e., does carry out specific acts towards) people located in France to have same provide the data controller with personal data, the French personal data agency is likely to consider that a data collection/processing is carried out in France (so that French data protection law would be deemed applicable).

Are there key cases and/or regulatory decisions involving promotions of which a company should be aware?

A clause which limits the right of the consumer to bring a legal action, or limits the consumer’s grounds of action, or which imposes an alternate dispute resolution solution (such as an arbitration), is listed as a clause presumed abusive (“*clause présumée abusive*”) and is therefore not enforced if declared abusive by French judges.

These principles have been enforced by the first degree Tribunal of Paris, on March 5, 2015, against Facebook Inc. whose Terms of Use provided that Californian Courts have jurisdiction. This clause has been deemed to impose excessive costs on the consumer. It has been deemed all the more unfair/excessive towards the consumer that Facebook Inc. does have human and financial resources in France, allowing Facebook Inc. to be easily represented in France.

Such a decision should be taken into account for the Official Rules/Terms and Conditions applicable to a promotion targeting French consumers.

Are there any other important issues a company should consider or be aware of when structuring a chance-based game/skill-based contest that will be open to residents of your country?

Personal data issues (specific information to be delivered to the data subjects, filing with the French data protection agency, where applicable...etc.) are very important and should not be left aside while organizing a promotion targeting France.

GERMANY

Are chance-based games (i.e., random draw promotions, instant win games) generally permissible?

Yes, random draw promotions, instant win games are permissible (provided the entrant is not required to pay a stake). There is no bonding, prize deposit or license required for promotional chance or skill based games or contests. Gaming against payment of a stake (lotteries) are regulated, and are prohibited unless licensed.

Is any type of registration or filing required to offer a chance-based game and/or a skill-based contest? If so, what are the costs and deadlines associated with such registration or filing?

There is no registration or filing required to offer a chance-based promotional game and/or skill-based contest.

Are promotions (chance-based or skill-based) in which someone is required to purchase the product in order to enter permitted? If a purchase is required, must a non-purchase method of entry be offered?

The former statutory prohibition of linking entry in a promotional game to a purchase has been cancelled as a matter of harmonizing German law with EU law. It is no longer illegal to interconnect the entry in a game to a purchase (subject to general fair trade requirements: no misleading or excessively alluring effects on the purchase invitation). This means that a promotional game offer may require that the entrant has purchased a given product or service provided there is no excessively enticing effect of the offered game prize.

Are there other forms of “consideration” which are prohibited in connection with entry into a chance-based game (e.g., posting a photo on Instagram, tweeting a response to a call-to-action, completion of a survey, taking a quiz and be required to answer questions correctly to be entered, watching a short video)?

No. In principle, customary and inexpensive entrant activities required of an entrant (such as the ones described in the question) are acceptable and would not constitute unfair competition., subject to compliance with other legal requirements (e.g. no incitement to do anything illegal or unreasonable such as asking to do anything that would violate a third party's copyright, breach the right in a third party's right in its own image, breach data protection laws, etc.).

Are promotions in which the winner(s) are determined in whole or in part by public voting permitted?

Yes.

If a chance-based game or skill-based contest is open to residents of several countries, must the random draw/winner determination process occur in your country or can it be conducted in another country? If the selection process must occur in your country, is there an exception for promotions taking place solely online?

The random draw/winner determination process may occur in another country. The process must be transparent and provable in the event of a dispute.

If a chance-based game or skill-based contest is open to residents of several countries, is it permissible to combine all entries from all countries to determine the winners for a single prize pool or must there be a separate prize pool for residents of your country?

All entries from all countries may be combined to determine the winners for a single prize pool. The Official Rules must clearly disclose the selection process as well as the pool of entrants from which the winner(s) will be selected.

Are there any restrictions on the type, nature or value of the prizes (e.g., travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

No, there are no such general restrictions. If the game is linked to an activity or contribution of the entrant, the value of the prize should be reasonable in relation to the sponsor's benefit from the required activity or contribution. In other words, the prize may not have an excessively enticing effect on the entrant to participate and perform the required activity or contribution.

Is there a tax liability associated with prizes? If yes, who is responsible for the taxes, winner or sponsor? Are there any other costs or fees, such as duties and customs fees, imposed on prize awards?

No. In Germany, prizes awarded in a promotional game are not subject to German income or other tax. Customs duties may arise from the import of a prize (goods) from abroad, subject to applicable customs laws.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (i.e., in any and all media, now or hereafter devised, worldwide in perpetuity)? Can such ownership exist in perpetuity? Can copyright be transferred electronically or must the transfer occur in writing?

If the properly agreed Official Rules of the promotional game provide that the sponsor will own the works submitted by an entrant, or that it has a right (license) to use or exploit such works, then (based on the principle of freedom of contract) this would be legally permissible in Germany, subject to the provisions and limitations of German contract law, copyright laws (in terms of minimum royalty requirements), and antitrust laws in the event of an exclusive license. "Properly agreed" means that the entrant must be of age, Official Rules must be transparent and in compliance with German consumer protection law, and the laws governing general, pre-formulated terms and conditions must be followed. The entrant must have expressly consented to the subject terms by a declaration on the entry site. For German consumer entrants, terms must normally be in the German language and must comply with German liability laws. Compulsory copyright requirements may apply (such as minimum royalty and royalty adjustment requirements). Compulsory procedural laws as to permissible courts of jurisdiction may apply (a German court venue cannot be excluded in case of German consumer entrants). Exceptions apply where permissible under applicable law (which can be an expressly agreed foreign law), subject again to compulsory protective laws in the entrant's jurisdiction. Licenses can grant rights in perpetuity. Copyright can be transferred electronically, printable rules are required. There is no transfer of the "droit morale" which means the German entrant submitting a work qualifying under German copyright law always retains certain fundamental rights as described in the German Copyright Act. These rights cannot be waived nor transferred.

Is it generally permissible to require that a winner sign a liability and/or publicity release in order to receive a prize?

Yes, if that is properly agreed upon (see above), a liability and/or publicity release is acceptable (subject again to any compulsory contract rules of German law). To that end, a liability release would be invalid in so far as it waives claims for damages regarding death or body injury. Liability and/or publicity releases should be adapted to the laws applicable in the entrant's jurisdiction.

Must the Official Rules and advertising materials (including website) be provided in the native language? Or must the Official Rules and website only be provided in the native language if the promotion is advertised/promoted in that language (e.g., if all advertising is in English, can the Official Rules and website only be in English)?

Official Rules, advertising materials and website content is not normally enforceable as against a party who is not fully conversant with the language used. This applies particularly to legal terms which are not readily understandable for a foreign language entrant. This is independent of the language in which a promotion is advertised. That means Official Rules applicable to German entrants should be made available in the German language.

Are there restrictions on the use of personal information collected from entrants?

Yes, restrictions of German and any other applicable (EU) data protection laws apply. Unless the data subject (entrant) has expressly consented to the use of its personal data (or unless that consent is implied as part of the legal relationship entered under the Official Rules), personal data may not be collected, processed or used. Data transfer to a jurisdiction outside the European data protection regime requires special consent. The EU Commission has adopted in 2016 its decision on the EU-U.S. Privacy Shield which protects the fundamental rights of individuals in the EU whose personal data is transferred to the United States. It regulates transatlantic data transfers.

If the chance-based game or skill-based contest is solely online and no promotion takes place in your country, is it subject to the laws of your country?

Yes, if German entrants are targeted by the promotion. German law applies in particular if the promotion is run via a server located in Germany. Even if it is solely run from a server abroad, with no local sponsor activity in Germany, compulsory rules of German law are still applicable to German entrants if the promotion is directed to parties in Germany.

Are there key cases and/or regulatory decisions involving promotions of which a company should be aware?

There is relatively rare case law involving foreign promotions. The decisions deal with very special circumstances of a given case and have little or no impact on foreign promotions in general.

Are there any other important issues a company should consider or be aware of when structuring a chance-based game/skill-based contest that will be open to residents of your country?

The sponsor should have the Official Rules reviewed in respect of compulsory rules of German local law, particularly if the promotion is specifically directed to German entrants (rather than being a purely international online promotion applicable uniformly to many different countries). If the sponsor accepts entries from German entrants, it can enforce the Official Rules only to the extent these comply with minimum legal requirements protecting parties in Germany. This applies regardless of the contractual choice of law and jurisdiction, compulsory local laws override foreign Official Rules.

Sponsors should be aware that the enforcement of German fair trade laws is mainly a matter of enforcement by competitors or trade associations by means of cease and desist requests and complaints to the courts (including quick and effective preliminary injunction proceedings). Government agencies or regulatory bodies get rarely involved.

GREECE

Are chance-based games (i.e., random draw promotions, instant win games) generally permissible?

Yes, they are permissible provided that no wager/stake is involved. Promotional chance-based games that do not abide by this rule may be considered illegal lotteries.

Sponsors must ensure that the winner(s) will not incur any cost to claim/receive the prize(s).

Are skill-based contests (i.e., essay contests, photo contests, user-generated content contests) generally permissible?

Yes, these contests are generally permissible. Nevertheless, sponsors must ensure that the winner(s) will not incur any cost to claim/receive the prize(s).

The self-regulatory advertising code (Hellenic Code of Advertising & Communication Practice -HCACP) specifies the information which must be made clear and unambiguous to consumers before participation in the promotion (both skill- based and chance-based promotions):

1. Eligibility rules;
2. Costs associated with participation, other than for communication at or below standard rate (mail, telephone, etc.);
3. The number, value and nature of prizes to be awarded and whether a cash alternative may be substituted for a prize;
4. In the case of a skill contest, the nature of the contest and the criteria for judging the entries;
5. The selection procedure for the award of prizes;
6. The closing date of the competition;
7. When and how the results will be made available;
8. Whether the beneficiary may be liable to pay tax as a result of winning a prize;
9. The time period during which prizes may be collected;
10. Where a jury is involved, the composition of the jury; and
11. Any intention to use winners or winning contributions in post-event activities.

Is any type of registration or filing required to offer a chance-based game and/or a skill-based contest? If so, what are the costs and deadlines associated with such registration or filing?

No. Greek law does not impose any administrative filing or license requirement prior to offering a chance-based game or a skill- based contest. However, some sponsors voluntarily file the promotion terms with a public notary.

Are promotions (chance-based or skill-based) in which someone is required to purchase the product in order to enter permitted? If a purchase is required, must a non-purchase method of entry be offered?

The commercial practice of making the participation to a prize promotion conditional upon the purchase of a product is not *per se* forbidden (provided that there is no mark up to the price of the product) but, depending on the specific characteristics of each promotion, this practice could be considered to be unfair if it entices the consumer in an excessive manner. Given that such practice might qualify as unfair, from our experience, Greek sponsors tend to offer a free (no purchase) route in order just to be on the safe side.

Are there other forms of “consideration” which are prohibited in connection with entry into a chance-based game (e.g., posting a photo on Instagram, tweeting a response to a call-to-action, completion of a survey, taking a quiz and be required to answer questions correctly to be entered, watching a short video)?

No.

Are promotions in which the winner(s) are determined in whole or in part by public voting permitted?

Yes.

If a chance-based game or skill-based contest is open to residents of several countries, must the random draw/winner determination process occur in your country or can it be conducted in another country? If the selection process must occur in your country, is there an exception for promotions taking place solely online?

There is no such restriction with regard to the selection process.

If a chance-based game or skill-based contest is open to residents of several countries, is it permissible to combine all entries from all countries to determine the winners for a single prize pool or must there be a separate prize pool for residents of your country?

Yes. A separate prize pool is not required. Nevertheless, it must be made clear to the Greek participants that the winner(s) may not come from Greece.

Are there any restrictions on the type, nature or value of the prizes (e.g., travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

There are no restrictions; however sponsors must clearly and prominently state the number, value and nature of prize(s) to be awarded. More specifically, sponsors should be particularly careful when describing the prize so as to make clear any additional conditions that must be met by the winner (e.g. availability to travel on certain dates, passport or visa requirements, etc.) and any costs that need to be incurred by the winner in order to take advantage of the prize. For instance, if the prize is described as a “trip to Greek islands”, the Official Rules of the promotion must state whether the prize includes air tickets/hotel accommodation/out of pocket expenses, etc.

Is there a tax liability associated with prizes? If yes, who is responsible for the taxes, winner or sponsor? Are there any other costs or fees, such as duties and customs fees, imposed on prize awards?

Under Greek tax law, prizes granted through promotions organized in Greece, whose value exceeds 1000 Euros are subject to a withholding tax of 20%. The person responsible to pay this tax is the winner.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (i.e., in any and all media, now or hereafter devised, worldwide in perpetuity)? Can such ownership exist in perpetuity? Can copyright be transferred electronically or must the transfer occur in writing?

If the entries submitted include material protectable under Copyright Law, it is permissible for the sponsor to obtain a grant of the relevant author’s rights. Nevertheless, Greek Copyright Law (Law No. 2121/1993) provides the following restrictions:

1. Copyrighted works enjoy protection for 70 years following the death of the author; thereafter, they fall into the public domain. Consequently, in accordance with Greek law, the grant/transfer of rights is valid for the duration such rights are legally protectable (and not in perpetuity).
2. In addition, a copyright license may not refer to forms of exploitation which were unknown on the date of the contract. Thus, under Greek law, the sponsor would not acquire the right to exploit the work on media/ forms hereafter invented.
3. Any grant or transfer of rights is valid if it occurs in writing,
4. In the light of Greek Copyright Law, it is compulsory to pay an economic remuneration to the author for the exploitation of his/her IP rights. In cases of contests which require the creation of a video etc., as an exemption to the above rule, no actual economic remuneration is paid to the entrants-authors. Therefore, the opportunity to enter the competition and claim a prize should be considered as the author’s remuneration.

Is it generally permissible to require that a winner sign a liability and/or publicity release in order to receive a prize?

These requirements may not be enforceable under Greek law.

Must the Official Rules and advertising materials (including website) be provided in the native language? Or must the Official Rules and website only be provided in the native language if the promotion is advertised/promoted in that language (e.g., if all advertising is in English, can the Official Rules and website only be in English)?

The Official Rules and all materials associated with the promotion must be provided in Greek.

Are there restrictions on the use of personal information collected from entrants?

In the framework of promotions that involve processing of personal data of participants, a number of obligations fall on the sponsor which qualifies as a personal data controller. In view of its legal position, sponsor must obtain the informed consent of participants before any processing (usually the participant provides his/her consent through the acceptance of the rules of the promotion).

In addition, the Official Rules must disclose the following information to participants:

1. Who is the data controller (name/ address/contact details);
2. Which personal data will be processed (e.g. name/address/ contact details of entrants/ any personal data contained in the entries submitted);
3. What is the purpose of the process (normally it is the carrying out of the promotion and notification of the winners);
4. If the personal data are going to be transferred to third parties;
5. Information regarding data subject rights (right of access to data/ right to object).

If the chance-based game or skill-based contest is solely online and no promotion takes place in your country, is it subject to the laws of your country?

It could be subject to Greek penal laws (if, for example, a chance based game offered online is, in fact, an illegal lottery).

Are there key cases and/or regulatory decisions involving promotions of which a company should be aware?

To our knowledge, there are no recent decisions.

Are there any other important issues a company should consider or be aware of when structuring a chance-based game/skill-based contest that will be open to residents of your country?

It is advisable that the sponsor reserves the right to amend the Official Rules of the promotion; any such amendments must be properly notified to participants.

 HONG KONG 

Are chance-based games (i.e., random draw promotions, instant win games) generally permissible?

Gambling is regulated under the Gambling Ordinance (Cap. 148) (“GO”).

Under s.2 of the GO:-

- gambling is defined as “includes gaming, betting and bookmaking”
- gaming is defined as includes a game of chance and a game of chance and skill combined and a pretended game of chance or chance or chance and skill combined.

A chance- based game is therefore subject to the regulation of the GO, which is *prima facie* unlawful under s.3(1) of the GO unless it falls within one of the exceptions under s.3(2) to (8) of the GO.

The GO also provides for the required licensing of “trade promotion competition” which refers to a competition or other scheme promoted, conducted or managed for the purpose of promoting a trade or business or the sale of any product (e.g. lucky draws organized by department stores and restaurants to boost sales and promote business).

In any trade promotion competition, any game that carries an explicit gambling connotation or serves as an alternative form of authorized gambling (e.g., a game in a casino, a mahjong, bingo or card game, guessing the results of football matches/horse races, Mark Six-type games, etc.) is forbidden. Likewise, such gambling tools and symbols as slot machines, roulette wheels, cards, chips, mahjong tiles and dice should not be employed. In addition, games that are not socially sanctioned are discouraged.

Are skill-based contests (i.e., essay contests, photo contests, user-generated content contests) generally permissible?

Games/ contests purely based on skill with no element of chance are not within the definition of gaming under the GO, and therefore they are generally permissible.

Is any type of registration or filing required to offer a chance-based game and/or a skill-based contest? If so, what are the costs and deadlines associated with such registration or filing?

For gaming, unless falling within one of the five lawful exceptions in s.3 of the GO, these are unlawful. Those five exceptions are summarized as follows:-

1. Gaming is lawful if the game is played on a social occasion in private premises and is not promoted or conducted by way of trade or business or for the private gain of any person otherwise than to the extent of a person’s winnings as a player of or at the game.
2. Gaming is lawful if the game is one in which dice, dominoes, mahjong or tin kau tiles, or playing cards are used and:
 - (1) the game is played on a social occasion in:
 - (a) premises licensed as a restaurant under the Public Health and Municipal Services Ordinance;
 - (b) premises where intoxicating liquor is sold pursuant to a licence or other authorization granted under any Ordinance; or
 - (c) a clubhouse in respect of which a certificate of exemption or a certificate of compliance under the Clubs (Safety of Premises) Ordinance has been issued;
 - (2) a fee is not charged for admission to such premises;
 - (3) the game is not played by any person in charge of, managing or involved in the operation of the premises or the clubhouse or employed at the premises or the club-house;
 - (4) the game does not involve playing against a bank kept by one or more of the players exclusively of the others; and
 - (5) the game is not promoted or conducted by way of trade or business, or for the private gain of any person otherwise than to the extent of a person’s winnings as a player of or at the game.
3. Gaming is also lawful if the game is one in which mahjong or tin kau tiles are used **and**:
 - (1) it is played in:

- (a) premises licensed as a restaurant under the Public Health and Municipal Services Ordinance; or
 - (b) a clubhouse respect of which a certificate of exemption or a certificate of compliance under the Clubs (Safety of Premises) Ordinance has been issued;
 - (2) a fee is not charged for admission to the premises;
 - (3) the game is not played by any person in charge of, managing or involved in the operation of the premises or the clubhouse or employed at the premises or club-house;
 - (4) the game does not involve playing against a bank kept by one or more of the players exclusively of the others; and
 - (5) the game is not promoted or conducted by way of trade or business in the premises, otherwise than to the extent of the charging of a fee not exceeding the prescribed amount for the hire of any set of tiles, or for the private gain of any person otherwise than to the extent of a person's winnings as a player of or at the game.
4. Gaming is also lawful if the game is:
- (1) a game of amusement with prizes;
 - (2) a game of tombola (also known as "bingo"); or
 - (3) a trade promotion competition, the organization and conduct of which is authorized by licence under the GO.
5. Gaming is also lawful if the game:-
- (1) is one in which mahjong or tin kau tiles are used; and
 - (2) is played on premises licensed for that purpose under the GO.

A Trade Promotion Competition Licence ("TPCL") is required for conducting a trade promotion competition which must be without charge to entrants.

One may apply to obtain a TPCL from the public officer appointed by the Secretary for Home Affairs.

The current license fee for TPCL is HK\$1,590.00. The whole application process normally takes 7 working days (working days exclude Saturdays, Sundays and Public Holidays). The time taken for the applicant to provide additional information and/or clarifications during the process is not counted towards these 7 working days. In the circumstances, applicants are advised to apply for a licence at least 2 calendar weeks in advance. However, licenses are not generally granted for more than 3 months.

Are promotions (chance-based or skill-based) in which someone is required to purchase the product in order to enter permitted? If a purchase is required, must a non-purchase method of entry be offered?

There are no restrictions.

Are there other forms of "consideration" which are prohibited in connection with entry into a chance-based game (e.g., posting a photo on Instagram, tweeting a response to a call-to-action, completion of a survey, taking a quiz and be required to answer questions correctly to be entered, watching a short video)?

One of the TPCL conditions is that no fee shall be charged for entering the competition.

Are promotions in which the winner(s) are determined in whole or in part by public voting permitted?

There are no restrictions.

If a chance-based game or skill-based contest is open to residents of several countries, must the random draw/winner determination process occur in your country or can it be conducted in another country? If the selection process must occur in your country, is there an exception for promotions taking place solely online?

There are no restrictions, but for winners drawn in Hong Kong it is customary for a notary public to certify.

If a chance-based game or skill-based contest is open to residents of several countries, is it permissible to combine all entries from all countries to determine the winners for a single prize pool or must there be a separate prize pool for residents of your country?

There are no restrictions.

Are there any restrictions on the type, nature or value of the prizes (e.g., travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

Prizes such as Mark Six tickets and mahjong tiles are not permitted. Money prizes are prohibited.

Is there a tax liability associated with prizes? If yes, who is responsible for the taxes, winner or sponsor? Are there any other costs or fees, such as duties and customs fees, imposed on prize awards?

The prize receipts are not taxable in the hands of the winner.

Cash prizes from lucky draws are not subject to betting duty.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (i.e., in any and all media, now or hereafter devised, worldwide in perpetuity)? Can such ownership exist in perpetuity? Can copyright be transferred electronically or must the transfer occur in writing?

An assignment of copyright, to pass the legal title to the right assigned, is not effective unless it is in writing and signed by or on behalf of the assignor (s.101(3) of Copyrights Ordinance (Cap.528).

Is it generally permissible to require that a winner sign a liability and/or publicity release in order to receive a prize?

Yes, there are no restrictions.

Must the Official Rules and advertising materials (including website) be provided in the native language? Or must the Official Rules and website only be provided in the native language if the promotion is advertised/promoted in that language (e.g., if all advertising is in English, can the Official Rules and website only be in English)?

It is one of the TPCL conditions that the draw results shall be published in one English and one Chinese registered local newspapers (including web-newspaper) under the Registration of Local Newspapers Ordinance (Cap. 268). There are no other applicable restrictions.

Are there restrictions on the use of personal information collected from entrants?

All personal data involved during the course of trade promotion competition should be collected, handled and destroyed in accordance with the Personal Data (Privacy) Ordinance (Cap. 486). The organizer shall follow the six data protection principles under the said Ordinance:-

1. Personal data must be collected in a lawful and fair way, for a purpose directly related to a function /activity of the data user;
2. Data subjects must be notified of the purpose and the classes of persons to whom the data may be transferred;
3. Data collected should be necessary but not excessive;
4. Personal data must be accurate and should not kept for a period longer than is necessary to fulfil the purpose for which it is used;
5. Personal data must be used for the purpose for which the data is collected or for a directly related purpose, unless voluntary and explicit consent with a new purpose is obtained from the data subject;
6. A data user needs to take practical steps to safeguard personal data from unauthorized or accidental access, processing, erasure, loss or use; and
7. A data user must make personal data policies and practices known to the public regarding the types of personal data it holds and how the data is used.

To protect the privacy of the participants, the TPCL Guidelines and FAQ:-

1. Require an organizer not to collect the entire Hong Kong Identity Card (HKID) number or the entire date of birth (including the year, month and day of birth) unless absolutely necessary. For example, if each participant has already been issued with a lucky draw ticket or a receipt which bears a unique number, the organizer can request the winner to produce the lucky draw ticket stub or the original receipt when redeeming the prize;
2. Propose the organizer can also verify the identity of the winner with his/her registered name, address and telephone number or check the name on his/her HKID. In such cases, there is no need to collect the participants' HKID numbers;
3. Provide under the 'Code of Practice on the Identity Card Number and other Personal Identifiers', that the winner's name together with his/her HKID number, even if altered should not be announced, and further provide that it may be possible to deduce the original HKID card number from its altered form. To prevent scams, do not publish the winner's telephone number in full; and
4. Without the agreement from the participants, do not use the personal data collected for purposes other than the trade promotion competition or transfer the personal data to a third party unless exempted under Part VIII of the Personal Data (Privacy) Ordinance.

If the chance-based game or skill-based contest is solely online and no promotion takes place in your country, is it subject to the laws of your country?

No.

Are there key cases and/or regulatory decisions involving promotions of which a company should be aware?

No.

Are there any other important issues a company should consider or be aware of when structuring a chance-based game/skill-based contest that will be open to residents of your country?

Notwithstanding the provisions of the GO, contests may be organized in connection with programs included by a licensee under the Broadcasting Ordinance in its licensed service. Such contests may form part of a program where no fee is payable either in money or money's worth for participation in the contests and the contests must offer an opportunity for all contestants on the basis of skill or knowledge of the participant and not by chance. The contests must also comply with any regulations made by the Chief Executive in Council and with any Code of Practice.

 HUNGARY 

Are chance-based games (i.e., random draw promotions, instant win games) generally permissible?

Yes, these games are generally permissible; however, the rules of the Gambling Act (Act XXXIV of 1991) must be taken into consideration, i.e. the main issue to be decided is whether or not the game qualifies as gambling. If the chance-based game qualifies as gambling, there are very strict requirements what kind of games can be legally organized and under what requirements.

Pursuant to the Gambling Act, the definition of gambling consists of four elements: gambling is a contest or a game in which (i) the player agreed to pay cash or other form of consideration (ii) for the chance to participate and to receive a cash prize or something of value (iii) in the event of a certain outcome or a future contingent event, where (iv) winning or losing depends exclusively or in a material degree upon an element of chance.

If a chance-based game is qualified as gambling pursuant to the above definition, it is, as a general rule, subject to a state monopoly (thus, prohibited for everybody except for the state or the concession holder) with the exception of two types of chance-based games that may be relevant in the given context.

One of those games is the raffle (under a certain value) and the other is the promotional prize draw. These types of chance-based game must only be reported to the Tax Administration in advance, but no permission is needed. Raffle is a game playable at events only in which prizes are pre-assigned to winning tickets. Only those present at the particular event can play. The players must pay for a ticket, which are drawn at random and the players can instantly see whether or not they have won a prize.

As for promotional prize draw, please see the details below.

To sum up the above, if a chance-based game fulfils the criteria as listed in the definition of gambling set forth in the Gambling Act, it can be organized as a raffle at events or as a promotional prize game. In both cases there is a prior reporting and payment obligation to the Tax Administration.

If a chance-based game does not fall under the scope of the Gambling Act, it does not qualify as gambling. In such case, general consumer protection, advertising and data protection rules must be complied with.

Are skill-based contests (i.e., essay contests, photo contests, user-generated content contests) generally permissible?

Yes, skill-based contests are generally permissible. These do not qualify as gambling, since the outcome does not depend on chance.

Is any type of registration or filing required to offer a chance-based game and/or a skill-based contest? If so, what are the costs and deadlines associated with such registration or filing?

The Gambling Act includes one type of a chance-based game, the "promotional prize draw", which is permissible without a permit; however, the game must be reported to the Tax Administration. In a prize draw, after buying a certain product, the consumers will get a ticket, from which tickets the winning ticket will be chosen by a public random draw. Money cannot be offered as a prize in these kinds of games; only goods or services. Only players above 18 years of age can participate.

Promotional prize draws must be reported to the Tax Administration at least 10 days before publishing the game. HUF 3,000 (approx. EUR 10) must be paid as duty. Also, an administrative fee of 1 *per mille* of the value of the prize but at least HUF 5,000 (approx. EUR 16) but maximum HUF 500,000 (approx. EUR 1,600) must be paid. In addition to this, the payment of the administrative fee must be also reported to the Tax Administration on a standard form.

We note that currently it is relatively easy to avoid a chance based promotion falling under the scope of the Gambling Act. As the Tax Administration interprets the law strictly, if there is no ticket actually drawn publicly, the Gambling Act does not apply (e.g. if instead of asking consumers to return the receipt via regular mail, in which case the receipt would qualify as a ticket, the companies provide codes on the receipt that can be uploaded online or that can be sent via an SMS without premium charge. The latter cases do not qualify as a promotional prize draw, and, therefore, do not qualify as gambling and no

reporting obligation applies.).

In case of games not falling under the scope of the Gambling Act, there is no registration or filing required. However, general consumer protection, advertising and data protection rules must be complied with.

Are promotions (chance-based or skill-based) in which someone is required to purchase the product in order to enter permitted? If a purchase is required, must a non-purchase method of entry be offered?

It is permissible to be able to participate only if the consumer purchases the product first (as this is the definition of promotional prize draws). In such case, a non-purchase method does not have to be made available. Otherwise, a chance-based game may qualify as prohibited gambling since the purchase may be considered as payment for the participation.

Are there other forms of “consideration” which are prohibited in connection with entry into a chance-based game (e.g., posting a photo on Instagram, tweeting a response to a call-to-action, completion of a survey, taking a quiz and be required to answer questions correctly to be entered, watching a short video)?

No, Hungarian law does not prohibit these kind of preconditions for participating in a contest; however, the guidelines of such forums must be followed.

Are promotions in which the winner(s) are determined in whole or in part by public voting permitted?

Yes, these are permitted if there is no payment for participation in the game.

If a chance-based game or skill-based contest is open to residents of several countries, must the random draw/winner determination process occur in your country or can it be conducted in another country? If the selection process must occur in your country, is there an exception for promotions taking place solely online?

No, there is no such specific restriction; the draw can take place abroad. However, please note that in case of promotional prize draws there are specific requirements as regards the drawing.

If a chance-based game or skill-based contest is open to residents of several countries, is it permissible to combine all entries from all countries to determine the winners for a single prize pool or must there be a separate prize pool for residents of your country?

It is possible to run a competition in which residents of multiple countries are competing. It is important, though, that this fact is made clear to consumers since it substantially affects the chances of winning.

Are there any restrictions on the type, nature or value of the prizes (e.g., travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

In promotional prize draws, it is prohibited to offer money as a prize. In games not falling under the scope of the Gambling Act, there is no such prohibition.

Is there a tax liability associated with prizes? If yes, who is responsible for the taxes, winner or sponsor? Are there any other costs or fees, such as duties and customs fees, imposed on prize awards?

Depending on the actual type of the contest, the organizer may have the liability to pay the personal income tax and the so called “social contribution”, based on the value of the prize.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (i.e., in any and all media, now or hereafter devised, worldwide in perpetuity)? Can such ownership exist in perpetuity? Can copyright be transferred electronically or must the transfer occur in writing?

Yes, to some extent, this is possible. If the submitted materials are protected by copyright then, according to the Copyright Act, the sponsor is not allowed to completely own the entries submitted by the participants; however, it is possible to obtain a broad license to use these materials. These rights can be

licensed for the whole period of time during which the copyright protection would apply. The licensing of these rights has to be made in writing.

Is it generally permissible to require that a winner sign a liability and/or publicity release in order to receive a prize?

Yes, this kind of precondition is allowed. However, this must be clear for consumers, even before entering the competition, otherwise the advertising of the whole promotion might be misleading, since consumers would not be aware of all the important conditions.

Must the Official Rules and advertising materials (including website) be provided in the native language? Or must the Official Rules and website only be provided in the native language if the promotion is advertised/promoted in that language (e.g., if all advertising is in English, can the Official Rules and website only be in English)?

Based on the Act on the Prohibition of Unfair Commercial Practices (Act XLVII of 2008) and the practice of the Hungarian Competition Authority, there is no general requirement to conduct the promotion in Hungarian.

If the promotion is advertised in Hungarian, but other important information is only available in other languages, this may qualify as an unfair commercial practice. As an example, a foreign airline was fined because it advertised its new flights in Hungarian; but important information and general terms and conditions were only available in other languages. Therefore, it is advisable that if the promotion is advertised in Hungarian, all important information – practically-speaking, the Official Rules of the competition – should also be available in Hungarian.

However, if a foreign language is used during the whole promotion, it seems to be acceptable to the Hungarian Competition Authority to not use the Hungarian language at all.

Are there restrictions on the use of personal information collected from entrants?

In order to use personal information, the consent of the consumers is required. Such consent may be implied; it is permissible to insert the consent into the game rules the consumers agree to by entering the promotion. However, if the company wishes to use the collected data to send direct marketing materials to the participants, the company needs the prior explicit consent of the participants for that. In case of online promotions, this is usually acquired by placing a separate checkbox for that on the website where the participants register.

If the chance-based game or skill-based contest is solely online and no promotion takes place in your country, is it subject to the laws of your country?

If the online contest has no connection whatsoever to Hungary, and the organizer of the contest has no intention to target Hungarian consumers, then most probably Hungarian law would not apply to that contest.

However, the wording of the territorial scope of the Act on the Prohibition of Unfair Commercial Practices is very broad, as it sets forth that the act applies to any commercial practice that can affect Hungarian consumers. In several cases foreign entities were fined by the Hungarian Competition Authority based on this; however, these commercial practices were usually intended for Hungarian consumers.

For the interpretation of the territorial scope of the relevant legislation, the judgment of the European Court of Justice in joint cases No. C-585/08 and C-144/09 may be of help. In this, the ECJ held that *“in order to determine whether a trader whose activity is presented on its website ... can be considered to be ‘directing’ its activity to the Member State of the consumer’s domicile ... it should be ascertained whether, before the conclusion of any contract with the consumer, it is apparent from those websites and the trader’s overall activity that the trader was envisaging doing business with consumers domiciled in one or more Member States, including the Member State of that consumer’s domicile, in the sense that it was minded to conclude a contract with them.”*

If the above criteria is fulfilled, the contest or the promotion may affect Hungarian consumers, thus Hungarian law is applicable to those.

Are there key cases and/or regulatory decisions involving promotions of which a company should be aware?

We are not aware of any decision which has a particular importance in connection with organizing promotions. The most common reason why promotions were held to be unlawful in Hungary was because the chances of winning and the terms of the participation were not clear for consumers.

Are there any other important issues a company should consider or be aware of when structuring a chance-based game/skill-based contest that will be open to residents of your country?

No, the most important issues related to competition are covered in the above answers.

It is worth noting, however, that while the legal background in Hungary is similar to other EU Member States, the Hungarian Competition Authority usually interprets these laws in a more strict and restrictive manner than the authorities of other Member States.

INDIA

Are chance-based games (i.e., random draw promotions, instant win games) generally permissible?

Certain legislations such as Lotteries Regulation Act, 1998 and Public Gambling Act, 1867 regulate and prohibit chance-based games such as lottery, gambling, etc.

To escape the ambit of Lottery laws, any type of purchasing of tickets to enter a chance to win prize(s) should be avoided.

To escape the ambit of Public Gambling Act, 1867, the promoter or sponsor (as the case may be) shall ensure that no facility for running an establishment for the purpose of gambling is provisioned for the conduct of the chance-based game.

Further, the Consumer Protection Act, 1986 prohibits the conduct of any contest, lottery, games of chance or skill, for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest.

Apart from the above scenarios, chance-based games are generally permissible. The point to be kept in mind is that such games should not be used as a source of promotion, whether direct or indirect.

Chance based games however, does not include (i) wagering or betting upon a horse-race/dog-race, when such wagering or betting takes place in certain circumstances, (ii) games of “mere skill” and (iii) lotteries (covered under Lottery laws).

Are skill-based contests (i.e., essay contests, photo contests, user-generated content contests) generally permissible?

Yes. Skill-based contests (i.e., essay contests, photo contests, user-generated content contests) or games involving preponderance of skill rather than mere chance are generally permissible upon fulfillment of certain conditions. The skill-based contests should seem something more than a simple draw of lots or a game of chance, and involve an element of skill being utilized.

Further, such skill-based contests should not be used for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest.

Is any type of registration or filing required to offer a chance-based game and/or a skill-based contest? If so, what are the costs and deadlines associated with such registration or filing?

No. In India there is no law or regulation which requires registration of chance-based game and/or a skill-based contest with any authority in India. Therefore, there is no requirement of registration of the same in India (subject to Answer 1 above).

Are promotions (chance-based or skill-based) in which someone is required to purchase the product in order to enter permitted? If a purchase is required, must a non-purchase method of entry be offered?

Promotions (chance-based or skill-based) in which someone is required to purchase the product in order to enter are covered under the Consumer Protection Act, 1986. Where a purchase is required to be made to enter the promotion, consideration is deemed to have been paid by the entrant to the promoters, thereby establishing a consumer-supplier relation, which in turn brings the entire transaction within the scope of Consumer Protection Act. Though, the jurisprudence in this regard is not very well developed and there is a considerable grey area as to whether purchase method is strictly prohibited for such promotions, we would say that non-purchase method of entry is preferable as they do not establish a consumer relationship with the entrants (subject to Answer 1 above).

Are there other forms of “consideration” which are prohibited in connection with entry into a chance-based game (e.g., posting a photo on Instagram, tweeting a response to a call-to-action, completion of a survey, taking a quiz and be required to answer questions correctly to be entered, watching a short video)?

Consideration, where not in money or money's worth, is generally permitted subject to the condition that the same is lawful and not immoral or opposed to public policy. We believe that consideration such as posting a photo on Instagram, tweeting a response to a call-to-action, completion of a survey, etc., should be generally permitted (subject to Answer 1 above).

Are promotions in which the winner(s) are determined in whole or in part by public voting permitted?

Yes. Promotions in which the winner(s) are determined in whole or in part by public voting are generally permitted.

If a chance-based game or skill-based contest is open to residents of several countries, must the random draw/winner determination process occur in your country or can it be conducted in another country? If the selection process must occur in your country, is there an exception for promotions taking place solely online?

There are no specific laws, regulations and guidelines mandating whether the determination process has to occur in India or any other country. In absence of such laws, regulations and guidelines, we believe that a random draw/winner determination process may be conducted in another country. Further, in absence of any specific laws, regulations and guidelines dealing with the place of selection process, we believe that there is no exception for promotions taking place solely online.

If a chance-based game or skill-based contest is open to residents of several countries, is it permissible to combine all entries from all countries to determine the winners for a single prize pool or must there be a separate prize pool for residents of your country?

There are no specific laws, regulations and guidelines dealing with the prizes that may be awarded to Indian residents. In absence of such laws, regulations and guidelines, we believe that it is permissible to combine all entries from all countries to determine the winners for a single prize pool.

Are there any restrictions on the type, nature or value of the prizes (e.g., travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

There are no specific laws, rules and guidelines governing the type, nature or value of the prizes awarded in a chance-based game/skill-based contest. In absence of such laws, regulations and guidelines, we believe that there are no restrictions on the type, nature or value of the prizes awarded in a chance-based game/skill-based contest (subject to Answer 1 above).

Is there a tax liability associated with prizes? If yes, who is responsible for the taxes, winner or sponsor? Are there any other costs or fees, such as duties and customs fees, imposed on prize awards?

Under Section 194B of the Income Tax Act, 30% tax is deducted on any prize money in excess of Rs 10,000 and other winnings from games of any sort, lotteries etc. This is deducted at source (TDS).

If prizes are partly in cash and partly in kind, tax is deducted on the total value of the cash and kind from the cash. And, if the cash is insufficient to meet the TDS liability, either the winner or the sponsor pays the deficit, which is dependent entirely on the terms and conditions set forth in the Official Rules.

However, where the entity responsible for paying the prize money is a foreign entity having no permanent establishment in India, the individuals or the legal entity receiving the prize money is liable to pay taxes in India.

Further, please note that the tax liability shall be subject to provisions of double taxation avoidance agreement, if any, between India and the country of the promoter/sponsor.

Besides this, we do not believe there are any other costs or fees, such as duties and customs fees, imposed on prize awards.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (i.e., in any and all media, now or hereafter devised, worldwide in perpetuity)? Can such ownership exist in perpetuity? Can copyright be transferred electronically or must the transfer occur in writing?

For skill-based contests, it is generally permissible for the sponsor to own the entries submitted and/or obtain a reasonable grant of rights. However, obtaining consent to the ownership of such rights in perpetuity is opposed to public policy for the same being unfair, unreasonable and unconscionable on account of falling under Section 23 of the Indian Contracts Act, 1872. Regarding the copyright, it may be transferred electronically.

Is it generally permissible to require that a winner sign a liability and/or publicity release in order to receive a prize?

It is generally permissible for a winner to sign a liability and/ or publicity release in order to receive a prize. However, such clauses should not contain any such condition whereby the promoter or sponsor is absolved of any liability which shall accrue upon him in case of any injury or personal damage or loss to property is caused due to the negligent act of the said promoter or sponsor or their representatives and associates. Inclusion of such a condition in a liability and/ or publicity release clause seems unreasonable, arbitrary and unconscionable as per Indian Contract Act, 1872.

Must the Official Rules and advertising materials (including website) be provided in the native language? Or must the Official Rules and website only be provided in the native language if the promotion is advertised/promoted in that language (e.g., if all advertising is in English, can the Official Rules and website only be in English)?

Indian laws do not specify any particular provisions for providing the Official Rules and advertising materials (including website) in the native language or English. However, in this connection a stipulation may be added in the Official Rules that participants to the game/contest should be able to read and understand English in case the rules are exclusively in English.

Are there restrictions on the use of personal information collected from entrants?

Stipulations regarding privacy and use of personal information collected from entrants must conform to the right to privacy as enshrined in provision of the Information Technology Act, 2000 which makes it an offence to disclose information in breach of lawful contract etc., and provision of the Indian Contract Act, 1872 which provides civil remedy in case of violation of contract in disclosing personal information without consent of the participant.

Further, Section 43-A of the Information Technology Act, 2000 provides the penalty in the form damages for failure by an organization dealing or handling sensitive personal data of others on account negligence in implementing and maintaining reasonable security practices and procedure which result in wrongful loss or wrongful gain to any person.

For this, the Promoters can devise the Promoter's Private Policy explicitly stating the purpose for which personal information will be used and stating that the personal information will be treated as confidential and reasonable steps, including standard industry safeguards for protection of such personal information from accidental deletion or loss and unauthorized access, disclosure or modification will be taken care of.

Further, Rules 5(6) and 5(7) of Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011 require that the entrants should have the right to access, review, correct, amend, delete or withdraw their personal data. Thus, the entrants are entitled to have control over their personal information.

If the chance-based game or skill-based contest is solely online and no promotion takes place in your country, is it subject to the laws of your country?

A chance-based game or a skill-based contest (online or not) wherein the Indian residents are the participants shall be subject to Indian laws (subject to Answer 1 above).

Are there key cases and/or regulatory decisions involving promotions of which a company should be aware?

In India, Prevention of Money Laundering Act, 2002 (“PMLA”) is the law relating to anti-money laundering. Entities carrying out the activities for playing games for cash or for kind (including online gaming sites and casinos) (“Gaming Entity”) are also required to adhere to the provisions of the PMLA and related rules (“Rules”).

As per the Rules, the Gaming Entities should also maintain records of the identity of their clients from the date of cessation of the transactions.

Under the Foreign Direct Investment Policy (FDI Policy) of India issued by the Ministry of Commerce & Industry, Government of India, Foreign Direct Investment (FDI) is prohibited in entities involved in ‘lottery, including government, private lottery, online lotteries, etc.; and gambling and betting including casinos etc.’

In the case of *State Of Andhra Pradesh v K. Satyanarayana & Ors* (“Satyanarayana Judgment”), the Supreme Court of India specifically tested the game of Rummy on the principles of skill v chance and held that Rummy is not a game entirely of chance like the ‘three-card’ game (i.e. ‘flush’, ‘brag’ etc.)

The Supreme Court in the case of *R. M. D. Chamarbaugwalla vs. The Union Of India* laid down the principle that skill based or preponderantly skill based competitions were not sought to be regulated under the Prize Competition Act 1955.

Are there any other important issues a company should consider or be aware of when structuring a chance-based game/skill-based contest that will be open to residents of your country?

The Indian Penal Code (“IPC”) and the Information Technology Act, 2008 (“IT Act”) penalize publication, distribution and transmission of obscene content. The IPC inter alia prohibits the sale, hire, distribution, exhibition, circulation of any obscene object and also penalizes any person who engages or advertises or promotes or offers or attempts to do any obscene activity. The IT Act, *inter alia*, penalizes the transmission of any obscene content or sexually explicit material in electronic form including child pornographic content.

The Indecent Representation of Women (Prohibition) Act, 1986 prohibits any indecent representation of women (i.e., the depiction in any manner of the figure of a woman, her form or body in such a way as to have the effect of being indecent, or derogatory to, or denigrating, women, or is likely to deprave, corrupt or injure the public morality or morals). The statute prohibits any such depiction, whether through advertisements or in publications, writings, paintings, figures or in any other manner and provides for penalty in connection with the same.

The provisions of the Trademarks Act, 1999 should be borne in mind while employing use of well-known brands, etc., or names, titles similar to such well-known brands in any kind of publication, be it audio, visual or print.

The use of copyrighted material in the games without taking adequate permissions/licenses from the owner of copyrighted material can trigger copyright infringement issues under the Copyright Act, 1957.

The Competition Act, 2002 aims at preventing practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets in India, and for matters connected therewith or incidental thereto. In view of the same, anti-competitive agreements, i.e., agreements in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, entered into by any enterprise, or association of enterprises or person or association of persons, which causes or is likely to cause an appreciable adverse effect on competition within India, are prohibited.

IRELAND

Are chance-based games (i.e., random draw promotions, instant win games) generally permissible?

Yes, although compliance with the Gaming and Lotteries Acts, 1956-1986 is required. Essentially a chance based promotion involving any form of consideration (such as purchasing a product or sending an SMS to a premium rate number) is considered a lottery under the Acts and needs a licence to operate legally. Licences are only obtainable in limited circumstances. An unlicensed lottery would be void. Chance-based games where entrants make no purchase to enter generally do not fall within the definition of a lottery and are acceptable.

Are skill-based contests (i.e., essay contests, photo contests, user-generated content contests) generally permissible?

Yes.

Is any type of registration or filing required to offer a chance-based game and/or a skill-based contest? If so, what are the costs and deadlines associated with such registration or filing?

Not at present. Draft legislation is presently under consideration to regulate gambling and casinos and that may also introduce a monitoring body who could also introduce filing requirements for prize competitions.

Are promotions (chance-based or skill-based) in which someone is required to purchase the product in order to enter permitted? If a purchase is required, must a non-purchase method of entry be offered?

For skill based competitions, the requirement to purchase a product is legal. For chance-based promotions, as set out above, they constitute a lottery if a purchase is required and can only successfully operate with a court issued licence which is only available in limited circumstances and with restrictions on prizes.

Are there other forms of "consideration" which are prohibited in connection with entry into a chance-based game (e.g., posting a photo on Instagram, tweeting a response to a call-to-action, completion of a survey, taking a quiz and be required to answer questions correctly to be entered, watching a short video)?

No, these would not be considered "consideration".

Are promotions in which the winner(s) are determined in whole or in part by public voting permitted?

Yes.

If a chance-based game or skill-based contest is open to residents of several countries, must the random draw/winner determination process occur in your country or can it be conducted in another country? If the selection process must occur in your country, is there an exception for promotions taking place solely online?

There is no requirement that it be conducted in Ireland.

If a chance-based game or skill-based contest is open to residents of several countries, is it permissible to combine all entries from all countries to determine the winners for a single prize pool or must there be a separate prize pool for residents of your country?

Yes.

Are there any restrictions on the type, nature or value of the prizes (e.g., travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

None, unless the competition is operating as a licensed lottery as set out above. If the competition is operating under a periodical lottery licence then the usual licence obtained places a restriction on prizes of a value of no more than €30,000 per week.

Is there a tax liability associated with prizes? If yes, who is responsible for the taxes, winner or sponsor? Are there any other costs or fees, such as duties and customs fees, imposed on prize awards?

No.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (i.e., in any and all media, now or hereafter devised, worldwide in perpetuity)? Can such ownership exist in perpetuity? Can copyright be transferred electronically or must the transfer occur in writing?

Ownership of entries would normally be dealt with in the terms and conditions but there are no restrictions on obtaining a grant of rights save that copyright assignment must be in writing. We are not aware of any court decision to date concerning whether an electronic transfer is sufficient to cover the “in writing” element of the assignment.

Is it generally permissible to require that a winner sign a liability and/or publicity release in order to receive a prize?

Yes. The Advertising Standards Authority of Ireland (“ASAI”) Code of Practice states that promoters need to be aware though of the issues that can arise with excess publicity (for example publicity indicating that a person has won a 3 week holiday may broadcast the fact that their house is empty for those 3 weeks) and their recommendation is that only the name and county of residence of the winner should be used in publicity releases.

Must the Official Rules and advertising materials (including website) be provided in the native language? Or must the Official Rules and website only be provided in the native language if the promotion is advertised/promoted in that language (e.g., if all advertising is in English, can the Official Rules and website only be in English)?

As English is an official language in Ireland, this question is not relevant.

Are there restrictions on the use of personal information collected from entrants?

Yes. The Data Protection Acts, 1988 – 2003 govern the use of personal information which can only be used for disclosed purposes and, if it is proposed to use it for marketing purposes, then that needs to be disclosed to entrants who must be given an opt in/out choice.

If the chance-based game or skill-based contest is solely online and no promotion takes place in your country, is it subject to the laws of your country?

There are complex issues that can arise in these circumstances, such as where the website for the game is hosted. Technically, it could still be subject to the laws of Ireland however in practice a prosecution regarding a sales promotion which was solely online and not promoted or specifically advertised here would be unlikely to proceed. This does not negate the risk, though, of a consumer complaining to the ASAI (whose remit does include digital media). If the ASAI felt that the website was out of their jurisdiction then if, for example the site was run in another EU country they can refer the complaint to the relevant advertising regulator in that country.

Are there key cases and/or regulatory decisions involving promotions of which a company should be aware?

Prosecutions involving prize promotions are rare and there is a general tolerance of promotions which strictly speaking may be in breach of the current Irish laws. There have been some important court decisions in the past.

Flynn -v- Denieffe & Ors [1993 1 IR 28]

The issue of “no purchase necessary” clauses was considered by the Irish Supreme Court. In this case a national newspaper was running a game of chance and delivered a free entry coupon to every household in the country. It was not necessary to purchase the newspaper to enter or win. However the Supreme Court held the law does not require every participant to be a purchaser to constitute a lottery; it is sufficient that there be a substantial number of purchasers. This decision has caused a difficulty ever since for promoters who might normally have relied on including a simple “no purchase necessary” clause in the promotional materials.

Attorney General (AG) -v- Bests Stores [1970 IR 225]

The court held that the purchase of a product at its regular retail price constitutes consideration under the Gaming and Lotteries Acts. Therefore even if every purchaser gained entry to the competition it still constituted a lottery.

AG -v- Healy [1972 IR 393]

The promoter had sought to pick a winner by way of prize draw and then that winner had to correctly answer a quiz question to win the prize. The court held that introducing a skill element after a winner was drawn was not sufficient to eliminate the element of chance so the competition still constituted a lottery.

Are there any other important issues a company should consider or be aware of when structuring a chance-based game/skill-based contest that will be open to residents of your country?

The main issue that arises is the risk of such competitions falling within the definitions as set out in the Gaming and Lotteries Acts. The legal position in the UK is different to that in the Republic of Ireland and because of the proximity of the markets many promoters seek to run the same prize competition in both markets – a tactic that will not always work. Legal advice should always be taken in both jurisdictions.

ISRAEL

Are chance-based games (i.e., random draw promotions, instant win games) generally permissible?

Chance-based games are generally prohibited.

The Israel Penal Law - 1977, subject to qualifications, outlaws unauthorized games, gambling and draws. An "unauthorized game" is defined as a "game in which one may win money, its equivalent or a benefit due to the results of a game, and the results are more dependent on luck than on understanding or capability". Gambling is defined as "any arrangement whereby one can win money, its equivalent or a benefit, and the winning is dependent on guessing, inclusive of a lottery connected to the results of games and sporting events". A draw is defined as "any arrangement whereby the draw of fate or other means, one can win money, its equivalent or a benefit, and the winning is more dependent on fate than on understanding or capability".

As stated above, draws and instant win games are outlawed in Israel. However, per the Penal Law, the Minister of Finance is empowered to authorize certain types of sweepstakes/draws. In accordance to these powers, he has permitted certain types of draws, via an "Announcement of a General License to Conduct Draws for Commercial Advertising/Promotion" ("**General License**").

Are skill-based contests (i.e., essay contests, photo contests, user-generated content contests) generally permissible?

A promotional game which is more dependent on skill than on luck will be legal. There are no clearly defined skill thresholds. However, there is clearly a requirement for an element of skill which should outweigh the element of luck. As an example, the organization of backgammon games, which requires both elements of skill and luck, in certain contexts was held illegal. The Tel Aviv District Court ruled that a Bingo/Trivia Pursuit game, in which a bingo winner must answer three (3) simple trivia questions in order to claim a prize, constitutes an "unauthorized game".

As long as the game/contest involves skill, it is permissible in Israel. In fact, skilled based competitions are quite common in Israel.

Is any type of registration or filing required to offer a chance-based game and/or a skill-based contest? If so, what are the costs and deadlines associated with such registration or filing?

As described above, chance based games are outlawed in Israel. There are no filing requirements for skill based games.

Regarding Draws which are allowed per the General License, there is no need to register the draw. Nevertheless, pursuant to the General License, there are many formalities, technicalities and restrictions which must be obeyed, such as the requirement to notify the Ministry of Finance's General Manager ("**MOFGM**") of the draw and its framework. Additionally, the draw's organizer(s) must appoint an Inspector (either an Israeli attorney or accountant) who is responsible for the Draw's administration ("**Inspector**"). The Inspector must notify the MOFGM that he/she has been appointed as the draw's Inspector and submit an official report relating to the draw. Additionally, there are requirements relating to the publication of the draws winners, the execution of the actual draw, etc.

Are promotions (chance-based or skill-based) in which someone is required to purchase the product in order to enter permitted? If a purchase is required, must a non-purchase method of entry be offered?

Promotions in which entrants must purchase a product are permitted. If a purchase is required, there are no requirements by law to offer a non-purchase option.

Are there other forms of "consideration" which are prohibited in connection with entry into a chance-based game (e.g., posting a photo on Instagram, tweeting a response to a call-to-action, completion of a survey, taking a quiz and be required to answer questions correctly to be entered, watching a short video)?

Chance-based games, hence games in the outcome of the challenge is more dependent on luck than on skill, are illegal. Consideration is not relevant to determining whether the game is legal, rather the skill factor.

As to draws which are allowed per the General License, it is prohibited to demand payment in consideration for participating in the draw. Participation in the draw usually occurs due to the purchase of goods and/or services.

Are promotions in which the winner(s) are determined in whole or in part by public voting permitted?

Promotions in which winners are determined by public voting are permitted provided there is a skill factor.

If a chance-based game or skill-based contest is open to residents of several countries, must the random draw/winner determination process occur in your country or can it be conducted in another country? If the selection process must occur in your country, is there an exception for promotions taking place solely online?

Skill-based contests may be open to residents in several countries. The winner determination process need not occur in Israel. As to draws, the actual draw/winner determination may occur outside of Israel, subject to certain technicalities prescribed in the General License.

If a chance-based game or skill-based contest is open to residents of several countries, is it permissible to combine all entries from all countries to determine the winners for a single prize pool or must there be a separate prize pool for residents of your country?

It is permissible to combine all entries from several countries to determine the winners from a single pool.

Are there any restrictions on the type, nature or value of the prizes (e.g., travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

The laws and regulations relating to the promotion, sale and advertising of tobacco and alcohol are quite stringent and detailed.

Pursuant to the Limitation of Tobacco Advertisement Act - 1983, it is prohibited to market tobacco products with accompanying free prizes, gifts or the right to participate in a sweepstake or competition. Furthermore, one may not distribute tobacco without consideration.

The Consumer Protection Regulations (Advertisements and Marketing Methods Targeted at Minors) – 1991 prohibit advertisements and marketing methods which encourage minors to consume alcoholic beverages and the use of cigarettes or other tobacco products.

Similar rules and regulations apply to pharmaceuticals which cannot be distributed within sweepstakes.

Israeli participants may receive cash prizes. It is permissible to award prizes which involve travel outside Israel. However, before offering Israelis the option of winning travel prizes, it is suggested to determine beforehand that Israelis are allowed to travel to the relevant countries.

Is there a tax liability associated with prizes? If yes, who is responsible for the taxes, winner or sponsor? Are there any other costs or fees, such as duties and customs fees, imposed on prize awards?

According to the Israel Tax Ordinance and its derived regulations, Israelis must pay 25% tax on prize earnings if the prize value is approximately \$16,000 and above. According to the law, Sponsors are responsible for paying the tax to the Israel tax authority.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (i.e., in any and all media, now or hereafter devised, worldwide in perpetuity)? Can such ownership exist in perpetuity? Can copyright be transferred electronically or must the transfer occur in writing?

Generally, it is permissible for the sponsor to obtain the Intellectual Property Rights over the entries. Electronic transfers are permissible. Nevertheless, the Israel Copyright Law-2007 clearly prohibits the transfer/assignment of Moral rights. However, the law is not clear about waiving Moral Rights and it remains to be seen if the courts will allow/recognize the possibility of waiving Moral Rights.

Is it generally permissible to require that a winner sign a liability and/or publicity release in order to receive a prize?

It is permissible to require a winner to sign a public release form. Liability releases are also permissible.

Nevertheless, it should be stressed that requiring a winner to sign a liability release may be problematic as it can be perceived as an oppressive and unfair term in light of the Israel Standard Contracts Act - 1982. Terms which exempt parties, either entirely or partially from responsibility which would otherwise bind them, are presumed to be unfair terms. This being said, the unfairness of the term is a presumption, which based on the individual facts, may be undermined by the Sponsor.

Must the Official Rules and advertising materials (including website) be provided in the native language? Or must the Official Rules and website only be provided in the native language if the promotion is advertised/promoted in that language (e.g., if all advertising is in English, can the Official Rules and website only be in English)?

Relating to skill based competitions, the language of the website or the Official Rules need not be in Hebrew. This being said, it is advisable for the sponsor to provide a clause in which the entrant states that he/she understood the language of the rules. Usually, by clicking a box, the entrant will state that he understood the terms.

Nevertheless, according to Israeli advertising and marketing laws, a contract/rules/marketing method, should be clear for the targeted audience. Hence, when targeting minors, one cannot use complicated language, especially when using a foreign language.

Relating to draws, the Official Rules must be in Hebrew.

Are there restrictions on the use of personal information collected from entrants?

The topic of storing and administering data relating to individuals is covered by the Israel Protection of Privacy Law-1981. Generally, if one holds or manages a "database" relating to people which is "a collection of data, kept by magnetic or optical means and intended for computer processing" under certain circumstances, one must register this database at **The Israeli Law, Information and Technology Authority ("ILITA")**. Within, ILITA, the "**Database Registrar**" is responsible for administering the "Database Registry".

Not all databases require registration. Registration is required, *inter alia*, if one holds data relating to over 10,000 individuals and/or the database contains "sensitive information".

If the chance-based game or skill-based contest is solely online and no promotion takes place in your country, is it subject to the laws of your country?

According to the relevant acts and judicial interpretation, the geographical place in which the promotion is administered is not relevant when determining the applicable law. Rather, the targeted audience will determine the relevant law. Hence, a website abroad, if targeting Israeli entrants, will be subject to Israeli law.

Are there key cases and/or regulatory decisions involving promotions of which a company should be aware?

No.

Are there any other important issues a company should consider or be aware of when structuring a chance-based game/skill-based contest that will be open to residents of your country?

The issue of gambling, games and draws is, *inter-alia*, governed by the Israel Penal Law. Hence, administering games, gambling and draws which are outlawed by the Penal Law, may result in criminal sanctions. Hence, before sponsoring a game/draw, it is advisable to determine its legality.

ITALLY

Are chance-based games (i.e., random draw promotions, instant win games) generally permissible?

Yes.

These initiatives fall within the category of 'sales promotions' and are subject to a specific Regulation (Presidential Decree no. 430 of October 26, 2001). which:

1. defines as '**prize contests**' ("*concorsi a premio*", in Italian) all promotional initiatives awarding a prize to one or more participants on the basis of their personal skills or by mere chance (e. g. a drawing), and
2. distinguishes them from '**premium operations**' ("*operazioni a premio*"), assigning premiums/gifts to:
 - a. All those buying a certain quantity of a product/service, or
 - b. All those collecting a given number of proofs of purchase, coupons, etc., or
 - c. All those buying a certain type of goods.

Prize Contests and Premium Operations are subject to different legal and administrative requirements.

Are skill-based contests (i.e., essay contests, photo contests, user-generated content contests) generally permissible?

Yes.

In the past, the competent State Department took the view that promotional initiatives, consisting in contests based on content authored by participants and based on their individual skills (e.g., in preparing and submitting a story, a video or other materials, commonly known as 'user generated content'), would have to be considered as 'ordinary promotions', therefore needing to fulfil the requirements laid down in Presidential Decree no. 430 of 2001. Only in a few cases, specifically indicated by the Regulation, such initiatives would result exempt from such compliance obligation, i.e. when:

1. No purchase was required for participating to the contest,
2. Prizes were to reward "*the service or work performed or to acknowledge personal merits achieved or to result in an encouragement in community's collective interests ...*". Reference is to an article or essay on topics such as tobacco dependence, drug addiction, chronic alcoholism, ecology, an individual's specific literary talent – e.g. skills in the use of ancient Latin – or a paper on topics of social interest.

Through a Memorandum, issued in 2014, the State Department has broadened the range of such exemptions. To the purpose, it has stated that Presidential Decree no. 430 of 2001 exempts from the requirements set by the Regulation all contests with content created by participants, not involving a purchase obligation and awarding prizes to recognize 'personal merits' through a benefit not resulting in a remuneration or where the fact of 'winning' overcomes the value of the awarded prize.

While this interpretation offers truly interesting openings for prize contests involving user-generated content, the memorandum unfortunately failed to provide the marketing and advertising industry with clear and easy to understand indications on how exactly to handle such promotional initiatives.

Advertisers and promoters are still wondering whether the new reading of the exemption rule set in Article 6 of the Presidential Decree would also overcome the general ban, not allowing to award cash prizes to winners. Therefore, they currently need to follow a case-by-case approach and to seek for the Department's in-advance opinion on this kind of promotional initiatives.

Is any type of registration or filing required to offer a chance-based game and/or a skill-based contest? If so, what are the costs and deadlines associated with such registration or filing?

Yes.

Advertisers do not need to obtain an in-advance authorization for running a prize contest. However, they will have to file a notice (including the Official Rules) about the planned promotion with the State

Department and shall not start the promotion before a 15 day period - from the moment of the filing - has elapsed. This to allow the State Department's offices to object - or temporarily halt - a promotion, when it appears as patently illegal or in-compliant with the Regulation. The notification procedure can be performed exclusively on-line, by using standard forms (available on the State Department's website).

Administrative and other costs:

Foreign companies intending to conduct a prize contest in Italy usually retain a local sales promotion agency to take care of handling and administration. The fee of such agency will clearly depend on the complexity of the planned initiative.

Aside from the aspect above, the main costs of a prize contest relate to the requirement meant to grant the actual availability of all the prizes promised to participants and imposing to the purpose a specific cautionary deposit, which must cover the overall value (= 100%) of the prizes. Local banks and insurance companies clearly charge fees for providing the warranty required as 'cautionary deposit'. The amount of such fees depends on a range of circumstances (e.g., whether you are – or are not – a client of the bank or insurance).

The performance of a local promotion is subject to the supervision either of a notary public or of an official of the Chamber of Commerce. Clearly, for such services the advertiser will encounter costs for fees and dues. Just to offer a rough idea about such costs (which change over time), consider that the local Chambers of Commerce apply rates, which may result slightly different from office to office: daily rates vary from Euro 330 to Euro 370 plus VAT (on working days within business hours), from Euro 385 to Euro 470, plus VAT (during after-hours), from Euro 550 to Euro 770, plus VAT (on Saturday, Sundays or Festivities); extra charge of Euro 80 for the preparation of the promotion's closing report.

Finally, taxes (on prizes) must be paid. Kindly refer to the dedicated section below.

Are promotions (chance-based or skill-based) in which someone is required to purchase the product in order to enter permitted? If a purchase is required, must a non-purchase method of entry be offered?

A 'premium operation' (see first answer above) will usually involve a product/service purchase, while a 'prize contest' can (but not necessarily has to) be linked to a purchase.

However, a promoter/sponsor cannot charge a special, separate participation fee (e.g., by increasing the price of the promoted product or service). Participation has to be free, save ordinary costs for filing the participation form (i. e. usual expenses for stamps, phone call or on-line access at ordinary rates).

Through this requirement, local law intends preventing the charge of entry fees for participating to a promotion, as such requirement would transform the initiative into a lottery (in Italy reserved to State Monopoly).

Are there other forms of “consideration” which are prohibited in connection with entry into a chance-based game (e.g., posting a photo on Instagram, tweeting a response to a call-to-action, completion of a survey, taking a quiz and be required to answer questions correctly to be entered, watching a short video)?

No, in theory. Actually, the mechanism:

1. Needs to strictly comply with the 'free entry' principle, mentioned in the previous paragraph.
2. Has to offer fair and equal conditions to all participants.
3. Must allow adequate control on all aspects/phases of the promotion's handling.

Are promotions in which the winner(s) are determined in whole or in part by public voting permitted?

Yes.

The general principle is that the mechanism or system set up for a promotion's handling and for winners' selection must result in compliance with public faith and has to grant equal treatment and opportunities to

all participants. A mechanism allowing the promoter or third parties to identify winners in advance or to influence their selection would clearly be held as illusive or deceptive,

If a chance-based game or skill-based contest is open to residents of several countries, must the random draw/winner determination process occur in your country or can it be conducted in another country? If the selection process must occur in your country, is there an exception for promotions taking place solely online?

According to the provisions of Presidential Decree no. 430 of 2001, a local promotion needs to be entirely handled and administered in Italy (save the packaging of products - awarded as prizes/premiums - manufactured abroad). The State Department has acknowledged that sales promotions are now frequently using records collected and stored on servers or on-line platforms (sometimes located outside the country). With respect to such case, the Department has taken the view that domestic (i. e. Italian) promotions, in principle, should not be allocated on websites not based on Italian territory. Therefore, advertisers using a foreign platform will need to have a “mirror system” in place, which simultaneously replicates locally all operations performed on the foreign platform. In such case, the local promotion's Official Rules must contain promoter's specific obligation to offer Italian Authorities – on their request – the database with all the information stored in relation to the promotion.

A strictly foreign promotion can be open to Italian residents, but needs to avoid the applicability of domestic law by staying entirely out of the country. To the purpose, no specific targeting of local residents, no local advertising of the promotion, no use of technical equipment (such as web sites or servers) located in the country, no involvement of Italian subsidiaries, branch offices or retailers of the foreign promoter should occur.

If a chance-based game or skill-based contest is open to residents of several countries, is it permissible to combine all entries from all countries to determine the winners for a single prize pool or must there be a separate prize pool for residents of your country?

Such system is permissible for strictly foreign promotions and provided all the premises indicated in the previous paragraph are met.

A foreign promotion can have a section dedicated and specifically targeted to Italian residents, but then this part has to be handled locally as a domestic promotion, subject to the requirements of Presidential Decree no. 430 of 2001.

Are there any restrictions on the type, nature or value of the prizes (e.g., travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

While there are no limits as to the value of the awarded prizes, restrictions do apply as to their nature.

Per Section 4 of Presidential Decree no. 430/2001 prizes/premiums “... may consist in products, services, discounts and qualifying documents and improper negotiable instruments as under Article 2002 of the Civil Code, capable of or resulting in economic evaluation” [reference is to vouchers, coupons, etc.] “subject to VAT or to the corresponding substitute tax ...”.

It is also possible to award “lottery combinations” (= wagers) “or national lottery tickets” (special rules apply in such case).

Not allowed are “... money, public and private loans, shares, quotas of share capital, of investment funds and life insurance policies”. Instead of cash, promoters can assign gold tokens as prize to winners.

The promotion's Official Rules need to detail both, the total economic value of all offered prizes/premiums as well as that of each prize/premium individually assigned to a participant.

Is there a tax liability associated with prizes? If yes, who is responsible for the taxes, winner or sponsor? Are there any other costs or fees, such as duties and customs fees, imposed on prize awards?

Yes.

A promoter/sponsor providing himself with products or services awarded as prizes/premiums in the context of a sales promotion will not be allowed to discharge Value Added Tax (VAT) paid when purchasing such prizes/premiums (the tax will therefore result in an additional cost to the sponsor). When VAT does not apply, a subsidiary taxation on their value is applied (the current rate is 20%).

Promoters are called to apply a withholding tax on the value of the prizes awarded to winners. Currently, the percentage of such withholding tax is 25%, but in some specific cases, a different rate may apply.

Reimbursement from winners of taxes anticipated on their behalf is hardly sought, as this would negatively reflect on the promotion's impact on the targeted public.

Promotions targeted – and prizes assigned - to third party employees may also have an influence on winners' income tax. Additional aspects will then have to be considered.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (i.e., in any and all media, now or hereafter devised, worldwide in perpetuity)? Can such ownership exist in perpetuity? Can copyright be transferred electronically or must the transfer occur in writing?

Theoretically, yes, but the wording of such agreement needs to be carefully drafted. Agreements can consider uses related to media not yet available.

Under Civil Law, unbalanced provisions could easily result in an 'unfair commercial practice' and be held as void by local Courts. Ahead-of-time waivers relating to rights not yet established would also be at the risk of being potentially void.

According to Italian Statute Law, an individual may not waive his 'moral rights'.

Per Section 110 of the Italian Copyright Statute (Law for the Protection of Copyright and Neighboring Rights, Law No. 633 of April 22, 1941) the transfer of exploitation rights shall be set out in writing.

Is it generally permissible to require that a winner sign a liability and/or publicity release in order to receive a prize?

Yes. Having winners signing a release is definitely advisable.

Special attention is recommended with respect to use of participants' names and images, pertaining to an individual's 'very personal rights' and as such not be used without permission.

Consent-by-implication mechanisms (e.g., *"by participating winners automatically agree"*) may result critical. Winners should possibly sign a specific release, covering all of the planned uses. Should this not be a viable solution, permission for use of name and image should be sought at least through express acceptance of the Official Rules and a specific ticker box. Clearly, the uses/purposes specified in such releases will have to be strictly maintained. Finally, one has to bear in mind that:

1. Consent is valid and effective between the parties, but is not automatically transferable to third other subjects (an aspect that could easily become relevant, when participants' submissions are handed over to business partners or affiliates).
2. In local jurisprudence and literature, differing opinions occur as to whether consent (once given) is revocable or not.

When drafting liability releases promoters need to be aware that, under Italian Statute Law, they will not be able to achieve a general release from their liability towards participants as to errors contained in the Official Rules, misleading information diffused (e.g., through advertising) or as to problems faced during the promotion's handling process. When facing a claim from a participant, they may eventually seek for recovery from third parties as to damages deriving from services improperly performed on their behalf.

Must the Official Rules and advertising materials (including website) be provided in the native language? Or must the Official Rules and website only be provided in the native language if the promotion is advertised/promoted in that language (e.g., if all advertising is in English, can the Official Rules and website only be in English)?

For a local promotion, all material has to be in Italian language. Advertising is not subject to formal restrictions, but:

1. Must inform consumers about the promotions' terms and conditions, the expiry dates and the value of prizes to be awarded,
2. If not providing (e.g., due to the characteristics of the audiovisual means or spaces used) such indications, the information offered must explicitly refer to the Official Rules and inform where the full text can be accessed.

Are there restrictions on the use of personal information collected from entrants?

Yes.

Sales promotions usually do imply the processing (i.e. collecting, storing and transferring) of participants' personal data. In Italy, for such processing a strictly "opt-in" system applies. Any time data handling occurs in Italy, the provisions of the local Privacy Code (Legislative Decree no. 196 of June 30, 2003) will become relevant. Participants are, therefore, to be offered exact in-advance notice as to the purposes of the data collection performed and as to all uses planned for the personal information stored (such indications will have to be strictly maintained in the aftermath, as purposes and uses not covered by the initial information would require an additional notice).

For certain uses and purposes of data processing (e. g. monitoring or profiling of data subjects as well as for data transfer to a country not member to the EU) one has to fulfill additional requirements (among them achievement of data subject's express consent).

Foreign marketers must bear in mind that on May 25, 2018 the new General Data Protection Regulation – GDPR (i.e. EU Regulation no. 679 of 2016) is due to come into force. Such Regulation contains new provisions likely to significantly affect the handling of personal information performed for marketing purposes. Specifically, marketers need to consider that under the upcoming regime also for processing of personal data performed by entities not having a business presence within the EU, the GDPR will still apply any time: (i) personal data of EU residents is processed in connection with goods/services offered (even without payment) to them; or (ii) the behavior of individuals within the EU is "monitored", i.e. when tracking of individuals' online conduct is performed to create profiles (including where such practice is used to take decisions to analyze or to predict personal preferences, behaviors and attitudes). Mere accessibility of a foreign platform from within the EU will not result sufficient to make the GDPR's provisions automatically applicable. Finally, when processing of an individual's personal information is performed for marketing purposes, such individual must always be offered an opt-out choice.

If the chance-based game or skill-based contest is solely online and no promotion takes place in your country, is it subject to the laws of your country?

In an earlier section, it has been outlined that a local promotion needs to be performed within Italy and has to comply with a specific domestic Regulation.

Promoters can avoid such outcome only when they perform a strictly foreign initiative.

To the purpose, it would be essential that the promotion:

1. Is performed by a subject located outside of Italy,
2. Is entirely administered and handled outside of Italy,
3. Does not involve local subjects,
4. Does not make use of technical equipment (such as servers or websites) located in Italy,
5. Restrains from offering entry/participation methods made available in Italy,
6. Is not advertised locally through Italian media.

The GDPR no. 679 of 2016 (see end of the preceding answer above) in certain cases will result in an extension of the new provisions to marketers not having a business presence within the EU.

Are there key cases and/or regulatory decisions involving promotions of which a company should be aware?

Under Italian Statute Law, a prize contest involves a 'promise to the public'. According to the Italian Civil Code, such promise, once made public, determines binding effects for the promoter (as per sections 1989 and 1990 of the Code). Therefore, any time the promoter does not strictly comply with the announcements of the Official Rules, he exposes himself to the risk of performing unfair commercial practices (and in cases of serious infringement, may find himself performing a conduct of interest to a criminal prosecutor).

The Court of Justice of the European Union has recently held (so judgment 18 October 2012 of the Sixth Chamber) that giving the false impression of a consumer having already won a prize, "*while the taking of any action in relation to claiming that prize, be it requesting information concerning the nature of that prize or taking possession of it, is subject to an obligation on the consumer to pay money or to incur any cost whatsoever*", results in an illegal aggressive commercial practice. Additionally, the Court found that "*It is irrelevant that the cost imposed on the consumer, such as the cost of a stamp, is de minimis compared with the value of the prize or that it does not procure the trader any benefit*" and also that "*It is also irrelevant that the trader offers the consumer a number of methods by which he may claim the prize, at least one of which is free of charge, if, according to one or more of the proposed methods, the consumer would incur a cost in order to obtain information on the prize or how to acquire it*".

Are there any other important issues a company should consider or be aware of when structuring a chance-based game/skill-based contest that will be open to residents of your country?

1. The local Regulation on sales promotions requires promoters to perform a prize contests handled in Italy within a maximum period of one year (from their start). Such maximum duration includes both, the procedure concerning winners' selection and determination as well as the deadline for claiming the prizes. Prizes offered must be delivered to those entitled to receiving them within six months from the promotion's end or from the moment of their claiming.

2. Presidential Decree no. 430 of 2001 provides that promoters must assign all prizes not awarded or not claimed by the winners to a not-for-profit organization (which they need to specifically indicate in advance). It is therefore common to provide for 'reserve winners'.

3. A closing remark on the sanctions, which promoters risk when performing an illegal initiative (N.B.: sanctions may also be extended to retailers/distributors involved in the illegal promotion):

a. When an illegal sales promotion is ascertained, the State Department may serve a fine from Euro 50.000 up to Euro 500.000.

b. For performing a prize contest without filing in-advance notice to the State Department, the fine varies from a minimum of Euro 2.065,83 up to a maximum of Euro 10.329,14 (for notifications filed late - i. e. filed after the promotion's start, but before the infringement is ascertained - the fine is reduced by 50% of the ordinary amount. Fines paid within 30 days are reduced to one sixth of the awarded amount.

c. Prize contests performed in a way not compliant with the terms and conditions provided in the promotion's Official Rules, will imply a fine varying between Euro 1.032,91 and Euro 5.164,57.

d. Ignoring the State Department's cease and desist order and continuing in the illegal promotion, exposes the offender to a fine double the ordinary amount.

JAPAN

Are chance-based games (i.e., random draw promotions, instant win games) generally permissible?

Yes.

Are skill-based contests (i.e., essay contests, photo contests, user-generated content contests) generally permissible?

Yes.

Is any type of registration or filing required to offer a chance-based game and/or a skill-based contest? If so, what are the costs and deadlines associated with such registration or filing?

No.

Are promotions (chance-based or skill-based) in which someone is required to purchase the product in order to enter permitted? If a purchase is required, must a non-purchase method of entry be offered?

Yes. However, the Act against Unjustifiable Premiums and Misleading Representations will apply and there are restrictions on the value of a prize and total value of prizes.

Are there other forms of “consideration” which are prohibited in connection with entry into a chance-based game (e.g., posting a photo on Instagram, tweeting a response to a call-to-action, completion of a survey, taking a quiz and be required to answer questions correctly to be entered, watching a short video)?

No.

Are promotions in which the winner(s) are determined in whole or in part by public voting permitted?

Yes.

If a chance-based game or skill-based contest is open to residents of several countries, must the random draw/winner determination process occur in your country or can it be conducted in another country? If the selection process must occur in your country, is there an exception for promotions taking place solely online?

The random draw/winner determination can be conducted in another country. There is no exception for promotions taking place solely online.

If a chance-based game or skill-based contest is open to residents of several countries, is it permissible to combine all entries from all countries to determine the winners for a single prize pool or must there be a separate prize pool for residents of your country?

It is permissible to combine all entries from all countries to determine the winners for a single prize pool.

Are there any restrictions on the type, nature or value of the prizes (e.g., travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

Not for open games/contests in which anyone can enter. If a chance-based game/skill-based contest is closed (i.e. not for everyone) and purchase is required, there is restriction on the value of each prize and the total value of the prize pool that can be used.

Is there a tax liability associated with prizes? If yes, who is responsible for the taxes, winner or sponsor? Are there any other costs or fees, such as duties and customs fees, imposed on prize awards?

Yes.

If the amount of prize exceeds 500,000yen (approximately US \$4,160), the winner would be required to pay income tax. The income from the prize would be categorized as “occasional income” and the occasional income is calculated as follows:

- (the amount of prize) - (the expenses to win the prize) - 500,000yen
- 50% of the occasional income is added to the other taxable income and the tax rate applicable to the aggregated income will be 5% - 40%, depending on the aggregated amount of taxable income.

In addition to the national income tax, the winner is required to pay 2.1% of the income tax as special reconstruction income tax.

Also, the winner is required to pay residential tax on the aggregated income. The rate of residential tax varies depending on where the winner lives. If the winner lives in Tokyo, the tax rate for residential tax is 10%.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (i.e., in any and all media, now or hereafter devised, worldwide in perpetuity)? Can such ownership exist in perpetuity? Can copyright be transferred electronically or must the transfer occur in writing?

Yes. Ownership may exist in perpetuity (to the extent the copyright exists). Copyright can be transferred electronically although it is generally transferred in writing, in practice.

Is it generally permissible to require that a winner sign a liability and/or publicity release in order to receive a prize?

Yes.

Must the Official Rules and advertising materials (including website) be provided in the native language? Or must the Official Rules and website only be provided in the native language if the promotion is advertised/promoted in that language (e.g., if all advertising is in English, can the Official Rules and website only be in English)?

No.

Are there restrictions on the use of personal information collected from entrants?

Yes. It is necessary to obtain consent from entrants to collect personal information, informing the entrants of the purpose of use. Such consent can be obtained via a website (i.e. check the box).

If the chance-based game or skill-based contest is solely online and no promotion takes place in your country, is it subject to the laws of your country?

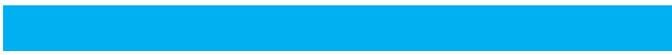
If the game/contest requires a purchase of a ticket, etc., then the Act against Unjustifiable Premiums and Misleading Representation will apply.

Are there key cases and/or regulatory decisions involving promotions of which a company should be aware?

No.

Are there any other important issues a company should consider or be aware of when structuring a chance-based game/skill-based contest that will be open to residents of your country?

In addition to the general regulations under the Act against Unjustifiable Premiums and Misleading Representation, there are special regulations for (i) newspaper business, (ii) magazine business, (iii) real estate business and (iv) pharmaceutical, medical devices and medical technology related businesses.

 LUXEMBOURG 

Are chance-based games (i.e., random draw promotions, instant win games) generally permissible?

Chance-based games are generally prohibited under Luxembourg law.

As an exception to this principle, promotional games, free sweepstakes and raffles exclusively organized for commercial propaganda purposes are permissible, provided that they comply with Luxembourg law requirements.

Are skill-based contests (i.e., essay contests, photo contests, user-generated content contests) generally permissible?

Skill-based contests are permitted. Luxembourg law does not set out specific requirements regarding skill-based games.

Is any type of registration or filing required to offer a chance-based game and/or a skill-based contest? If so, what are the costs and deadlines associated with such registration or filing?

According to Luxembourg law, chance-based games are only allowed if the organizer of the game has drafted Official Rules for the planned game and filed them with a Luxembourg public notary or a bailiff. Such filing must occur prior to any communications about the game.

The bailiff/public notary will check the legality of the Official Rules and register them afterwards. The costs for this registration are approximately of EUR 270, and it generally takes 4 business days.

There are no such obligations regarding skill-based contests, even if it is highly recommended to draft terms and conditions to limit the risks of claims from the participants.

Are promotions (chance-based or skill-based) in which someone is required to purchase the product in order to enter permitted? If a purchase is required, must a non-purchase method of entry be offered?

According to Luxembourg law, a chance-based promotion must be free of charge and cannot be subject to any financial consideration or to a purchase obligation.

As an exception, chance-based promotions based on a purchase obligation are valid under Luxembourg traditional case-law when a free way to participate in the game is alternatively offered, and provided that:

1. the conditions for access to the free channel are real and duly accessible to the consumers,
2. there is an equivalence of winning chances between the two channels, and
3. the free channel does not require any financial sacrifice on the part of the participant.

It should be noted that the European Court of Justice ruled, on 14 January 2010, that national legislation prohibiting as such promotional games subject to purchase obligation were not compatible with the Community law. Such games can only be prohibited if, in practice, they appear unfair. Luxembourg law, however, still prohibits the participation to a promotional contest to a purchase obligation and, to our knowledge, there is no equivalent case-law in Luxembourg for the moment.

To the contrary, the entry in a skill-based contest can be require a product purchase.

Are there other forms of “consideration” which are prohibited in connection with entry into a chance-based game (e.g., posting a photo on Instagram, tweeting a response to a call-to-action, completion of a survey, taking a quiz and be required to answer questions correctly to be entered, watching a short video)?

No.

Are promotions in which the winner(s) are determined in whole or in part by public voting permitted?

Yes. Luxembourg law does not contain any rules regarding the judges of a sweepstake or competition.

If a chance-based game or skill-based contest is open to residents of several countries, must the random draw/winner determination process occur in your country or can it be conducted in another country? If the selection process must occur in your country, is there an exception for promotions taking place solely online?

No.

If a chance-based game or skill-based contest is open to residents of several countries, is it permissible to combine all entries from all countries to determine the winners for a single prize pool or must there be a separate prize pool for residents of your country?

It will be possible to combine all entries from all countries to determine the winners for a single prize pool provided that Luxembourg law requirements, regarding more particularly chance-based games, are fulfilled.

Luxembourg law does not require the drafting of specific Official Rules for each country where the competition is run. However, from a practical standpoint, the localization of the Official Rules remains advisable to meet the specific compulsory requirements of each country. For instance, a jurisdiction clause may not be enforceable in Luxembourg towards consumers. Also, Luxembourg law imposes, as a rule, to obtain the prior consent of recipients before sending them marketing emails (opt-in system). Any clause to the contrary would be null and void.

Are there any restrictions on the type, nature or value of the prizes (e.g., travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

Luxembourg law does not state any prize limitations.

Is there a tax liability associated with prizes? If yes, who is responsible for the taxes, winner or sponsor? Are there any other costs or fees, such as duties and customs fees, imposed on prize awards?

Prizes offered, on a free basis, by a sponsor established in Luxembourg to a winner also established in Luxembourg do not fall under Luxembourg VAT law and are consequently not subject to VAT under Luxembourg law. If the winner is a Luxembourg non-resident or if the sponsor is not established in Luxembourg, the prize may be subject to foreign VAT depending upon the applicable law.

A prize should also not be subject to income tax at the level of the winner, if the person is resident in Luxembourg. If the winner is a Luxembourg non-resident, the prize may be subject to foreign income tax here also depending upon the applicable law.

Luxembourg gift tax may be levied on a gift if embodied in a Luxembourg notarial deed signed before a Luxembourg notary or otherwise registered in Luxembourg.

Customs fees are not imposed on prize awards.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (i.e., in any and all media, now or hereafter devised, worldwide in perpetuity)?

It is generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights in any and all media, worldwide, free of charge, and for the duration of protection of the copyrights.

However, under Luxembourg law, assignments of copyrights for use on unknown devices must set a specific remuneration.

Can such ownership exist in perpetuity? Can copyright be transferred electronically or must the transfer occur in writing?

Copyrights may only be assigned for the legal duration of the rights. Ownership of the entries may be assigned in perpetuity.

According to Luxembourg law on copyright, a copyright assignment must be formalized in written to be valid. Besides, the burden of proof of the assignment lies on the assignor.

Copyrights may be transferred electronically provided that the participant has expressed its consent to the assignment before its participation to the game. To that end, it is advisable to include, in the game's Official Rules, a provision regarding intellectual property, and to make the participation to the game subject to a box to tick «*I have read the Official Rules and accept them*».

Is it generally permissible to require that a winner sign a liability and/or publicity release in order to receive a prize?

Yes.

Must the Official Rules and advertising materials (including website) be provided in the native language? Or must the Official Rules and website only be provided in the native language if the promotion is advertised/promoted in that language (e.g., if all advertising is in English, can the Official Rules and website only be in English)?

Luxembourg law does not explicitly determine in which language provisions concerning games rules have to be laid down. However, the participants need to be able to understand them. It is therefore advisable to translate the game rules into at least one of Luxembourg's official languages, i.e. French, German or Luxembourgish, for those clients who do not understand English in order to avoid later problems with their validity and opposability.

Are there restrictions on the use of personal information collected from entrants?

Regardless of the method used to collect the user data, the Luxembourg Personal Data Law applies to promotional games where:

1. the data controller is established on Luxembourg territory; or where
2. the data controller, although not established on Luxembourg territory or in any other Member State of the European Community, uses means of processing located on Luxembourg territory, with the exception of processing used only for the purposes of transit.

The application of the Luxembourg Personal Data Law has the following main consequences:

1. Notification of the processing of data with the Luxembourg personal data authority ("*Commission Nationale pour la Protection des Données*" – the "*CNPD*");
2. Obligation to provide the participants with certain information relating to the processing of their data and to their rights concerning their data.

If the chance-based game or skill-based contest is solely online and no promotion takes place in your country, is it subject to the laws of your country?

No, provided that Luxembourg consumers can indeed not participate to the game.

Are there key cases and/or regulatory decisions involving promotions of which a company should be aware?

No.

Are there any other important issues a company should consider or be aware of when structuring a chance-based game/skill-based contest that will be open to residents of your country?

The associated product messaging must comply with general Luxembourg regulations on advertising messages and especially must not be misleading or confusing for the consumers.

More specifically, if the organizer of the promotional game creates the impression that the consumer has won a prize, the prize is actually owed to the consumer.

Besides, regarding chance-based games only, Luxembourg law requires that the participation form to the game has to be different from the order form, and that the promotional material must not be confusing or misleading with respect to the number and the value of the prizes.

 MALAYSIA 

Are chance-based games (i.e., random draw promotions, instant win games) generally permissible?

No.

Are skill-based contests (i.e., essay contests, photo contests, user-generated content contests) generally permissible?

Yes.

Is any type of registration or filing required to offer a chance-based game and/or a skill-based contest? If so, what are the costs and deadlines associated with such registration or filing?

Yes. Approval to hold competitions for promotion purposes /lucky draws/sweepstakes in Malaysia is dealt with by the Betting Control Unit (BCU) within the Ministry Of Finance which provides that:

- The Official fees : US \$200.00
- Our Professional Fees to obtain approval: US \$2000.00
- The process usually takes 1 to 2 days but it may take longer if the officer is uncomfortable with any aspect of the application or requests for further information.
- The Minister of Finance may authorize the client to promote and organize gaming as specified in the license, for a period not exceeding 3 months. However, the Minister in his discretion may renew the license from time to time for periods of not more than 3 months.

No registration is required for skill-based games.

Are promotions (chance-based or skill-based) in which someone is required to purchase the product in order to enter permitted? If a purchase is required, must a non-purchase method of entry be offered?

No purchase is required.

Are there other forms of “consideration” which are prohibited in connection with entry into a chance-based game (e.g., posting a photo on Instagram, tweeting a response to a call-to-action, completion of a survey, taking a quiz and be required to answer questions correctly to be entered, watching a short video)?

For contest that is based purely on chance such as prize draws/ sweepstakes. In Malaysia, only contests that are a mix of chance and skill or skill only are allowed. Thus, for contest that is based purely on chance, a skill testing question must be given to the potential winner prior to awarding the prize.

Are promotions in which the winner(s) are determined in whole or in part by public voting permitted?

No.

If a chance-based game or skill-based contest is open to residents of several countries, must the random draw/winner determination process occur in your country or can it be conducted in another country? If the selection process must occur in your country, is there an exception for promotions taking place solely online?

It can be conducted in another country.

As an aside, given that the organizer/sponsor is not Malaysian and is not present in Malaysia, court proceedings may be held in a competent court abroad as Malaysian law does not provide for a jurisdictional clause.

If a chance-based game or skill-based contest is open to residents of several countries, is it permissible to combine all entries from all countries to determine the winners for a single prize pool or must there be a separate prize pool for residents of your country?

It is advisable that a separate prize pool for Malaysia as this is to avoid any misleading to the Malaysian entrants.

Are there any restrictions on the type, nature or value of the prizes (e.g., travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

The suggested retail value of each prize is recommended in Malaysian Currency; Ringgit Malaysia (RM) to avoid any misleading to the Malaysian Entrants.

Is there a tax liability associated with prizes? If yes, who is responsible for the taxes, winner or sponsor? Are there any other costs or fees, such as duties and customs fees, imposed on prize awards?

Yes. The winner is responsible for the taxes. The Official Rules should express that taxes payable imposed by customs upon importation of prizes will be paid by the entrant at the receiving end.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (i.e., in any and all media, now or hereafter devised, worldwide in perpetuity)? Can such ownership exist in perpetuity? Can copyright be transferred electronically or must the transfer occur in writing?

Yes, it is generally permissible for the sponsor to own the submitted entries. Such ownership can be in perpetuity. Malaysian legislation recognizes electronic transactions which are governed by Malaysian Contract Law and the Malaysian Communications and Multimedia Act and Content Code which aims to facilitate both domestic and international dealings, transactions, agreements, contracts and exchanges and storage of information through the utilization of electronic, optical and similar medium, mode, instrumentality and technology to recognize the authenticity and reliability of electronic documents related to such activities and to promote the universal use of electronic transactions in both the government and general public.

The Acts and Code shall apply to any kind of data message and electronic document used in context of commercial and non-commercial activities to include domestic and international dealings, even online contest forms made for promotional purposes.

Is it generally permissible to require that a winner sign a liability and/or publicity release in order to receive a prize?

Yes.

Must the Official Rules and advertising materials (including website) be provided in the native language? Or must the Official Rules and website only be provided in the native language if the promotion is advertised/promoted in that language (e.g., if all advertising is in English, can the Official Rules and website only be in English)?

Yes.

Are there restrictions on the use of personal information collected from entrants?

Yes.

If the chance-based game or skill-based contest is solely online and no promotion takes place in your country, is it subject to the laws of your country?

Yes.

Are there key cases and/or regulatory decisions involving promotions of which a company should be aware?

With regard to release of liability, under the Malaysian civil law, liabilities or damages resulting from intentional misconduct or gross negligence cannot be avoided by a liability release clause. Therefore, the Official Rules shall be subject to the scrutiny of the court on whether it is unfair or unreasonable in relation to the exclusion of liability and causation of such injury or loss.

Malaysia does not allow for contracts to exclude liability of physical injury and / or death. Such clauses will be deemed void and unenforceable should there be injuries or death arising out of the Sponsor's own negligence. Therefore, liabilities of the Sponsor will be measured based on the objective test (i.e. based on

the reasonableness test).

Are there any other important issues a company should consider or be aware of when structuring a chance-based game/skill-based contest that will be open to residents of your country?

The Official Rules and ad copy for the promotion must fully disclose who is eligible to participate in the promotion (e.g. the age of majority in Malaysia is 18).

MALTA

Are chance-based games (i.e., random draw promotions, instant win games) generally permissible?

Yes, subject to obtaining a licence from the Malta Gaming Authority. When these are associated with remote gaming sites and/or lotteries, a different licence is required.

Are skill-based contests (i.e., essay contests, photo contests, user-generated content contests) generally permissible?

Yes.

Is any type of registration or filing required to offer a chance-based game and/or a skill-based contest? If so, what are the costs and deadlines associated with such registration or filing?

Yes, a licence regarding Broadcasting Media Games is required from the Malta Gaming Authority has to be applied for prior to the implementation of any promotion/competition.

Are promotions (chance-based or skill-based) in which someone is required to purchase the product in order to enter permitted? If a purchase is required, must a non-purchase method of entry be offered?

This is subject to the discretion of the Malta Gaming Authority when issuing a licence for the particular game

Are there other forms of “consideration” which are prohibited in connection with entry into a chance-based game (e.g., posting a photo on Instagram, tweeting a response to a call-to-action, completion of a survey, taking a quiz and be required to answer questions correctly to be entered, watching a short video)?

No.

Are promotions in which the winner(s) are determined in whole or in part by public voting permitted?

Yes.

If a chance-based game or skill-based contest is open to residents of several countries, must the random draw/winner determination process occur in your country or can it be conducted in another country? If the selection process must occur in your country, is there an exception for promotions taking place solely online?

Subject to Discretion of Malta Gaming Authority when issuing the licence.

If a chance-based game or skill-based contest is open to residents of several countries, is it permissible to combine all entries from all countries to determine the winners for a single prize pool or must there be a separate prize pool for residents of your country?

This is not regulated. In the absence of an express prohibition, it is permissible to combine all entries from all countries to determine the winners for a single prize pool.

Are there any restrictions on the type, nature or value of the prizes (e.g., travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

Prizes cannot include cash, cheques or the equivalent (prizes in money are prohibited). The aggregate retail value of any prizes cannot exceed fifty-eight thousand and two hundred and thirty-four euro and thirty-three cents

Is there a tax liability associated with prizes? If yes, who is responsible for the taxes, winner or sponsor? Are there any other costs or fees, such as duties and customs fees, imposed on prize awards?

Any tax liability related to the prize has to be communicated to participants when the prize is offered (such as taxes related to airline tickets). Capital gains issues do not. There is no obligation for the sponsor to pay any tax liabilities that are not purely its own.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (i.e., in any and all media, now or hereafter devised, worldwide in perpetuity)? Can such ownership exist in perpetuity? Can copyright be transferred electronically or must the transfer occur in writing?

Copyright can be transferred upon participation by means of general terms of entry (which must be brought to the attention of the participant) or by means of a release form.

Is it generally permissible to require that a winner sign a liability and/or publicity release in order to receive a prize?

Yes.

Must the Official Rules and advertising materials (including website) be provided in the native language? Or must the Official Rules and website only be provided in the native language if the promotion is advertised/promoted in that language (e.g., if all advertising is in English, can the Official Rules and website only be in English)?

There are no language restrictions but virtually all local promotions are held in Maltese and English.

Are there restrictions on the use of personal information collected from entrants?

Yes, data protection rules apply and data may only be used for the purpose for which it was collected.

If the chance-based game or skill-based contest is solely online and no promotion takes place in your country, is it subject to the laws of your country?

Yes, if it is operated by a local company, aimed at locals and/or operated by a business with local presence it will be subject to the laws of Malta. If the competition is operated by a local Remote Gaming entity, the Remote Gaming Regulations will apply.

Are there key cases and/or regulatory decisions involving promotions of which a company should be aware?

No recent case law.

Are there any other important issues a company should consider or be aware of when structuring a chance-based game/skill-based contest that will be open to residents of your country?

If the promotion in any way resembles gambling or remote gaming, sector specific legislation will apply.

MEXICO

Are chance-based games (i.e., random draw promotions, instant win games) generally permissible?

Yes, the Federal Law on Games and Raffles and its Regulations allows raffles.

“Raffle” is defined as an activity in which the possessor of a ticket, through the prior selection of a number, a combination of numbers or of any other symbol, obtains the right to participate, either for free or by way of payment, in a proceeding that was previously stipulated and approved by the Secretary of Governance, in conformity with which a number, combination of numbers, a symbol or symbols are randomly determined, which generates one or a number of winners of a prize.

The law allows the following types of raffles:

- **Raffle with the aim of commercial promotion:** A form of raffle whose aim is only to incentivize or promote a product, service, commercial activity or particular business and in which the holder of the raffle offers the possibility of participating in the raffle without basing participation on payment or the acquiring of another product or service. The tickets or vouchers granted under this form must contain the legend “free ticket not conditioned on purchase.”
- **Raffle with the sale of tickets:** A form of raffle in which the contestant, through the payment of a determined quantity of money, acquires a ticket that serves as proof of participation in the raffle.
- **Instant raffle:** Form of raffle in which tickets are offered with hidden numbers of symbols and which, once acquired, allow the possessor to know immediately the result of the raffle by only drawing, scratching or unveiling the ticket or part of the ticket. The winner of this class of raffle, also known as “Scratch Offs” or “Instant Raffles,” claims the prizes obtained through a proceeding previously stipulated and printed on the ticket or voucher.
- **Raffle without the sale of tickets:** Form of raffle in which one freely becomes a participant from only having acquired a good, from having contracted a service or from receiving without consideration a ticket or proof of participation.
- **Raffle of numbers or symbols through machines:** Activity in which the participant, through any kind of appliance or device, by random choice, makes a bet, through the insertion of a bill, coin, token or any electronic means of payment or similar object, with the aim of obtaining a prize.

Finally, commercial contest programs which are transmitted or promoted through radio or television, in which at some point in their development random chance intervenes directly or indirectly, may only be conducted with the authorization and supervision of the Secretary of Governance.

Are skill-based contests (i.e., essay contests, photo contests, user-generated content contests) generally permissible?

Yes, in Mexico, the performance of skill-based contests is allowed

Is any type of registration or filing required to offer a chance-based game and/or a skill-based contest? If so, what are the costs and deadlines associated with such registration or filing?

Yes, for raffles, it is necessary to first obtain permission from the Secretary of Governance. As soon as the application and all required documents are presented, the Secretary of Governance will take between two or three weeks to grant permission. Permission is necessary to promote and conduct the raffle.

The government fee is a percentage of the value of the prizes and varies depending on the amount. Additionally, one must present a security that guarantees the total amount of the prizes. The security will be cancelled as soon as it is demonstrated to the authority that the prizes were duly delivered to the winners. Moreover, one must present notice to the Federal Consumer Protection Office, informing it of the performance of the contest at least three days before the promotion begins. This notice is free.

For the performance of a skill-based contest, it is necessary to present the mentioned notice before the Federal Consumer Protection Office.

Are promotions (chance-based or skill-based) in which someone is required to purchase the product in order to enter permitted? If a purchase is required, must a non-purchase method of entry be offered?

Yes, this type of promotion is allowed, and it is not necessary to offer a non-purchase entry method.

Are there other forms of “consideration” which are prohibited in connection with entry into a chance-based game (e.g., posting a photo on Instagram, tweeting a response to a call-to-action, completion of a survey, taking a quiz and be required to answer questions correctly to be entered, watching a short video)?

There are no forms of special consideration, which are prohibited in connection with entry into a chance-based game. Nevertheless, in order to ensure raffles are authorized, it is necessary that Official Rules of the raffle are appropriate to the type of raffle permitted under the law, and that they comply with the established requirements for each type of raffle.

Are promotions in which the winner(s) are determined in whole or in part by public voting permitted?

Yes, this type of promotion is allowed.

If a chance-based game or skill-based contest is open to residents of several countries, must the random draw/winner determination process occur in your country or can it be conducted in another country? If the selection process must occur in your country, is there an exception for promotions taking place solely online?

Raffles will only be authorized for Mexican persons that are domiciled in Mexico. At the same time, raffles will only be authorized if they are performed in Mexico, taking into account that a random draw and the delivery of the prizes must take place in Mexico, and that in some cases, depending on the amount of the prizes, it is necessary that these actions are performed before a functionary of the Secretary of Governance. In this way, the authority does not authorize raffles open to residents of other countries, regardless of whether they are online.

With respect to skill-based contests, there are no restrictions as to whether they are open to residents of other countries or as to the place in which the selection of winners takes place.

If a chance-based game or skill-based contest is open to residents of several countries, is it permissible to combine all entries from all countries to determine the winners for a single prize pool or must there be a separate prize pool for residents of your country?

For skill-based contests, all of the entries from varying countries may be combined to determine the winners for a single prize pool, in Mexico or another country.

For chance-based games, one cannot do so in conformity with Mexican law in light of the fact that permission for such raffles is granted only for their performance in Mexican territory and open to residents of Mexico. The authority would not authorize an open raffle for residents of other countries.

Nevertheless, if in another country the participation of varying nations is allowed, it would be possible to permit the participation of Mexican residents and to conduct the raffle in the other country, provided that it is clear that the law applicable to the raffle is the law of the country(ies) which permits it.

Are there any restrictions on the type, nature or value of the prizes (e.g., travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

There are no special restrictions respecting the type, nature or value of the prizes. The Federal Law of Games and Raffles only indicates that the prizes can be in cash or in kind. At the same time, it indicates that the prizes that are to be delivered must include taxes, fees and delivery costs.

Is there a tax liability associated with prizes? If yes, who is responsible for the taxes, winner or sponsor? Are there any other costs or fees, such as duties and customs fees, imposed on prize awards?

The sponsor is responsible for retaining and paying taxes that are generated by the prize.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (i.e., in any and all media, now or hereafter devised, worldwide in perpetuity)? Can such ownership exist in perpetuity? Can copyright be transferred electronically or must the transfer occur in writing?

It is possible for the sponsor to own the entries submitted, but there are many restrictions.

Federal Copyright Law in Mexico grants to authors two types of rights: moral rights and economic rights.

Moral rights are considered tied to the author, and are inalienable, indefeasible, not renounceable and unencumbered. This corresponds to the exercise of moral rights, to the proper creator of the work and his heirs.

The owners of moral rights are always able to:

- Determine if their work will be disseminated and in what form, or whether it will not be seen;
- Require the recognition of their authorship with respect to the work created by them and whether once disposed of it should be considered anonymous or under a pseudonym;
- Require with respect to the work the opposition to whatever deformation, mutilation or other modification of it, as well as against every action or attack upon the same which tarnishes it or prejudice to the reputation of the authors;
- Modify their work;
- Retire their work from commerce; and
- Oppose their attribution to a work that is not of their creation.

On the contrary, it is understood that authors who contribute works for their use in public advertisements or propaganda have authorized the omission of authorial credit during the use or exploitation of the same, without this implying the renouncement of moral rights.

For its part, the economic rights consist of the right to exclusively exploit their works, or to authority others to exploit them, in whatever form, under the limits established by the law. The owner of the property right is the author, heir or the party, which has acquired ownership. Property rights will be active during the life of the author and, as of his death, 100 years more or 100 years once divulged.

In conformity with Mexican law, the transmission of economic rights must be done in writing and cannot be for perpetuity. Nevertheless, the sponsor may chose, as the applicable law for intellectual property issues, other than Mexican law, which will cover the copyrights derived from a contest or raffle.

Is it generally permissible to require that a winner sign a liability and/or publicity release in order to receive a prize?

Yes, it is permissible. There do not exist any such restrictions.

Must the Official Rules and advertising materials (including website) be provided in the native language? Or must the Official Rules and website only be provided in the native language if the promotion is advertised/promoted in that language (e.g., if all advertising is in English, can the Official Rules and website only be in English)?

If the contest or raffle conducted in Mexico conforms to Mexican laws, it is obligatory that the Official Rules, as well as the publicity, be in the Spanish language. They can also be listed in other languages.

Are there restrictions on the use of personal information collected from entrants?

There are not any special restrictions on the use of personal information. All that is required is to include a privacy statement, which states, at least, the following information:

- Name and address of the business responsible for the handling of personal information;
- The purpose of the handling;
- The personal information that will be gathered and treated;
- If the personal information will be transmitted to other businesses or abroad it must be indicated, as well as the aims of the transfer;
- Measures and proceedings that the responsible party has implemented so that the owners may exercise their rights to access, rectification, cancellation or opposition;
- The measures through which the responsible party will communicate to the owners the changes of the privacy statement.

If the chance-based game or skill-based contest is solely online and no promotion takes place in your country, is it subject to the laws of your country?

If the sponsor is located in Mexico and the chance-based game or skill-based contest is directed to Mexican residents, it would be subject to Mexican laws, independent of whether it is online.

If the chance-based game or skill-based game takes place in several countries, and in the terms and conditions it is clear that the applicable law is a foreign law, Mexican law will not apply.

Are there key cases and/or regulatory decisions involving promotions of which a company should be aware?

There are no relevant decisions in this area.

Are there any other important issues a company should consider or be aware of when structuring a chance-based game/skill-based contest that will be open to residents of your country?

The sponsors of a raffle or contest must provide at least the following information to consumers:

- Name and address of the sponsor;
- The good or service that is the object of the promotion;
- The timespan and limit of the promotion;
- The geographic coverage;
- Restrictions for the consumer with respect to the maximum quantity of the sale;
- The number of the permission granted by the Secretary of Governance in the case of raffles;
- The number of tickets issues;
- The total number of prizes;
- The conditions or mechanisms for participating;
- The means of communication and the date when the results will be known and the prizes will be delivered;
- The period for collecting the prizes;
- The place and time for collecting the prizes;
- The telephone number for information or clarifications.

NETHERLANDS

Are chance-based games (i.e., random draw promotions, instant win games) generally permissible?

Yes.

Are skill-based contests (i.e., essay contests, photo contests, user-generated content contests) generally permissible?

Yes.

Is any type of registration or filing required to offer a chance-based game and/or a skill-based contest? If so, what are the costs and deadlines associated with such registration or filing?

No. The Dutch Betting and Gaming Act requires a permit to organize chance-based games, but in case of *promotional* games of chance a permit is not required (as long as the rules from the Code of Conduct for Promotional Games of Chance are followed).

Are promotions (chance-based or skill-based) in which someone is required to purchase the product in order to enter permitted? If a purchase is required, must a non-purchase method of entry be offered?

Yes. A non-purchase method of entry is not required.

Are there other forms of “consideration” which are prohibited in connection with entry into a chance-based game (e.g., posting a photo on Instagram, tweeting a response to a call-to-action, completion of a survey, taking a quiz and be required to answer questions correctly to be entered, watching a short video)?

No. However, it is possible that the medium which is used to communicate the chance-based game (for instance Facebook) prohibits specific forms of consideration.

Are promotions in which the winner(s) are determined in whole or in part by public voting permitted?

Yes.

If a chance-based game or skill-based contest is open to residents of several countries, must the random draw/winner determination process occur in your country or can it be conducted in another country? If the selection process must occur in your country, is there an exception for promotions taking place solely online?

The random draw/winner determination process may occur in a another country.

If a chance-based game or skill-based contest is open to residents of several countries, is it permissible to combine all entries from all countries to determine the winners for a single prize pool or must there be a separate prize pool for residents of your country?

It is permissible, provided that it is clear from the general (gaming) conditions that the game is not organized only in the Netherlands, but also in other countries and that the winner will be determined out of all entries of the countries combined. The participant should be made aware of the fact that there might be no winner from the Netherlands at all and should be able to assess his (or her) chances of winning.

Are there any restrictions on the type, nature or value of the prizes (e.g., travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

The maximum combined monetary value of the prizes in a promotional game of chance is EUR 100,000. Skill-based contests do not have a maximum prize value.

The Dutch Code of Conduct for Promotional Games of Chance states that prizes should comply with the generally accepted standards of good taste, common decency and respectability. Awarding certain products as a prize is prohibited, for instance alcohol, drugs or weapons.

With respect to promotional games of chance aimed at minors, the Code of Conduct also states that the prizes offered must be suitable for minors and should not be the cause of any moral, mental or physical damage. Account should be taken of the capacity to understand and the expectations of minors in relation

to the prizes offered.

Is there a tax liability associated with prizes? If yes, who is responsible for the taxes, winner or sponsor? Are there any other costs or fees, such as duties and customs fees, imposed on prize awards?

There is tax liability for prizes worth EUR 450 and over won in chance-based games and skill-based contests. Prizes with a value up to EUR 449 are exempt from taxes. The tax rate is 29% of the total value of the prize. In general, the winner of a prize is responsible for the taxes. In practice the organizer pays the taxes for the winner in the vast majority of cases.

There is a tax exemption to prevent double taxes for the winner of a prize who already pays taxes for the prize in a foreign country.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (i.e., in any and all media, now or hereafter devised, worldwide in perpetuity)? Can such ownership exist in perpetuity? Can copyright be transferred electronically or must the transfer occur in writing?

Owning the rights or obtaining a broad grant of rights is permissible, provided it is not unreasonably onerous. Copyrights can only be transferred by deed of transfer (whether in writing or electronically). An electronic transfer must contain a digital signature. Ownership can exist in perpetuity, subject to the existence of the underlying rights. Copyright protection is limited to 70 years after the death of the author. Moral rights remain with the author.

Is it generally permissible to require that a winner sign a liability and/or publicity release in order to receive a prize?

This is permissible as long as it is not unreasonably onerous and clearly stated in the general (gaming) conditions.

Must the Official Rules and advertising materials (including website) be provided in the native language? Or must the Official Rules and website only be provided in the native language if the promotion is advertised/promoted in that language (e.g., if all advertising is in English, can the Official Rules and website only be in English)?

There are no specific rules regarding the language of the Official Rules and advertising materials. In general, Official Rules and advertising materials need to be clear and may not be misleading. If the promotion is advertised/promoted in Dutch, it is recommendable (but not legally required) to provide a Dutch version of the Official Rules and website. If all advertising is in English, and people understand the advertisement enough to know how to participate, it could be argued that participants can also understand the English version of the Official Rules and website.

Are there restrictions on the use of personal information collected from entrants?

According to the Dutch Personal Data Protection Act (“Dutch DPA”), personal information always needs to be collected for a specific purpose. The collected data must be relevant, adequate and may not be excessive, regarding the purpose it is collected for. Use of this personal information is only allowed as long as it used for the purpose it was collected for and is not saved longer than needed for this specific purpose. The Dutch DPA requires a legal basis for the collection and use of personal data. Regarding chance-based games and skill-based contests, only the legal basis of ‘consent’ of the entrant is an option. In other words, the entrant must consent to the use of his personal data for the purposes of the game of chance/skill-based contest. The Dutch Personal Data Protection Act states that consent needs to be given specifically and unambiguously. Consent for the use of personal data from minors that have not yet reached the age of 16 years can only be obtained from their legal representative.

The Code of Conduct for Promotional Games of Chance contains additional rules regarding the collection of personal information collected from minors (individuals under the age of 18). The sponsor/supplier of a promotional game of chance may not gather any personal details of minors, nor permit these to be gathered, without verifiable permission from a parent of the minor, unless that is necessary to request the

minor to provide contact details of his/her parent for the purpose of gaining permission for distributing prizes or premiums.

If the chance-based game or skill-based contest is solely online and no promotion takes place in your country, is it subject to the laws of your country?

Dutch tax law applies when the sponsor/supplier is established in the Netherlands and/or when the winner is a resident of the Netherlands.

The Dutch Betting and Gambling Act and the related Code of Conduct apply to chance-based games and skill-based contests organized by a Dutch sponsor/supplier, or, in case of a foreign sponsor/supplier, when the chance-based game or skill-based contest is specifically aimed at entrants in the Netherlands.

Are there key cases and/or regulatory decisions involving promotions of which a company should be aware?

No.

Are there any other important issues a company should consider or be aware of when structuring a chance-based game/skill-based contest that will be open to residents of your country?

It is only allowed to organize a promotional game of chance when the Dutch Code of Conduct for Promotional Games of Chance is respected. Non-compliance with this Code of Conduct makes the promotional game of chance a forbidden game of chance according to the Dutch Betting and Gambling Act. The Code of Conduct differentiates between two types of promotional games of chance. First the 'small promotional games of chance' with a maximum total prize value of EUR 4,500 and second the 'big promotional games of chance', with a maximum prize value between EUR 4,500 and EUR 100,000. Big promotional games of chance may only be organized once per year per product, service or organization, and require general gaming conditions. Small promotional games of chance do not require general gaming conditions, it is however advisory to still adopt them.

Designation of the winner(s) of prizes amongst the participants must take place in an impartial manner.

The general gaming conditions must be made available to participants and potential participants free of charge and they must be made easily available for viewing. During a promotional game of chance, the general gaming conditions may not be changed to the detriment of the entrant.

It is important that the monetary value of the prizes needs to be clearly communicated.

The announcement of the winner must happen within three months after the end of the promotional game of chance and prizes that winners are entitled to need to be actually awarded.

The advertising for the promotional game of chance should always contain information on the sponsor/supplier of the promotional game of chance, and must not incite immoderate participation.

It is obligatory to adopt a complaints procedure and make an address or telephone number publicly available that can be used for submitting complaints.

NEW ZEALAND

Are chance-based games (i.e., random draw promotions, instant win games) generally permissible?

Yes, chance-based games are generally permissible in New Zealand. However, depending on the structure of the game or promotion, it may be subject to compliance with the Gambling Act 2003 ("Gambling Act").

The Gambling Act prohibits "gambling", unless permitted by it. "Gambling" is defined as "paying or staking consideration directly or indirectly on the outcome of something; seeking to win money when the outcome depends wholly or partly on chance". The term "consideration" in the context of gambling can be read wider than simply monetary consideration. Money is defined as including "money's worth", whether or not convertible into money. If a game was considered "gambling", the Gambling Act provides for different classes of allowable gambling and different requirements relating to those classes. In summary, the Gambling Act provides for the following classes:

- Class 1 – this relates to the form of gambling where the prize or turnover is not greater than \$500. All proceeds of such gambling must be applied to the winners.
- Class 2 – this class relates to gambling that has prizes with a total value of between \$500 and \$5,000. The potential turnover of the gambling cannot exceed \$25,000. No licence is required for this class of gambling however, it must be conducted by societies (associations established and conducted for non-commercial purposes).
- Class 3 – this relates to gambling where the prizes exceed \$5,000. A licence must be obtained for Class 3 gambling.
- Class 4 – this class generally relates to gambling that utilizes gaming machines. A licence must be obtained for Class 4 gambling.

The Gambling Act also provides for certain requirements in respect of particular activities which fall within the definition of gambling including "sales promotion schemes" as further detailed below.

Are skill-based contests (i.e., essay contests, photo contests, user-generated content contests) generally permissible?

Yes, skill-based contests are generally permissible in New Zealand.

Is any type of registration or filing required to offer a chance-based game and/or a skill-based contest? If so, what are the costs and deadlines associated with such registration or filing?

Subject to the game not being considered "gambling", there are no registration or filing requirements in relation to chance-based or skill-based contests. If the game is considered "gambling" and falls within Class 3 or 4 gambling, a licence is required. Licence fees vary depending on type of "gambling" and the total value of the prize. Licences must be applied for before the promotion is undertaken.

Are promotions (chance-based or skill-based) in which someone is required to purchase the product in order to enter permitted? If a purchase is required, must a non-purchase method of entry be offered?

Promotions in which someone is required to purchase something in order to enter are permissible in New Zealand, subject to complying with the requirements of the Gambling Act in relation to sales promotion schemes (as further described below)

If a contest is considered a "sales promotion scheme" as defined in the Gambling Act it will be an authorized form of gambling and may be offered in New Zealand. A "sales promotion scheme" is defined as gambling that does not involve a gaming machine... used by a creator, distributor, or vendor of goods or services to promote the sale of those goods or services if (a) participation in the gambling requires a person to purchase the goods or services promoted for a price not exceeding the usual retail price; (b) the date or period on or over which the outcome of the gambling will be determined is clear to the participant at the time and place of sale; (c) the person is not required to pay direct or indirect consideration other than to purchase the goods or services; and (d) the outcome is determined: (i) randomly or wholly by chance; or (ii) partly by chance (where the chance plays the greater or lesser part) and partly by the application of some knowledge or skill.

Note that generally the payment of true costs associated with submitting an entry via post or

telecommunication is not considered as 'consideration' for the entry into a sales promotion scheme, provided that cost is charged at the 'standard rate' calculated and charged by a third party service provider (for example, a telecommunications provider) who is not associated with the promotor of the competition.

Are there other forms of "consideration" which are prohibited in connection with entry into a chance-based game (e.g., posting a photo on Instagram, tweeting a response to a call-to-action, completion of a survey, taking a quiz and be required to answer questions correctly to be entered, watching a short video)?

The Gambling Act does not prohibit specific forms of consideration, where the consideration is not monetary it will be decided as a case by case basis whether the act required to enter a promotion is considered "consideration" for the purposes of the Gambling Act.

Are promotions in which the winner(s) are determined in whole or in part by public voting permitted?

Subject to compliance with the Gambling Act, a winner can be determined by public voting.

If a chance-based game or skill-based contest is open to residents of several countries, must the random draw/winner determination process occur in your country or can it be conducted in another country? If the selection process must occur in your country, is there an exception for promotions taking place solely online?

No, it can occur in a different country.

If a chance-based game or skill-based contest is open to residents of several countries, is it permissible to combine all entries from all countries to determine the winners for a single prize pool or must there be a separate prize pool for residents of your country?

All entries can be combined into a single prize pool.

Are there any restrictions on the type, nature or value of the prizes (e.g., travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

If the game is considered a form of gambling, then there are restrictions on the amount of cash/value of prizes which can be given depending on the class of gambling. For instance where gambling is considered to fall within the meaning of class 2 the value of prizes must be greater than \$500 but must not exceed \$5,000.

There are also restrictions on the certain types of prizes offered for any type of "gambling". In New Zealand it is illegal to award the following prizes:

- A firearm, explosive (including ammunition), restricted weapon, or air gun
- Alcohol
- Tobacco Products
- An object more than 50 years old that relates to Maori culture, history or society, and was manufactured, modified, used or brought into New Zealand by Maori
- Vouchers or entitlements to commercial sexual services
- Vouchers or entitlements to any of the other property listed above.

Is there a tax liability associated with prizes? If yes, who is responsible for the taxes, winner or sponsor? Are there any other costs or fees, such as duties and customs fees, imposed on prize awards?

Generally speaking there will not be any tax liability for prizes won from chance based games. In New Zealand a game of chance includes games "the outcome of which depends wholly or partly on chance". One possible exception to this is if, in a chance based game, the winner's primary form of income is gambling (i.e. a professional poker player) and in those circumstances the obligation will fall on the winner to pay the relevant taxes. In respect of prizes at skill based sporting events and competitions where prize money is in excess of \$500 the winner is responsible for deducting the applicable tax.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (i.e., in any and all media, now or hereafter devised, worldwide in perpetuity)? Can such ownership exist in perpetuity? Can copyright be transferred electronically or must the transfer occur in writing?

Yes, it is generally permissible for a sponsor to obtain broad rights in entries submitted, provided that this is clearly specified in the promotion's terms.

The ownership of copyright in New Zealand does not last in perpetuity. There are limits to length of time a copyright can be protected under the Copyright Act 1994. Depending on the type of applicable work, protection generally ranges from 25-50 years. The assignment of copyright must occur in writing and be signed by or on behalf of the assignor. An exclusive license must be in writing and signed by or on behalf of the copyright owner. However, there are certain circumstances where a copyright license can be implied by conduct or course of dealing.

Is it generally permissible to require that a winner sign a liability and/or publicity release in order to receive a prize?

It is generally permissible to require a winner to sign a liability/publicity release in order to receive a prize, provided that this is clearly specified in the promotion's terms.

Must the Official Rules and advertising materials (including website) be provided in the native language? Or must the Official Rules and website only be provided in the native language if the promotion is advertised/promoted in that language (e.g., if all advertising is in English, can the Official Rules and website only be in English)?

The Official Rules must be in the same language in which the promotion is advertised.

Are there restrictions on the use of personal information collected from entrants?

Personal information must only be used for the purpose for which it was collected (such purpose must be made clear to participants) and only be held for the time required for the use that it was collected for. Persons must be given the ability to access, review and correct any personal information held about them.

If the chance-based game or skill-based contest is solely online and no promotion takes place in your country, is it subject to the laws of your country?

A game which is available solely online and for which no promotion is undertaken in New Zealand will not be subject to New Zealand law.

Are there key cases and/or regulatory decisions involving promotions of which a company should be aware?

TV Works Limited v Department of Internal Affairs – TV Works published an advertisement promoting the Asia Pacific Poker Tour. TV Works was charged and convicted under the Gambling Act 2003 of advertising a gambling operator based overseas in New Zealand. The argument was raised that poker was not a game of chance and therefore did not fall within the meaning of the legislation. It was, however, held by the Court that poker was a game which depended wholly or partly on chance. The suggestion that this would mean that the outcome of a yachting race or golfing tournament (where an entry fee was required) would also fall under the gambling legislation was rejected. The Court held in those circumstances that the decisive feature likely to determine the outcome of the event was skill rather than chance.

Commerce Commission v TMG Asia Pacific Pty Ltd – involved a “text and win” trivia promotion conducted through texts and TV advertising in New Zealand. In that case the Judge found that the effect of the representations in “text and win” promotions meant that a number of the consumers were not sufficiently informed of the terms and conditions of the promotion they were entering into. Many of the customers did not realize that they would be charged for each message they received and would continue to be until such time as they sent a text message with the word “stop”. The defendant accepted that the information provided was not prominent enough in the promotions and that this meant that consumers did not understand the nature of the service and costs included. Accordingly the Court found that the promotions had been misleading.

Are there any other important issues a company should consider or be aware of when structuring a chance-based game/skill-based contest that will be open to residents of your country?

One of the main considerations in undertaking a chance based promotion is how the "consideration" to enter the promotion will be structured. If this will be a form of monetary consideration (or akin to monetary consideration) or require the purchase of a product, the provisions of the Gambling Act will need to be considered.



NICARAGUA

Are chance-based games (i.e., random draw promotions, instant win games) generally permissible?

Yes, in Nicaragua chance-based games (i.e., random draw promotions, instant win games) are generally permissible, provided that the same are offered by casinos or gambling houses duly authorized by the relevant authority (Ministry of Finance and Public Credit), in accordance with the provisions of Law No. 776, "Special Law for the Control and Regulation of Casinos and Gambling Halls" and its Regulations, Decree No. 46-2011.

In the case of commercial promotions in Nicaragua, these are covered by the Law of Protection to Consumers and Users (Law No. 842) and its Regulations, Decree No. 36-2013.

The following forms of promotion are recognized, among others:

1. To additionally promote another good or service to a price lower than the regular price in the commerce or in the same commercial establishment; or for free.
2. To offer goods with content additional to the usual product presentation, for free or to a price lower than the regular price.
3. To offer two or more goods or services for a same price.
4. To offer goods or services with the incentive of participating in draws, raffles, contests, and others of the same nature.

To stimulate the consumer through figures or legends printed on boxes or packaging of products or included therein, different to those they regularly bear, whether they are collectable or not.

Are skill-based contests (i.e., essay contests, photo contests, user-generated content contests) generally permissible?

Skill-based contests are not regulated by the Law; however, they do exist in practice and are regulated by the rules issued by the sponsor, which must not be contrary to law or moral values.

Is any type of registration or filing required to offer a chance-based game and/or a skill-based contest? If so, what are the costs and deadlines associated with such registration or filing?

In Nicaragua, the term "chance-based game" is limited to those establishments offering slot machines or table games or other gambling games established in a Games Catalog that may only be operated by casinos or gambling houses duly authorized.

In the case of commercial promotions detailed in our answer to question 1, these will have to comply with the requirements established in the Law of Protection to Consumers and Users (Law No. 842) and its Regulations, Decree No. 36-2013. The approval process involves the following requirements and costs:

1. Preparation of the rules for the promotion with the data provided by the client. Although there are no official fees involved, there would be professional fees - involved in reviewing the information and subsequent preparation/correction of the rules - amounting to approximately 2-3 hours of legal work.
2. Submission and approval of the rules before the office of protection of the consumer. Although there are no official fees involved, there would be professional fees - involved in preparing the application and giving follow-up to the same before the governmental entity - amounting to approximately 2-3 hours of legal work.
3. Additionally, the Notary Public must certify the whole process of the promotion; consequently, there would be additional professional fees involved (approximately 1-2 hours of legal work).

Are promotions (chance-based or skill-based) in which someone is required to purchase the product in order to enter permitted? If a purchase is required, must a non-purchase method of entry be offered?

Yes, they are permitted. The sponsor establishes the conditions of participation in the rules or bases of the promotion that are published for this end.

Are there other forms of “consideration” which are prohibited in connection with entry into a chance-based game (e.g., posting a photo on Instagram, tweeting a response to a call-to-action, completion of a survey, taking a quiz and be required to answer questions correctly to be entered, watching a short video)?

There are no restrictions for conditions of participation provided that they are not contrary to law or moral values.

Are promotions in which the winner(s) are determined in whole or in part by public voting permitted?

There is no regulation on this matter. In this case, the terms and conditions of the promotion establish how to select the winner(s).

If a chance-based game or skill-based contest is open to residents of several countries, must the random draw/winner determination process occur in your country or can it be conducted in another country? If the selection process must occur in your country, is there an exception for promotions taking place solely online?

There are no special regulations on these type of promotions, and it would only be required that they are not contrary to law or moral values. Therefore, the random draw/winner determination process needs not to occur in your country.

If a chance-based game or skill-based contest is open to residents of several countries, is it permissible to combine all entries from all countries to determine the winners for a single prize pool or must there be a separate prize pool for residents of your country?

There is no regulation on this matter, and it would only be required that they are not contrary to law or moral values. Usually the terms and conditions of the promotion establish the format of the promotion and how to select the winner(s).

Are there any restrictions on the type, nature or value of the prizes (e.g., travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

No.

Is there a tax liability associated with prizes? If yes, who is responsible for the taxes, winner or sponsor? Are there any other costs or fees, such as duties and customs fees, imposed on prize awards?

For local promotions run by local registered companies, all prizes in cash higher than C\$50,000 (fifty thousand Córdoba) are subject to the Tax on Income (IR, for its acronym in Spanish), which is retained by the sponsor and paid to the Nicaraguan Tax Authorities (DGI – Dirección General de Ingresos) in the same fiscal year of the promotion. The sponsor must be duly registered and authorized by the DGI.

Additionally, the Tax Plan of the Municipality of Managua, Decree No. 10-91, establishes that all local entities that repeatedly or sporadically carry out raffles, promotions, or draws will pay a Municipal Tax of 5% on the nominal value of all the tickets issued or the total value of the prizes. This tax only applies in the Capital city of Managua and when the prize is delivered in cash. An example of the above-cited scenarios takes place when the local distributor of a multi-national corporation is in charge of conducting the promotion on behalf of the latter.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (i.e., in any and all media, now or hereafter devised, worldwide in perpetuity)? Can such ownership exist in perpetuity? Can copyright be transferred electronically or must the transfer occur in writing?

No. The transfer should occur in writing.

Is it generally permissible to require that a winner sign a liability and/or publicity release in order to receive a prize?

Yes, it is permitted as long as the physical person (the winner) voluntarily and expressly provides their consent.

Must the Official Rules and advertising materials (including website) be provided in the native language? Or must the Official Rules and website only be provided in the native language if the promotion is advertised/promoted in that language (e.g., if all advertising is in English, can the Official Rules and website only be in English)?

All information and/or publicity intended for commercial promotions carried out in the Nicaraguan territory must be displayed in Spanish language in accordance with the provisions of the Law of Protection to Consumers and Users (Law No. 842) and its Regulations, Decree No. 36-2013.

Are there restrictions on the use of personal information collected from entrants?

In accordance with the provisions of the Law of Protection of Personal Data (Law No. 787), any information that reveals economic and financial data of a person is catalogued as Sensitive Personal Data, and its access, reproduction, or transmission is prohibited without the consent of the proprietor of said data.

In view of this, all information that reveals economic and financial data of a person is confidential, and it may be obtained and used by the data administrators only with the proprietor's consent.

If the chance-based game or skill-based contest is solely online and no promotion takes place in your country, is it subject to the laws of your country?

There is no special regulation for the control of chance-based games or skill-based contests that take place out of Nicaraguan territory or without any advertising promotion made through local media.

Are there key cases and/or regulatory decisions involving promotions of which a company should be aware?

No.

Are there any other important issues a company should consider or be aware of when structuring a chance-based game/skill-based contest that will be open to residents of your country?

In case the promotion consists of raffles, contests, exchange, or any other form that necessarily requires rules (bases of the promotion), said rules must be published through any communication media accessible to the consumer or user, clearly indicating the terms and conditions of the promotion.

 NORWAY 

Are chance-based games (i.e., random draw promotions, instant win games) generally permissible?

Yes

Are skill-based contests (i.e., essay contests, photo contests, user-generated content contests) generally permissible?

Yes

Is any type of registration or filing required to offer a chance-based game and/or a skill-based contest? If so, what are the costs and deadlines associated with such registration or filing?

No, not required.

Are promotions (chance-based or skill-based) in which someone is required to purchase the product in order to enter permitted? If a purchase is required, must a non-purchase method of entry be offered?

The Norwegian Marketing Control Act Section 18 did originally prohibit the use of competitions to which entry was "conditional upon purchase or a service in return". However, this requirement is now removed. This means that competitions may be used in marketing either with or without a competition element.

But please note the Norwegian Lottery Act which states that an activity in which participants may for a stake acquire a prize as a result of a draw, guesswork, or other procedure which wholly or in part produces a random outcome is considered "Lottery", and furthermore that lottery may only be held for the benefit of a humanitarian or socially beneficial aim. Whether this applies must be assessed.

Are there other forms of "consideration" which are prohibited in connection with entry into a chance-based game (e.g., posting a photo on Instagram, tweeting a response to a call-to-action, completion of a survey, taking a quiz and be required to answer questions correctly to be entered, watching a short video)?

No, but please note the general requirement in the Norwegian Marketing Control Act section 18 (see below under the last question).

Competition which is based on referral of friends in social media is a type of marketing that the Norwegian Consumer Ombudsman (NCO) watches closely. This type of marketing may be a violation of the Marketing Control Act section 6, which prohibits "unfair commercial practices". Whether a "refer-a friend"- competition should be considered "unfair commercial practices" must be assessed on a case to case-basis. The Norwegian Market Council has especially emphasized the problem with this kind of marketing when the trader encourage the consumer to refer their friends by giving away rewards. Decisions from the Market council and NCO consider refer-a friend marketing as legal when the option to refer the marketing to a friend merely is made possible to the consumer, and is not accompanied by any offers or possible rewards to encourage it.

Are promotions in which the winner(s) are determined in whole or in part by public voting permitted?

Yes

If a chance-based game or skill-based contest is open to residents of several countries, must the random draw/winner determination process occur in your country or can it be conducted in another country? If the selection process must occur in your country, is there an exception for promotions taking place solely online?

Yes, the determination process may be conducted in another country.

If a chance-based game or skill-based contest is open to residents of several countries, is it permissible to combine all entries from all countries to determine the winners for a single prize pool or must there be a separate prize pool for residents of your country?

Yes, it is permissible with a single prize pool for all countries.

Are there any restrictions on the type, nature or value of the prizes (e.g., travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

There are certain goods that cannot be awarded; e.g. living animals, tobacco, alcohol, etc.

Is there a tax liability associated with prizes? If yes, who is responsible for the taxes, winner or sponsor? Are there any other costs or fees, such as duties and customs fees, imposed on prize awards?

There can be a tax liability associated with prizes, depending on the value of the prize and the type of contest. If so, the winner is responsible for the taxes, and should be made aware of this.

Whether there are any other costs or fees depends on the type of goods awarded. I.e. if a car is the prize there are annual motor vehicle tax.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (i.e., in any and all media, now or hereafter devised, worldwide in perpetuity)? Can such ownership exist in perpetuity? Can copyright be transferred electronically or must the transfer occur in writing?

This is permissible. Express consent is required. A check box that is not pre-ticked is sufficient. There should also be a system in place for saving the consents as the duty to document that the participants have expressly consented to transferring the rights lies with you. Please note that it follows from the Norwegian Copyright Act that authors as a main rule may not waive the "Droit Moral" (or moral rights) to any works.

Is it generally permissible to require that a winner sign a liability and/or publicity release in order to receive a prize?

Yes, if this is clearly communicated in the rules of the contest.

Must the Official Rules and advertising materials (including website) be provided in the native language? Or must the Official Rules and website only be provided in the native language if the promotion is advertised/promoted in that language (e.g., if all advertising is in English, can the Official Rules and website only be in English)?

The rules don't have to be translated into Norwegian, unless the contest is directed towards children. If the contest is directed at children the rules should be translated.

Are there restrictions on the use of personal information collected from entrants?

Yes. The main rule is that all use of personal data requires specific consent, including use for other purposes.

If the chance-based game or skill-based contest is solely online and no promotion takes place in your country, is it subject to the laws of your country?

Yes

Are there key cases and/or regulatory decisions involving promotions of which a company should be aware?

No.

Are there any other important issues a company should consider or be aware of when structuring a chance-based game/skill-based contest that will be open to residents of your country?

In general one must be aware of the Norwegian Marketing Control Act section 18 which states:

"Traders who in marketing offer consumers an additional advantage or an opportunity to secure such an advantage, for example in the form of discounts, gifts, participation in competitions or games, shall ensure that the terms and conditions for making use of the offer are clear and easily accessible to the consumers."

This applies to all the answers above; it is important that the terms and conditions are clear and easily accessible.

When a contest is directed towards children this assessment is even stricter due to special regulations in the Marketing control Act relating to marketing directed towards children. The requirement to have terms and conditions that are easily accessible for children implies that they should be translated into Norwegian.

Furthermore the Marketing Control Act section 6 prohibits unfair commercial practices. Whether a contest constitutes unfair commercial practice is a specific assessment that must be done on a case to case basis.

As mentioned above one must also be aware of the Lottery Act, when stakes are involved.

PANAMA

Are chance-based games (i.e., random draw promotions, instant win games) generally permissible?

Yes, we confirm that chance-based games are generally permissible in Panama and are regulated by Law No. 2 of February 1998 and Resolution No. 59 of July 1999.

Are skill-based contests (i.e., essay contests, photo contests, user-generated content contests) generally permissible?

Yes, skill-based contests are generally permissible in Panama.

Is any type of registration or filing required to offer a chance-based game and/or a skill-based contest? If so, what are the costs and deadlines associated with such registration or filing?

Only chance-based games require prior registration and approval from Panama's Gaming Board ("*Junta de Control de Juegos*"). On the other hand, skill-based contests do not require registration or filing with any governmental authority.

Chance-based games are required to be approved by the Gaming Board prior to the initiation of any marketing or implementation of the game. The approval process usually takes about two weeks.

Are promotions (chance-based or skill-based) in which someone is required to purchase the product in order to enter permitted? If a purchase is required, must a non-purchase method of entry be offered?

Yes, these types of promotions are permitted. However, the law does not contemplate the purchase of a product as a requirement and it is up to the contest organizers or sponsors to include this as a requirement to participate.

Are there other forms of "consideration" which are prohibited in connection with entry into a chance-based game (e.g., posting a photo on Instagram, tweeting a response to a call-to-action, completion of a survey, taking a quiz and be required to answer questions correctly to be entered, watching a short video)?

No, there are no specific forms. It is common practice to ask for a form of consideration in order to participate in chance-based games.

Are promotions in which the winner(s) are determined in whole or in part by public voting permitted?

Yes, these promotions would typically qualify as skill-based games and would not require registration or filing with the Gaming Board.

If a chance-based game or skill-based contest is open to residents of several countries, must the random draw/winner determination process occur in your country or can it be conducted in another country? If the selection process must occur in your country, is there an exception for promotions taking place solely online?

No, the process may take place outside of Panama. However, a Panamanian public notary and a representative from the Gaming Board must certify the drawing of the winner(s). The law does not contemplate if such presence must be physical (i.e. in person) or whether it can be through electronic means (e.g. video conference or similar).

If a chance-based game or skill-based contest is open to residents of several countries, is it permissible to combine all entries from all countries to determine the winners for a single prize pool or must there be a separate prize pool for residents of your country?

Yes, it is permissible to combine all entries from all countries to determine the winners for a single prize pool. It is not a requirement to have a separate prize pool per country or specifically for residents of Panama.

Are there any restrictions on the type, nature or value of the prizes (e.g., travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

No, in Panama there are no restrictions on the type, nature or value of the prizes awarded in a chance-based game / skill-based contest.

Is there a tax liability associated with prizes? If yes, who is responsible for the taxes, winner or sponsor? Are there any other costs or fees, such as duties and customs fees, imposed on prize awards?

No. However, it is important to note that registration fees charged by the Gaming Board for the approval process will vary according to the value of the prize to be awarded.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (i.e., in any and all media, now or hereafter devised, worldwide in perpetuity)? Can such ownership exist in perpetuity? Can copyright be transferred electronically or must the transfer occur in writing?

The matter is not specifically regulated. General Intellectual Property laws would apply and confirm that a Copyright must be transferred in writing to have effects in Panama.

Is it generally permissible to require that a winner sign a liability and/or publicity release in order to receive a prize?

This matter is not specifically regulated in Panama. However, it is common practice to require that the winner sign a liability and/or publicity release in order to receive a prize. However, unless such condition has been properly disclosed in advance to the Gaming Board as a requirement to win the prize, it is likely that resistance from the winner to sign the documents would not prevent such winner from receiving the prize.

Must the Official Rules and advertising materials (including website) be provided in the native language? Or must the Official Rules and website only be provided in the native language if the promotion is advertised/promoted in that language (e.g., if all advertising is in English, can the Official Rules and website only be in English)?

The Official Rules and advertising materials must be provided in the native language of Panama (Spanish).

Are there restrictions on the use of personal information collected from entrants?

As of today, the matter is not expressly regulated in Panama. Notwithstanding the foregoing, a consent duly signed by the entrants would constitute an authorization to use such personal information in the manner and for the purposes provided in such consent.

If the chance-based game or skill-based contest is solely online and no promotion takes place in your country, is it subject to the laws of your country?

Online promotions are not expressly regulated in Panama. Notwithstanding the foregoing, as a general rule, online games made available to Panamanian citizens or residents living in Panama would be subject to the laws of Panama.

Are there key cases and/or regulatory decisions involving promotions of which a company should be aware?

No.

Are there any other important issues a company should consider or be aware of when structuring a chance-based game/skill-based contest that will be open to residents of your country?

Yes, it is important for all companies to obtain clearance of the local laws in Panama before structuring a chance-based game / skill-based contest open to residents of Panama, in order to comply with the local legislation.

PARAGUAY

Are chance-based games (i.e., random draw promotions, instant win games) generally permissible?

Yes, they are permitted.

Are skill-based contests (i.e., essay contests, photo contests, user-generated content contests) generally permissible?

Yes, they are permitted.

Is any type of registration or filing required to offer a chance-based game and/or a skill-based contest? If so, what are the costs and deadlines associated with such registration or filing?

The operation of a chance-based game and/or skill-based contest is regulated by Law No. 1016/97 and the Executive Decree No. 6.206/99. The CONAJZAR (Comisión Nacional de Juegos de Azar, in English "National Commission of Chance-Based Games") is the entity in charge of enforcing the Law; it supervises and controls natural and legal persons who exploit chance-based games and/or skill-based contest. The Official Rules of chance-based games must be registered with the CONAJZAR. It is required to pay 5% of the total prize value as a legal fee.

Are promotions (chance-based or skill-based) in which someone is required to purchase the product in order to enter permitted? If a purchase is required, must a non-purchase method of entry be offered?

Yes, they are permitted. It is not necessary to provide an alternative method of participation.

Are there other forms of "consideration" which are prohibited in connection with entry into a chance-based game (e.g., posting a photo on Instagram, tweeting a response to a call-to-action, completion of a survey, taking a quiz and be required to answer questions correctly to be entered, watching a short video)?

No, they are not regulated.

Are promotions in which the winner(s) are determined in whole or in part by public voting permitted?

Yes, they are permitted.

If a chance-based game or skill-based contest is open to residents of several countries, must the random draw/winner determination process occur in your country or can it be conducted in another country? If the selection process must occur in your country, is there an exception for promotions taking place solely online?

They can be conducted in another country. Online games or promotions are not regulated.

If a chance-based game or skill-based contest is open to residents of several countries, is it permissible to combine all entries from all countries to determine the winners for a single prize pool or must there be a separate prize pool for residents of your country?

Yes, it is permissible to combine all entries from all countries. It is not necessary to have a separate prize pool for residents of Paraguay. However, if the prizes drawn consist of movable property they shall be deposited or installed in places where the public can view them.

Are there any restrictions on the type, nature or value of the prizes (e.g., travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

No, there are not.

Is there a tax liability associated with prizes? If yes, who is responsible for the taxes, winner or sponsor? Are there any other costs or fees, such as duties and customs fees, imposed on prize awards?

Yes, there is a tax liability associated with prizes. The sponsor is responsible for the taxes, costs, duties, customs fees, public deeds expenses or of any costs associated with the prize. The winner must receive the prize without any liability.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (i.e., in any and all media, now or hereafter devised, worldwide in perpetuity)? Can such ownership exist in perpetuity? Can copyright be transferred electronically or must the transfer occur in writing?

Yes, is it generally permissible for the sponsor to own the entries submitted. However, usually it is not permissible for the sponsor to own the entries submitted in perpetuity. Copyright can be transferred in writing by public deed.

Is it generally permissible to require that a winner sign a liability and/or publicity release in order to receive a prize?

It could be permissible, given that it is not regulated by law.

Must the Official Rules and advertising materials (including website) be provided in the native language? Or must the Official Rules and website only be provided in the native language if the promotion is advertised/promoted in that language (e.g., if all advertising is in English, can the Official Rules and website only be in English)?

Both Official Rules and broadcast material must be provided in the official language.

Are there restrictions on the use of personal information collected from entrants?

Yes, there are, such as the restrictions on the right of privacy enshrined in the Constitution and its subsequent regulation in the Civil Code and other laws.

If the chance-based game or skill-based contest is solely online and no promotion takes place in your country, is it subject to the laws of your country?

No, it is not.

Are there key cases and/or regulatory decisions involving promotions of which a company should be aware?

The resolutions issued by the CONAJZAR may eventually regulate the matter.

Are there any other important issues a company should consider or be aware of when structuring a chance-based game/skill-based contest that will be open to residents of your country?

Neither Law No. 1015/97 nor Resolution No. 62 refers to chance-based games on the Internet. All chance-based games/skill-based contests in Paraguay operate only under license granted by CONAJZAR. The license is obtained exclusively through competitive bidding for a five year period from the date of the contract, except as otherwise provided by law.

PERU

Are chance-based games (i.e., random draw promotions, instant win games) generally permissible?

Yes, chance-based games such as random draw, promotions and instant win games are generally permissible.

Are skill-based contests (i.e., essay contests, photo contests, user-generated content contests) generally permissible?

Yes, skill-based contests are generally permissible.

Is any type of registration or filing required to offer a chance-based game and/or a skill-based contest? If so, what are the costs and deadlines associated with such registration or filing?

By Legislative Decree N° 1246 passed on November 10th, 2016, the prior authorization from the National Bureau of Internal Affairs (ONAGI) to run promotions (chance or skill based) was eliminated.

Thus, since the publication of the legal disposition above mentioned, a sponsor can run promotions (chance based game or skill based contest), sweepstakes, draw, sale-exchange, exchange for no valuable consideration, or contests with no prior authorization.

Are promotions (chance-based or skill-based) in which someone is required to purchase the product in order to enter permitted? If a purchase is required, must a non-purchase method of entry be offered?

Promotions in which someone is required to purchase a product to enter are not prohibited. It is not necessary to offer a non-purchase method of entry.

Are there other forms of “consideration” which are prohibited in connection with entry into a chance-based game (e.g., posting a photo on Instagram, tweeting a response to a call-to-action, completion of a survey, taking a quiz and be required to answer questions correctly to be entered, watching a short video)?

There are no other forms of “consideration” prohibited in connection with entry into a chance-based game.

Are promotions in which the winner(s) are determined in whole or in part by public voting permitted?

Yes, promotions in which the winners are determined in whole or in part by public voting are permitted.

If a chance-based game or skill-based contest is open to residents of several countries, must the random draw/winner determination process occur in your country or can it be conducted in another country? If the selection process must occur in your country, is there an exception for promotions taking place solely online?

If a chance-based game or skill-based contest is open to residents of several countries, the random draw/winner determination process can be conducted in another country.

If a chance-based game or skill-based contest is open to residents of several countries, is it permissible to combine all entries from all countries to determine the winners for a single prize pool or must there be a separate prize pool for residents of your country?

If a chance-based game or skill-based contest is open to residents of several countries, is it permissible to combine all entries from all countries to determine the winners for a single prize pool

Are there any restrictions on the type, nature or value of the prizes (e.g., travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

There are no restrictions on the type, nature or value of the prizes offered in promotions. Cash prize is permitted.

It is strongly recommended to award prizes within the term of ninety calendar days counted as from the day following the date the winners were notified. In case of perishable goods, the term is of thirty calendar days.

If the prize consists of tickets and accommodation, it is strongly recommended that the period of validity shall be of one year; and in case of coupons, the period of validity of such prize shall be of six months

Is there a tax liability associated with prizes? If yes, who is responsible for the taxes, winner or sponsor? Are there any other costs or fees, such as duties and customs fees, imposed on prize awards?

In principle, prizes granted as per random draw promotions, instant win games and any other kind of commercial promotions are not levied with special taxes (i.e. taxes on prizes). In that respect, neither the sponsor nor the winner are liable for taxes as consequence of the granting of prizes, unless they consist in goods, as explained below.

When prizes consist in goods, their value can be subject to payment of custom duties (if they are imported by the sponsor, who will therefore be liable for the payment of these duties, which range between 0% and 9% of the import value) and to VAT (18%).

It is recommendable to carry out the draw before a Public Notary so he can give public faith of the results and because the value of prizes may be tax deductible for sponsors located in Peru.

The sponsor must assume all taxes, costs or other payment.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (i.e., in any and all media, now or hereafter devised, worldwide in perpetuity)? Can such ownership exist in perpetuity? Can copyright be transferred electronically or must the transfer occur in writing?

For skill based contests, it is generally permitted for the sponsor to obtain a broad grant of rights over the entries submitted. The Copyright Law, approved by Legislative Decree N° 822, affords protection to the proprietary and moral rights of the author of any given work. The author can transfer proprietary rights to a third party (sponsor) on an exclusive, unlimited and worldwide basis, for up to seventy years counted as from the date the author passed away.

Copyright can be transferred electronically.

Is it generally permissible to require that a winner sign a liability and/or publicity release in order to receive a prize?

Yes, it is generally permissible to require that a winner sign a liability and/or publicity release in order to receive a prize.

Must the Official Rules and advertising materials (including website) be provided in the native language? Or must the Official Rules and website only be provided in the native language if the promotion is advertised/promoted in that language (e.g., if all advertising is in English, can the Official Rules and website only be in English)?

It is not legally mandatory that the Official Rules and advertising materials be provided in the native language (Spanish).

The advertising materials and rules of a promotion in which Peruvian residents may participate must be clear and exact, according to the Advertising and Consumer Protection local regulations.

The National Institute for the Defense of Competition and Protection of Intellectual Property (INDECOPI) is the Peruvian administrative agency responsible of the fulfillment of the Consumer Protection and Advertising regulations and it may impose fines sponsors in case of infringements of such dispositions.

If the advertising materials or Official Rules of the promotion applicable for Peruvian residents are not in the native language (therefore, not clear and exact), in theory, INDECOPI may initiate a proceeding against the

sponsor, even though it is not legally incorporated in the country. Nevertheless, the probabilities for this to occur are reduced. If the contest or game is open to residents of several countries and the sponsor is not located in Peru and the advertising is solely online, it could be acceptable that the Official Rules and advertising material are in English.

If the sponsor is located in the National territory and the contest or game is open to Peruvian residents and/or residents of several countries, we strongly recommend that the Official Rules and advertising shall be available in Spanish language.

Are there restrictions on the use of personal information collected from entrants?

The personal data collected from entrants must be used only for the purposes requested. Otherwise, the sponsor needs to obtain an express authorization from the entrants, according to Personal Data regulation.

If the chance-based game or skill-based contest is solely online and no promotion takes place in your country, is it subject to the laws of your country?

If the online game or contest is open to Peruvian residents, it may be subject to the local laws. The National INDECOPI may initiate a proceeding against the sponsor, even though it is not legally incorporated in the country. The probabilities for this to occur are low.

Are there any other important issues a company should consider or be aware of when structuring a chance-based game/skill-based contest that will be open to residents of your country?

Our recommendation is that chance-based game and skill-based contest must not be inconsistent with generally accepted moral standards and good principles and should not put on risk the physical integrity of the participants and respect their Constitutional rights. The Official Rules and advertising material are binding for the sponsor and participants so we recommend to request legal advice for their review.

 POLAND 

Are chance-based games (i.e., random draw promotions, instant win games) generally permissible?

Yes, chance-based games are generally permissible. They are, however, recognized as a form of gambling and are subject to a very strict regime under the Polish Act on Gambling of 19 November 2009.

Are skill-based contests (i.e., essay contests, photo contests, user-generated content contests) generally permissible?

Yes, skill-based contests are generally permissible. They are more popular than chance-based games on Polish market, because they are not heavily regulated.

Is any type of registration or filing required to offer a chance-based game and/or a skill-based contest? If so, what are the costs and deadlines associated with such registration or filing?

1. Chance-based games are heavily regulated in Poland. Under the Act on Gambling, the category of 'games of chance' includes various games, *i.e.* number games, bingo, card games, dice games and different kinds of lotteries: cash lotteries (covered by a government monopoly), raffle lotteries (with entire profit donated to social causes), promotional lotteries and audiotex lotteries.

For promotional purpose, mainly promotional lotteries and audiotex lotteries are employed. Therefore, for the purpose of this chapter, when mentioning to the 'chance-based games' or 'games of chance', we will refer only to these two types of games. In *promotional lotteries* a participant purchases goods, services or obtains another proof of participation and thus enters into a lottery without additional cost. The organizer may offer cash or material prizes. In *audiotex lotteries* a participant makes a paid phone call or sends a text message via a public telecommunications network. An organizer may offer cash or material prizes.

In case of both types of lotteries, the organizer should obtain a permit issued by Polish customs authorities and official approval of the game's Official Rules. The organizer must also secure supervision over the lottery by a person who holds a professional certificate issued by the Ministry of Finance. The official fee for the issuance of the permit in case of promotional lotteries and audiotex lotteries amounts to 10% of the value of the prizes, but in any case no less than app. EUR 500 (the sum varies each year since it is based on averages salaries in Poland). Additionally, the organizer bears costs of a bank guarantee, in the amount equal to the total value of prizes, which must be enclosed to the application for a permit. The permit is generally issued within 2 months, provided that the application and all enclosed documents are in order.

There are no exemptions from this regime, even for very small lotteries with negligent prize value or for lotteries organized privately or only for internal purposes of the organizer. For instance, according to the interpretation of the authorities, a lottery organized by an employer during an internal social event open only to employees is also subject to all formal requirements, indicated above.

2. Skill-based contests are relatively easy to organize. They do not require a registration or filing with the authorities. Organizer should prepare the Official Rules of the contest meeting the requirements set forth for business-to-consumer contracts under the Polish Civil Code and specific consumer protection legislation (for instance, Unfair Competition Law and Unfair Commercial Practices Law).

Are promotions (chance-based or skill-based) in which someone is required to purchase the product in order to enter permitted? If a purchase is required, must a non-purchase method of entry be offered?

Under Polish law, the organizer may require the participant to purchase the product in order to enter a chance-based or skill-based promotion. There is no obligation to provide a non-purchase method of entry.

Are there other forms of "consideration" which are prohibited in connection with entry into a chance-based game (e.g., posting a photo on Instagram, tweeting a response to a call-to-action, completion of a survey, taking a quiz and be required to answer questions correctly to be entered, watching a short video)?

Various modes of entry are permissible, although choosing one of them may determine the character of the game and, consequently, the legal regime which will apply. For instance, entering a chance-based game by sending a text message will determine such game as an audiotex lottery, which is slightly more difficult to

organize than a promotional lottery.

There is another major limitation introduced by the Act on Gambling: the games of chance cannot be organized in the Internet (with the exception of betting, under certain conditions). According to the prevailing interpretation of the customs authorities, this does not exclude the possibility to collect entries to a promotional lottery through electronic communication channels: social media, web form, e-mail, as long as all the other activities within the game are not carried out online (in particular, random draw of winners). Nevertheless, the issue of online entry may be assessed differently by local customs authorities during the authorization proceedings in particular case.

Are promotions in which the winner(s) are determined in whole or in part by public voting permitted?

Yes, such promotions are permitted. Since the winner is not chosen randomly but by way of a public voting, on the basis of the quality of the submitted entry, they are considered skill-based contests.

If a chance-based game or skill-based contest is open to residents of several countries, must the random draw/winner determination process occur in your country or can it be conducted in another country? If the selection process must occur in your country, is there an exception for promotions taking place solely online?

There are no such restrictions for skill-based contests. Organizers may choose to conduct the winner determination in another country, but this should be clearly stated in the contest's Official Rules.

For chance-based games, it is more problematic. According to the customs authorities, multinational chance-based games cannot be organized in Poland. The Polish part of a lottery should be separated in order to cover only the Polish territory and all the activities connected with this lottery, including random draw, should take place in Poland.

From the Polish law perspective, it is not possible to lawfully organize a chance-based game which takes place solely online. Please note that it is also illegal for the Polish residents to participate remotely from Polish territory (for instance, via the internet) in games conducted abroad and not conforming to the Act on Gambling. Participating in such contests could result in penal fiscal liability of the game entrant.

If a chance-based game or skill-based contest is open to residents of several countries, is it permissible to combine all entries from all countries to determine the winners for a single prize pool or must there be a separate prize pool for residents of your country?

As mentioned in the response to the previous question, the Polish part of the lottery must be separated and authorized as a standalone game. The authorities are extremely unlikely to grant authorization for a game taking place in several countries, combining the entries in one single pool. Therefore, the prizes for Poland should be separate.

Are there any restrictions on the type, nature or value of the prizes (e.g., travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

There are no restrictions on the nature of prizes offered in skill-based contests or promotional/audiotex lotteries. Both cash and material prizes may be awarded. There may be some limitations stemming from the specific provisions of law, for instance regulating marketing of certain types of products (alcohol, pharmaceuticals etc.). Additionally, the value of a particular prize in the chance-based game cannot be lower than the price of participation.

Is there a tax liability associated with prizes? If yes, who is responsible for the taxes, winner or sponsor? Are there any other costs or fees, such as duties and customs fees, imposed on prize awards?

In principle, prizes are subject to 10% flat income tax. Tax is due from winners, however, sponsors act as tax remitters obliged to calculate, collect and pay tax to authorities. Thus, in case of non-pecuniary prizes it is a common practice to increase them by an additional cash prize which is used to settle tax. Prize winners conducting business activity may be liable to pay tax by themselves (standard rates apply: a flat 19%,

or a progressive tax 18-32% rate) – the practice in this regard (whether to apply a 10% tax or standard rates) is not uniform yet.

There are some exemptions for winners applicable:

- For prizes won in promotional lotteries and audiotex lotteries – if the prize does not exceed PLN 2,280;
- For skill-based contests organized by media (it is disputable if also *via* Internet) or in case of contests related to science, culture, art, journalism and sport – if the prize does not exceed PLN 760;
- In general for all types of prizes related to advertisement and promotion of sponsors – if the prize does not exceed PLN 200.

Additionally, please note that revenues of the audiotex lottery organizer are subject to 25% tax on games. In turn, organizing a promotional lottery is excluded from such taxation.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (i.e., in any and all media, now or hereafter devised, worldwide in perpetuity)? Can such ownership exist in perpetuity? Can copyright be transferred electronically or must the transfer occur in writing?

Polish regulation of skill-based contests provides for a possibility to acquire copyrights to the winning entry automatically. In case when the promoter wishes to acquire also the rights to other submitted entries, it must be specifically stipulated in the contest's Official Rules.

Transfer of copyrights requires a written form (otherwise being invalid) and, generally, cannot occur electronically. Therefore, in order to acquire copyrights to all submitted entries, the promoter should execute a written agreement with every entrant. Since signing a written agreement is usually not possible, the promoter may choose to acquire a non-exclusive license, which does not require written form. Such license may be granted in electronic form, for instance when submitting the entry to the contest and accepting the Official Rules. Polish copyright law limits a possibility to grant a perpetual license – the license may be fixed for 5 years, but after this period, the licensor may usually terminate it. In order to secure licensee's rights for a longer period, the wording of the license must be drafted very specifically in view of Polish Copyright Law.

Is it generally permissible to require that a winner sign a liability and/or publicity release in order to receive a prize?

It is generally not possible to acquire an effective liability release from consumers in Poland (such practice would very likely be deemed infringing collective consumer interest).

There is no restriction on acquiring a publicity release, although the specific text of such release should be disclosed to entrants before they enter the promotion (for instance, a form may be provided as a schedule to the Official Rules).

Must the Official Rules and advertising materials (including website) be provided in the native language? Or must the Official Rules and website only be provided in the native language if the promotion is advertised/promoted in that language (e.g., if all advertising is in English, can the Official Rules and website only be in English)?

The Official Rules of any contest or chance-based game which are open to Polish residents should be provided to consumers in Polish. Since all the chance-based games organized in the territory of Poland must be authorized and have Official Rules reviewed by the customs authorities, there is no possibility to escape this obligation in case of the lotteries.

In case of skill-based contest organized by foreign entity, which is not advertised or promoted in Polish media, the possibility of effective enforcement by Polish authorities over such contest will be very limited and sanctions for drafting Official Rules in a foreign language are unlikely; nevertheless, it is strongly recommended to provide the Polish version of the Official Rules if the promotion is addressed to Polish

consumers.

Are there restrictions on the use of personal information collected from entrants?

Polish law does not specifically address the issue of personal information used in contests and games. General rules stipulated in the Act on Personal Data Protection apply. Since the personal data protection rules are harmonized in the EU, the restrictions should be similar as in other EU countries.

The organizer may process personal data as it is necessary for the performance of the agreement, but also for the organizer's legitimate purposes (such as marketing of its own products or services). If the data controller wants to process the data for other purposes, the consent of the entrant may be required.

There are also other obligations connected with personal data processing. In particular, the organizer (data controller) should provide certain information to the entrant: the identity of the controller, purpose of collecting personal data, potential data recipients, the existence of the right to access the data and rectify it and notification that making personal data available to the data controller is voluntary (if applicable). The data controller should officially register the database with Polish personal data authority or appoint a data protection officer. In case when processing of data is outsourced to third party service providers, the data controller should execute written data processing agreements with such providers. Transferring personal data to third countries (beyond EEA) is subject to additional restrictions.

If the chance-based game or skill-based contest is solely online and no promotion takes place in your country, is it subject to the laws of your country?

Polish Gambling Law should be applied to any chance-based games covering the Polish territory, including games taking place in the internet open to residents of Poland. As indicated above, organizing chance-based games solely online is not possible in Poland.

In practice, if the game is chance-based organized by an entity which has no direct presence in Poland, Polish authorities would have no legal means to enforce this rule, but, strictly speaking, any game open to residents of Poland is subject to laws of Poland.

Are there key cases and/or regulatory decisions involving promotions of which a company should be aware?

As mentioned above, the authorities deem any lottery involving entry via text message to be an audiotex lottery, and not a promotional lottery. Since the audiotex lotteries are subject to stricter legal regime (for instance, entrants must be aged above 18 so audiotex lotteries cannot be addressed to minors while promotional lotteries have no similar restriction; the profit of the promoter is covered by a tax on games which does not apply in promotional lotteries), this interpretation limits the popularity of text message used as a method of entry for games in Poland.

Are there any other important issues a company should consider or be aware of when structuring a chance-based game/skill-based contest that will be open to residents of your country?

We usually advise our clients to avoid the regime of the Act on Gambling and to organize a skill-based contest, if possible.

In any case, the Official Rules should be drafted in Polish and revised by local lawyers, since Polish consumer protection law is rather punishing when so-called abusive provisions are included in the text of business-to-consumer contracts. Including such abusive provision (a clause which shapes the rights and obligations of a consumer in a way contrary to good practices, grossly violating consumer's interests) may be considered as a practice infringing collective consumer interests by the Office of Competition and Consumer Protection and result in high fines up to 10% of organizer's yearly revenue. In practice the fines are lower, but the risk connected with the abusive contractual provisions is still considerable.



PORTUGUAL

Are chance-based games (i.e., random draw promotions, instant win games) generally permissible?

No. Portuguese law has a general prohibition on chance-based games (in which the hope to win is dependent on luck/chance or skill and luck/chance combined). There is, however, an exception, with regards to chance-based games which are authorized by the General Secretary of Ministry of Internal Affairs (MAI), under the terms and conditions allowed by law.

There are specific regulations regarding chance-based games, which is therefore subject to the rules established in Decree-Law no. 422/89, December 2nd, 1989 (last amended by Law 42/2016, , December 28th, 2016) on Gambling Law.

Are skill-based contests (i.e., essay contests, photo contests, user-generated content contests) generally permissible?

Yes. There are no specific regulations regarding skill-based contests.

Is any type of registration or filing required to offer a chance-based game and/or a skill-based contest? If so, what are the costs and deadlines associated with such registration or filing?

1. Chance-based games: Yes.

In order to promote chance-based games, the promoter has to request prior authorization from the competent local authority. This authorization is granted by MAI. In practical terms, an application must be filed by the promoter addressed to MAI and with the following documents:

- Terms and conditions of the draw;
- Identification card (collective entity/taxpayer card) of the promoter;
- Bank Guarantee or Insurance Bond in the amount of the net value of the total prizes to be granted;
- Income tax payment certificate; and
- Commercial registry certificate (to prove powers of the person signing the request on behalf of the company).

There is no time limit for an approval, however this is usually a swift procedure. Nevertheless, it is recommended that the request is filed, at least, 15 days prior to the commencement date of the contest or promotion.

Finally, this authorization procedure is subject to payment of an official fee in the amount of € 500,00

2. Skill-based contests: No.

In case of skill-based contest, no authorization or filling is required.

Are promotions (chance-based or skill-based) in which someone is required to purchase the product in order to enter permitted? If a purchase is required, must a non-purchase method of entry be offered?

Yes, requiring a purchase to enter is permitted provided that all details are disclosed in the Official Rules.

Please note that contests or promotions cannot create any expenses to the entrant other than the current courier or telecommunication expenses (with no value added), or expenses higher than the cost of the product or service that the entrant has to purchase to participate.

Are there other forms of “consideration” which are prohibited in connection with entry into a chance-based game (e.g., posting a photo on Instagram, tweeting a response to a call-to-action, completion of a survey, taking a quiz and be required to answer questions correctly to be entered, watching a short video)?

There are no specific regulations on entry requirements determined by law.

Are promotions in which the winner(s) are determined in whole or in part by public voting permitted?

1. Chance-based games: Yes.

Notwithstanding, if the drawing of the winner (or the selection of the participants in an intermediate stage of the game) is based on luck or on luck and skill combined, it must be observed by a representative of MAI or,

if it is executed by computer software, such software must be provided to MAI with the filling of the request for authorization for assessment.

2. Skill-based contests: Yes.

If a chance-based game or skill-based contest is open to residents of several countries, must the random draw/winner determination process occur in your country or can it be conducted in another country? If the selection process must occur in your country, is there an exception for promotions taking place solely online?

1. Chance-based games:

Random prize draws/winner determination must be limited to the Portuguese territory and under the jurisdiction of MAI. Therefore, winner determination processes must occur in Portugal under the supervision of an officer from the MAI at a specific pre-determined place and time.

If the games are performed by a foreign entity or via a website which is not under Portuguese jurisdiction, they will not be subject to Portuguese law.

2. Skill-based contests:

There are no limits regarding the winner determination process. So, it can be conducted in another country.

If a chance-based game or skill-based contest is open to residents of several countries, is it permissible to combine all entries from all countries to determine the winners for a single prize pool or must there be a separate prize pool for residents of your country?

1. Chance-based games:

According to our previous answer, there must be a separate prize pool for residents in Portugal to the extent that MAI has jurisdiction to authorize those types of games in Portugal.

2. Skill-based contests:

There are no regulations applicable to the winner determination process. In this regard, it is permissible to combine all entries from all countries to determine the winners for a single prize pool. However, we note that all details relative to such determination processes must be disclosed in the Official Rules.

Are there any restrictions on the type, nature or value of the prizes (e.g., travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

1. Chance-based games: Yes.

Prizes cannot be cash or substituted by cash. Only good or services with economic value can be awarded as a prize. There are also limitations on the types of prizes: they can neither be similar to traditional games of chance, namely poker, fruits, bells, roulette, dice, bingo, number lotteries or other lotteries, nor substitute the prizes by money or playing chips.

2. Skill-based contests:

No restrictions apply regarding the type, nature or value of the prizes. It is recommended that those elements are described in the Official Rules.

Is there a tax liability associated with prizes? If yes, who is responsible for the taxes, winner or sponsor? Are there any other costs or fees, such as duties and customs fees, imposed on prize awards?

Yes. Prizes to be delivered are subject to Stamp Duty at a 45% taxation 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 day of the month following the date in which the prize is granted. No other costs or fees are imposed on prize awards.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (i.e., in any and all media, now or hereafter devised, worldwide in perpetuity)? Can such ownership exist in perpetuity? Can copyright be transferred electronically or must the transfer occur in writing?

Yes. Promoters must reference who owns copyright in the entries. It is possible to allocate ownership of copyright in the entries within the Official Rules (work made under order).

Please note, however, that the transfer/assignment of copyright to third parties may be subject to certain requirements:

1. Partial and/or temporary assignment: Copyright contracts must be drafted in writing with the signatures of the parties to the contract being certified by a Notary.
With regards to temporary assignment of copyright the parties are entitled to establish the duration of the assignment. Notwithstanding, in the absence of that statement the assignment is executed for 25 years (general rule) or 10 years (specific cases).
2. Total or definitive assignment: Total and/or definitive assignment of copyright may only be executed in writing by means of a public deed.

Is it generally permissible to require that a winner sign a liability and/or publicity release in order to receive a prize?

Yes. Generally, liability and/or publicity release are established in the Official Rules of the games and/or contests.

Must the Official Rules and advertising materials (including website) be provided in the native language? Or must the Official Rules and website only be provided in the native language if the promotion is advertised/promoted in that language (e.g., if all advertising is in English, can the Official Rules and website only be in English)?

1. Chance-based games:

Yes, Official Rules and advertising materials must be available in Portuguese language in order to be analyzed and authorized by MAI (please see our responses above regarding MAI jurisdiction).

2. Skill-based contests:

There are no regulations regarding skill-based contests.

However, we recommend providing the Official Rules of the promotion in Portuguese, and also that all other advertising material be in Portuguese, not only to avoid any claims originated from the lack of understanding of its contents, but also in order to ensure their enforceability against Portuguese consumers and compliance with advertising law. This obligation arises not only from the general duty of information provided in the Portuguese Standard Contracts Law (Decree-Law 446/85 of October 25, amended by Decree-Law 249/ 99 of July 7) but also on the specific provisions of the Portuguese Advertising Code, according to which all advertising must be in Portuguese language, except if only addressed to foreigners or essential to obtain the desired effect of the communication.

Are there restrictions on the use of personal information collected from entrants?

Yes.

The Portuguese Data Protection Law (Law 67/98 of October 26th, 1998, which enacted Directive 95/46/EC) applies. In this regard, the processing and use of entrants' personal data is subject to their unambiguous consent. The processing of personal data revealing philosophical or political beliefs, political party or trade union membership, religion, privacy and racial or ethnic origin, and the processing of data concerning health or sex life, including genetic data is qualified as sensitive data and its processing is prohibited, with exception of specific cases authorized by Data Protection Authority (CNPD).

It is worth nothing that the data subject has the right (i) to object on request and free of charge, to the processing of personal data relating to him which the controller anticipates being processed for the purposes of direct marketing or any other form of research, or (ii) to be informed before personal data are disclosed for the first time to third parties for the purposes of direct marketing or for use on behalf of third parties, and to be expressly offered the right to object free of charge to such disclosure or uses.

If the promoter intends to use the data for direct marketing purposes, it should take the following into account:

1. Postal Mail: The consumer should be given the right to refuse to have the information provided processed (“opt-out”). If they do not opt-out, the controller is entitled to use the information for the purposes set out in the privacy statement.
2. Email: If it is intended to send marketing communication by e-mail, the explicit consent of the consumer to receive such a communication is required (“opt-in”). However, a marketer is allowed to market similar products to existing customers without their explicit consent, but they must be given the option to object to further marketing on each occasion without any costs (“opt-out”). This is not applicable to e-mail messages that are sent to corporate entities that, in order not to receive this kind of advertising, must oppose to receiving them (“opt-out”).
3. SMS: If it is intended to send marketing communication by SMS, the explicit consent of the consumer to receive such a communication is required (“opt-in”). However, a marketer is allowed to market similar products to existing customers without their explicit consent, but they must be given the option to object to further marketing on each occasion without any costs (“opt-out”).

Finally, the promoter must file a prior notification or authorization request, depending on the cases, with CNPD in order to process such data.

If the chance-based game or skill-based contest is solely online and no promotion takes place in your country, is it subject to the laws of your country?

No, Portuguese Law does not apply.

If the chance-based game are open to Portuguese participants but advertised and executed exclusively by means of a foreign website (any non-Portuguese country-code top-level domain, i.e. “.pt” or other Portuguese domains), then they will be outside the scope of jurisdiction of Portuguese authorities and, therefore, no administrative formalities or territorial limitations shall apply.

Are there key cases and/or regulatory decisions involving promotions of which a company should be aware?

No.

Are there any other important issues a company should consider or be aware of when structuring a chance-based game/skill-based contest that will be open to residents of your country?

One of the issues concerns the contractual age of majority to enter in a chance-based game / skill-based contest. Although Portuguese Civil law admits that minors above 16 and under 18 enter into certain agreements, contracts with minors may not always be upheld, and minors may not be bound by the terms and conditions of a contract to which they are a party. Therefore, it is necessary to seek the express consent of a parent/guardian when directing a prize promotion at minors.

In chance-based games, all promotional materials shall have the following reference “Promotion n.º [...] authorized by MAI of [...] on [...]. Prize may not be substituted by cash”.

■ PUERTO RICO ■

Are chance-based games (i.e., random draw promotions, instant win games) generally permissible?

Yes. In Puerto Rico, sweepstakes are regulated by the Sweepstakes Regulations, Regulation No. 7764 dated as of October 27, 2009 (the "Regulation"), as issued by the Department of Consumer Affairs (also known as "DACO" for its Spanish acronym). Rule 3 of the Regulation states that the application of the dispositions set forth in the Regulation "[a]pply to any person who advertises, makes, promotes, holds, organizes or otherwise entrusts the holding of sweepstakes to promote companies, institutions, products, goods, services or any other purposes of commercial gain."

Are skill-based contests (i.e., essay contests, photo contests, user-generated content contests) generally permissible?

Yes. Rule 3 of the Regulation states that the application of the dispositions set forth in the Regulation "[d]o not apply to activities limited to intellectual, or sports competitions or games where some kind of talent, skill capability, qualification or other special tribute is displayed which is the predominant determining element for the selection of the winner."

Is any type of registration or filing required to offer a chance-based game and/or a skill-based contest? If so, what are the costs and deadlines associated with such registration or filing?

The company holding the promotion/sweepstakes would need to register to do business in Puerto Rico (or hold the contest through an affiliate that is already registered in Puerto Rico). The registration with the Puerto Rico Department of State would subject the company to all of the Puerto Rico statutory filing requirements (for example, the Certificate of Authorization to Do Business in Puerto Rico, the Merchant Certificate before the Treasury Department, and the notification to the Treasury Department of the EIN of the Company) even if no actual taxes are payable to the Government of Puerto Rico.

Are promotions (chance-based or skill-based) in which someone is required to purchase the product in order to enter permitted? If a purchase is required, must a non-purchase method of entry be offered?

Regulation states that a statement must be included as part of the Official Rules indicating that no purchase is necessary to enter or participate in promotion. Promoters usually market a product, thus, depending on the promotion when a product is purchased one can participate, a non-purchase method is always required.

Are there other forms of "consideration" which are prohibited in connection with entry into a chance-based game (e.g., posting a photo on Instagram, tweeting a response to a call-to-action, completion of a survey, taking a quiz and be required to answer questions correctly to be entered, watching a short video)?

No.

Are promotions in which the winner(s) are determined in whole or in part by public voting permitted?

They are not prohibited. The Regulation does not apply, but provides guidance only, since winner is not selected by chance. Promotion/sweepstakes not subject to the Regulation, rather only by default, such Regulation can be used as a minimum basis for the rules.

If a chance-based game or skill-based contest is open to residents of several countries, must the random draw/winner determination process occur in your country or can it be conducted in another country? If the selection process must occur in your country, is there an exception for promotions taking place solely online?

Selection can be conducted in another country, and the promotion regulated according to the local applicable laws.

If a chance-based game or skill-based contest is open to residents of several countries, is it permissible to combine all entries from all countries to determine the winners for a single prize pool or must there be a separate prize pool for residents of your country?

Yes.

Are there any restrictions on the type, nature or value of the prizes (e.g., travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

No.

Is there a tax liability associated with prizes? If yes, who is responsible for the taxes, winner or sponsor? Are there any other costs or fees, such as duties and customs fees, imposed on prize awards?

Puerto Rico residents are normally taxed on any prizes received from contests, sweepstakes or promotions. An exception applies to those prizes “obtained in competitions or promotion/sweepstakes to promote and encourage literature, the arts, journalism, agriculture, industry, the professions, and the sciences”.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (i.e., in any and all media, now or hereafter devised, worldwide in perpetuity)? Can such ownership exist in perpetuity? Can copyright be transferred electronically or must the transfer occur in writing?

A release must be executed.

Is it generally permissible to require that a winner sign a liability and/or publicity release in order to receive a prize?

Yes.

Must the Official Rules and advertising materials (including website) be provided in the native language? Or must the Official Rules and website only be provided in the native language if the promotion is advertised/promoted in that language (e.g., if all advertising is in English, can the Official Rules and website only be in English)?

Since Spanish is Puerto Rico’s official language, the Official Rules should be in such language. Participants could be required to submit their submissions in English, but the Official Rules need to be provided in Spanish as well.

Are there restrictions on the use of personal information collected from entrants?

Information and / or data submitted must be cleared for use by means of a release.

If the chance-based game or skill-based contest is solely online and no promotion takes place in your country, is it subject to the laws of your country?

No.

Are there key cases and/or regulatory decisions involving promotions of which a company should be aware?

No.

Are there any other important issues a company should consider or be aware of when structuring a chance-based game/skill-based contest that will be open to residents of your country?

No.

RUSSIA

Are chance-based games (i.e., random draw promotions, instant win games) generally permissible?

Chance-based games are not regulated by the Russian legislation, and so from the perspective of the law chance-based games are not prohibited.

Are skill-based contests (i.e., essay contests, photo contests, user-generated content contests) generally permissible?

Skill - based contests are not specifically regulated by the Russian legislation. However, from the Russian law perspective, they are not prohibited.

General rules stipulated by the civil legislation and legislation on advertising shall be applicable and taken into consideration.

If contests are held for promotional purposes, promoters may face legal risks with regard to the use of the created objects - subjects to IP laws protection.

Is any type of registration or filing required to offer a chance-based game and/or a skill-based contest? If so, what are the costs and deadlines associated with such registration or filing?

If a chance-based game or a skill- based contest is of a promotional nature, it will not fall under regulations of sweepstakes, gambling or lottery, thus no registration or filing will be required.

The promoter of a marketing event held in open public place is obliged to notify the competent authority accordingly not later than 1 (one) month prior to the event. Notification shall include information on the intention of the promoter to hold the event, the plan of carrying out the event (scenario, scheme-plan for holding the event) along with the documentation confirming the authorization of the applicant's representatives. Within the term of 10 (ten) days, the notification shall be considered and a corresponding order on holding the promotional event will be issued.

Are promotions (chance-based or skill-based) in which someone is required to purchase the product in order to enter permitted? If a purchase is required, must a non-purchase method of entry be offered?

Russian laws provide for holding promotional events linked to prior purchase of the product as condition precedent; no limitations as to non-purchase entry are set. However, holding promotional events in which winning is chance-based or which require purchase of product as condition precedent, may be regarded as gambling or sweepstakes. In this case, prior state authorization will be required. Skill-based contests would not be qualified as such.

Advance purchase of a product (required for entering the contest) may be considered as investment. To eliminate potential risks entrance to promotional event not linked to purchase of a certain product is recommended.

If prior purchase is stipulated by the contest's Official Rules, the applicable Russian regulations do not impose any obligation to offer an alternate no purchase means of entry.

If non-purchase entrance is offered along with prior-purchase entry, the chances of the promoter will be deemed compliant with application Russian laws are enhanced.

Are there other forms of "consideration" which are prohibited in connection with entry into a chance-based game (e.g., posting a photo on Instagram, tweeting a response to a call-to-action, completion of a survey, taking a quiz and be required to answer questions correctly to be entered, watching a short video)?

Russian legislation does not provide for any restrictions on other forms of consideration.

In the event a chance-based contest is held within the Russian territory, the promoter may require any form of consideration for entrance that does not conflict with provisions of effective law, ethics, or established morals of the Russian nationals.

Are promotions in which the winner(s) are determined in whole or in part by public voting permitted?

Russian legislation does not regulate the issue. From a legal perspective, promotions in which the winner(s) are determined in whole or in part by public voting are permissible.

If a chance-based game or skill-based contest is open to residents of several countries, must the random draw/winner determination process occur in your country or can it be conducted in another country? If the selection process must occur in your country, is there an exception for promotions taking place solely online?

The Russian legislation does not impose any restrictions with regard to the place of issue of the decision. We are not aware of the related practices with regard to any limitation on the course/place of the winner determination.

Proceeding from the law, if a chance-based game or a skill-based contest is open to residents of several countries the random draw/winner determination process may be conducted in another country. If the selection process must occur in Russia, there is no exception for promotions taking place solely online. However, the course, place and timing for determination of the contest winner shall be transparent to potential entrants and expressly communicated in the Official Rules of the contest.

In case of online selection of the winner, this should be communicated in the Official Rules of the contest, together with the indication of the source of the publication decision, panel responsible for its issue along with other relevant information.

If the Official Rules of the contest do not target Russian nationals (*e.g.* there is no Russian translation provided, Russian nationals are not specified as participants, etc.) then Russian laws are not applicable to the contest.

If a chance-based game or skill-based contest is open to residents of several countries, is it permissible to combine all entries from all countries to determine the winners for a single prize pool or must there be a separate prize pool for residents of your country?

The Russian legislation does not regulate the issue. Thus it may be assumed that combining all entries from all countries to determine the winners for a single prize is permissible.

The promoter undertakes to communicate information on type of prizes and their number to the entrants along with the other data which is deemed to be essential. If the prizes are distributed among the entrants from a number of states, this must be stipulated in the Official Rules of the contest. If the prize pool is specifically determined for each state of entry, this must also be expressly specified to be compliant with the Russian laws.

Are there any restrictions on the type, nature or value of the prizes (e.g., travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

The Russian legislation does not provide for any restrictions as for the type, nature or value of the prizes. Since the forms of the prizes are not stipulated by the law, any prize is permissible with the exception of those withdrawn from circulation of products in the Russian Federation or circulation of which is limited (*e.g.* weapons and drugs).

Is there a tax liability associated with prizes? If yes, who is responsible for the taxes, winner or sponsor? Are there any other costs or fees, such as duties and customs fees, imposed on prize awards?

Tax liabilities associated with the prizes received through chance based games or skill based contests may arise where they are received by the Russian nationals and their value exceeds 4 000 RUB (approximately – USD \$67). The winner of the prize will be liable for payment of the applicable taxes

The promoter of the contest is regarded to be a tax agent and undertakes to report to the Russian tax authorities the information on winners, received prizes and their liquidated value, if applicable, by filing the respective form prescribed by applicable laws.

If the winner is entitled to a non-monetary form of a prize, it undertakes to pay the amount calculated proceeding from the liquidated estimate of the prize or estimated by a competent body based on the average value of similar products and services available in the Russian market. In the case of a monetary prize, the promoter may withhold the tax value from the amount of the prize itself.

Even though the law does not make the obligation of the promoter, the promoter is entitled to notify the winner as of his or her tax duty.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (i.e., in any and all media, now or hereafter devised, worldwide in perpetuity)? Can such ownership exist in perpetuity? Can copyright be transferred electronically or must the transfer occur in writing?

There are no restrictions preventing the sponsor from owning the results of intellectual activity submitted for the purposes of a skill-based contest. The promoter is required to enter into an agreement (assignment or license) with the author of the created work. Without such, further use of the object by the promoter may be considered illegal.

When entering a license agreement with the creator, it is obligatory to specify the particular IP object, methods and purposes of its use by the promoter, and the period of the agreement. There is no limit on the term of the license agreement by the law. In case of non-stipulation of the period in the agreement, it is deemed to be for a period of 5 (five) years.

In the event the promoter wishes to own the created object, it may enter into an assignment agreement with the creator. The assigned object should be clearly specified to avoid the risks of being considered as non-transferred.

The law does not provide transfer of the exclusive rights to the objects which will be created in future. Therefore, no agreement may be concluded with the entrant in respect to works that have not yet been created for the purposes of holding the contest as condition precedent to entrance. Moreover, the law provides that all the essential terms of the contest are communicated to potential entrants.

Thus, we believe that the Official Rules of the contest should provide that entering the agreement (license or assignment) with the promoter prior is a condition precedent to receiving the prize.

Is it generally permissible to require that a winner sign a liability and/or publicity release in order to receive a prize?

Processing from the Russian applicable laws, requiring a signed liability and publicity release form by virtue of the Official Rules of the contest prior to receipt of the prize is generally permissible.

If signing such a form is a condition precedent to receiving the prize, this information should be communicated to the potential entrants prior to entering the contest.

Must the Official Rules and advertising materials (including website) be provided in the native language? Or must the Official Rules and website only be provided in the native language if the promotion is advertised/promoted in that language (e.g., if all advertising is in English, can the Official Rules and website only be in English)?

According to the Russian legislation, Official Rules and advertising have to be in the Russian language. If foreign words are protected trademarks, then their translation is not required.

Advertising of the contest shall contain information on the period for holding the contest, the promoter of the contest, terms and conditions, quantity of prizes or winners, terms and place of receipt the prize.

All the essential terms and conditions of the contest shall be communicated in Russian for a contest targeting Russians. Lack of the Russian translation entails the risk of non-compliance with the effective laws.

Are there restrictions on the use of personal information collected from entrants?

Where the promotion entails collection of personal data of the participants, the promoter shall ensure that the contest is compliant with the Russian legislation on the protection of personal data.

Consent for the processing personal data should be obtained by the holder in the expressed form. The form of providing such a consent is not, however, clearly defined unless the data is subject to cross-border transfer.

The form of the consent shall be inclusive of the purpose, methods of processing, information on the operator of personal data, along with its contact information for the holder to be able to withdrawn its consent from the operator' databases at any time.

Consent provided to the promoter shall be obtained in the form that may unequivocally evidence the approval of the holder to process his/ her personal data. Simple written forms, or similar forms with the use of electronic signature, may be acceptable. Use of a 'click-through' form that stipulates the above-described information is deemed sufficient. The form for processing personal data may be attached to the Official Rules of the contest.

In promotional events targeted Russian citizens, promoter shall ensure compliance with personal data localization requirements.

While collecting personal data, including by means of the Internet promoter shall provide recording, systematization, accumulation, storage, clarification (update, modification) and retrieval of Russian citizens' personal data with use of databases located on the territory of the Russian Federation.

Russian legislation does not provide for storage mediums personal data processed on to be obligatory held by the promoter. Data protection authority finds rented mediums being appropriate for localization. In such a case, entrant's permission for processing personal data by the third party (storage medium holder) is required.

Non-compliance with data localization requirements may lead to an administrative fine up to ten thousand rubles (approximately – USD \$168)/website blocking.

In case of location promoter's databases outside the territory of Russia and Russian citizens' personal data processing accomplished outside Russia, consent for cross-border transfer of personal data shall be made in writing. The form of consent shall expressly stipulate entrant's consent on transfer of his/her personal data abroad, with the reference to the operator and the means for withdrawal of consent.

If the chance-based game or skill-based contest is solely online and no promotion takes place in your country, is it subject to the laws of your country?

Yes, in the event that the contest targets Russian citizens, it falls within the laws of the Russian Federation.

Are there key cases and/or regulatory decisions involving promotions of which a company should be aware?

No.

Are there any other important issues a company should consider or be aware of when structuring a chance-based game/skill-based contest that will be open to residents of your country?

No.

SINGAPORE

Are chance-based games (i.e., random draw promotions, instant win games) generally permissible?

Yes.

Are skill-based contests (i.e., essay contests, photo contests, user-generated content contests) generally permissible?

Yes.

Is any type of registration or filing required to offer a chance-based game and/or a skill-based contest? If so, what are the costs and deadlines associated with such registration or filing?

Yes, registration is mandatory for any contest involving skill or mixed chance and skill. The contest must be registered at least 4 weeks prior to its launch in Singapore. Our cost estimate for obtaining registration is USD \$2,000 (all inclusive).

Are promotions (chance-based or skill-based) in which someone is required to purchase the product in order to enter permitted? If a purchase is required, must a non-purchase method of entry be offered?

Yes, provided there is no increase in the price of the underlying product/ service, which is attributable to the conduct of the promotion.

Are there other forms of "consideration" which are prohibited in connection with entry into a chance-based game (e.g., posting a photo on Instagram, tweeting a response to a call-to-action, completion of a survey, taking a quiz and be required to answer questions correctly to be entered, watching a short video)?

No such restriction.

Are promotions in which the winner(s) are determined in whole or in part by public voting permitted?

Yes.

If a chance-based game or skill-based contest is open to residents of several countries, must the random draw/winner determination process occur in your country or can it be conducted in another country? If the selection process must occur in your country, is there an exception for promotions taking place solely online?

The random draw/ winner determination can be conducted in any country.

If a chance-based game or skill-based contest is open to residents of several countries, is it permissible to combine all entries from all countries to determine the winners for a single prize pool or must there be a separate prize pool for residents of your country?

Yes, it is permissible to combine all entries from all countries.

Are there any restrictions on the type, nature or value of the prizes (e.g., travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

No such restriction.

Is there a tax liability associated with prizes? If yes, who is responsible for the taxes, winner or sponsor? Are there any other costs or fees, such as duties and customs fees, imposed on prize awards?

Yes, the winners are generally liable for the taxes. There ought to be an express stipulation to that effect in the official rules governing the promotion.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (i.e., in any and all media, now or hereafter devised, worldwide in perpetuity)? Can such ownership exist in perpetuity? Can copyright be transferred electronically or must the transfer occur in writing?

Yes, copyright can be transferred electronically.

Is it generally permissible to require that a winner sign a liability and/or publicity release in order to receive a prize?

Yes.

Must the Official Rules and advertising materials (including website) be provided in the native language? Or must the Official Rules and website only be provided in the native language if the promotion is advertised/promoted in that language (e.g., if all advertising is in English, can the Official Rules and website only be in English)?

It will be sufficient if the Official Rules and advertising materials are in the English language.

Are there restrictions on the use of personal information collected from entrants?

Yes.

If the chance-based game or skill-based contest is solely online and no promotion takes place in your country, is it subject to the laws of your country?

Yes.

Are there key cases and/or regulatory decisions involving promotions of which a company should be aware?

The authorities have been clamping down on errant sponsors/ promoters, in recent times. Hence, it is imperative that the applicable laws, rules and regulations are abided by.

Are there any other important issues a company should consider or be aware of when structuring a chance-based game/skill-based contest that will be open to residents of your country?

It is imperative that advice regarding the structuring of the promotion, and its acceptability is sought from specialist attorneys, at the earliest. There are statutory requirements which need to be abided by for registration of promotions, and approaching the attorney just prior to launch in Singapore, complicates matters.

SLOVAKIA

Are chance-based games (i.e., random draw promotions, instant win games) generally permissible?

Yes, chance-based games (i.e., random draw promotions, instant win games) are generally permitted. According to Slovak legislation, there is a difference between games regulated by Act No. 171/2005 Coll., on hazardous games, as amended (the “Act”), and consumer games regulated by Act No. 40/1964 Coll., on Civil Code, as amended.

Under the Act, hazardous games means a game, in which a player/participant after paying the deposit (monetary contribution) can win if the game plan meets the predetermined conditions. Results of the game depend exclusively or predominantly on chance or from unknown result of a certain circumstance or event. The result shall not be known in advance to anyone and shall not be influenced by them.

On the contrary, the consumer game is a game in which there is no deposit payment as a condition for entry and the participants do not provide cash to win. To enter, they can be required acquire specific goods. Such games represent a common marketing tool that the public appreciates and does not risk financial resources and property of individuals.

Our answers to the questions below relate to consumer games within the meaning of Slovak legislation.

Are skill-based contests (i.e., essay contests, photo contests, user-generated content contests) generally permissible?

Yes, the skill-based contests are generally permissible in Slovakia.

Is any type of registration or filing required to offer a chance-based game and/or a skill-based contest? If so, what are the costs and deadlines associated with such registration or filing?

According to the regulation of chance-based games and/or skill-based contests, there is no statutory requirement for any form of registration or filing.

Are promotions (chance-based or skill-based) in which someone is required to purchase the product in order to enter permitted? If a purchase is required, must a non-purchase method of entry be offered?

Promotions where someone may be required to purchase the product in order to enter the game are permitted. It is quite common that participants do not pay cash in the game as an entry fee, but it can be done in the form of coupons, sending of EAN code of products or by completing a questionnaire, etc.

In this context, there is no statutory obligation of the entrepreneur/company to offer a non-purchase method of entry. These games are not regulated by the Act, and therefore there are no strict rules for their execution. (In case of first defined games under the Question 1 above the situation may be different.)

Are there other forms of “consideration” which are prohibited in connection with entry into a chance-based game (e.g., posting a photo on Instagram, tweeting a response to a call-to-action, completion of a survey, taking a quiz and be required to answer questions correctly to be entered, watching a short video)?

There are no specifically-defined forms of consideration prohibited in connection with entry into chance-based games, but participants and consumers in general enjoy a high level of legal protection regulated by the Slovak Consumer Act and the Act on Personal Data Protection.

Are promotions in which the winner(s) are determined in whole or in part by public voting permitted?

Yes, such games are permitted.

If a chance-based game or skill-based contest is open to residents of several countries, must the random draw/winner determination process occur in your country or can it be conducted in another country? If the selection process must occur in your country, is there an exception for promotions taking place solely online?

Under Slovak law, there is no rule that a winner determination process must occur in our country. It may be therefore executed in another country. However, a different approach is taken in case of hazardous games (e.g. scratch tickets, etc.) where, depending on a certain sum, a presence of a notary is required.

If a chance-based game or skill-based contest is open to residents of several countries, is it permissible to combine all entries from all countries to determine the winners for a single prize pool or must there be a separate prize pool for residents of your country?

If there is a game opened for residents of several countries there is no requirement for a separate prize pool for Slovak residents.

Are there any restrictions on the type, nature or value of the prizes (e.g., travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

No, there are no such restrictions in consumer games.

Is there a tax liability associated with prizes? If yes, who is responsible for the taxes, winner or sponsor? Are there any other costs or fees, such as duties and customs fees, imposed on prize awards?

Prizes from consumer games are generally subject to the income tax, unless the value of the prize does not exceed EUR 350. In case of monetary prizes, the tax is withheld when provided to the winner. In case of non-monetary prizes, the sponsor informs the winner about the value of the prize and the tax is paid by the winner.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (i.e., in any and all media, now or hereafter devised, worldwide in perpetuity)? Can such ownership exist in perpetuity? Can copyright be transferred electronically or must the transfer occur in writing?

In general, for publication and use of the work the Copyright Act is applicable. Pursuant the Copyright Act, the author has a right to authorize any use of his work based on the license agreement concluded between the author and the user (Sponsor in this case).

The user is not permitted to obtain a broad grant of rights because the personal rights of the author are not transferable to another person and they expire by author's death. On the other hand, the author is entitled to grant a license to another person and approval for use of the work (there represent the property rights of the author). Apart from this, neither the property rights are transferable to another person nor do they expire after granting of such approval.

Is it generally permissible to require that a winner sign a liability and/or publicity release in order to receive a prize?

There are no specific restrictions on publicity (press) releases, however liability disclaimers are not allowed. General doctrine of the law forbids any liability waiver.

Must the Official Rules and advertising materials (including website) be provided in the native language? Or must the Official Rules and website only be provided in the native language if the promotion is advertised/promoted in that language (e.g., if all advertising is in English, can the Official Rules and website only be in English)?

Under Slovak law, there is no such rule on publishing Official Rules or advertising materials of consumer chance-based games in Slovak. However, due to a strong consumer protection and rather extensive rights of consumers in Slovakia, we strongly advise providing Official Rules and advertising materials in Slovak as some consumers could otherwise file a claim with the Slovak Inspectorate.

Are there restrictions on the use of personal information collected from entrants?

Personal data protection is governed by the Slovak Data Protection Act which sets out the scope of use of personal information collected from entrants/participants of the chance-based games. This Act ensures the protection of individuals against unauthorized encroachment into their private lives in the processing of

their personal data, and determines the rights, duties and responsibilities during the processing of personal data itself.

These provisions apply to anyone who processes personal data, determines the purposes and means of processing, or provides personal data to process. Accordingly, the sponsor is bound by the Data Protection Act and is obliged to secure its adequate protection.

Personal information is information relating to an identified or identifiable person, who can be identified directly or indirectly, in particular by general identifier or by one or more features or attributes that create their physical, physiological, mental, economic, cultural or social identity. Processing of this information covers also their collection, production, distribution, recording or other form of use. In conclusion, the sponsor is bound to secure the protection of participants' rights under the law. In the case of a breach of the duties, participants are entitled to pursue their claims under this Act.

If the chance-based game or skill-based contest is solely online and no promotion takes place in your country, is it subject to the laws of your country?

In general, it depends on many other factors, such as tax liabilities from the winner's prize or protection of his personal data and type of games under Question 1 above. Based on this question we cannot accurately answer as this depends on several other factors.

Are there key cases and/or regulatory decisions involving promotions of which a company should be aware?

Slovak case law is not sufficiently developed in this area yet and there are no specific essential cases. There are decisions of relevant authorities in this regard, however decision-making practice is not unified and therefore cannot predict the outcome of possible claims to the future.

Are there any other important issues a company should consider or be aware of when structuring a chance-based game/skill-based contest that will be open to residents of your country?

No, we are not aware of any special issues not mentioned above as related to consumer games.



SOUTH AFRICA



Are chance-based games (i.e., random draw promotions, instant win games) generally permissible?

In practice, chance-based games are permissible and are regulated by consumer protection legislation. However, recent changes to lotteries legislation have led to an ambiguous position regarding the lawfulness of such competitions. It is hoped that the legislature will correct this situation.

Are skill-based contests (i.e., essay contests, photo contests, user-generated content contests) generally permissible?

Yes.

Is any type of registration or filing required to offer a chance-based game and/or a skill-based contest? If so, what are the costs and deadlines associated with such registration or filing?

No provided that, in the case of a chance-based game, the game must fall within the definition of a “promotional competition”.

Are promotions (chance-based or skill-based) in which someone is required to purchase the product in order to enter permitted? If a purchase is required, must a non-purchase method of entry be offered?

Due to the unclear wording of the relevant legislation, lawyers disagree regarding whether sponsors may require entrants to purchase products in order to enter a promotion. As such, promotions need to be evaluated on a case-by-case basis to consider the addition of a “non-purchase” method of entry.

Are there other forms of “consideration” which are prohibited in connection with entry into a chance-based game (e.g., posting a photo on Instagram, tweeting a response to a call-to-action, completion of a survey, taking a quiz and be required to answer questions correctly to be entered, watching a short video)?

At present, the above-mentioned examples would normally not be regarded as consideration. However, the term “consideration” has a very wide statutory definition and we do not yet have guidance from the National Consumer Commission and our courts regarding this issue. As such, the position might change in future. Having said this, the reasonable costs of posting or otherwise transmitting entry forms or devices may not exceed the maximum limit determined from time to time (currently ZAR1.50).

Are promotions in which the winner(s) are determined in whole or in part by public voting permitted?

Yes.

If a chance-based game or skill-based contest is open to residents of several countries, must the random draw/winner determination process occur in your country or can it be conducted in another country? If the selection process must occur in your country, is there an exception for promotions taking place solely online?

In the past, the determination process had to be conducted in South Africa. However, this is currently not a requirement.

If a chance-based game or skill-based contest is open to residents of several countries, is it permissible to combine all entries from all countries to determine the winners for a single prize pool or must there be a separate prize pool for residents of your country?

The relevant legislation does not deal with this issue and, currently, it should be permissible to combine entries from all countries.

Are there any restrictions on the type, nature or value of the prizes (e.g., travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

Yes, use and possession of prizes must be legal.

Is there a tax liability associated with prizes? If yes, who is responsible for the taxes, winner or sponsor? Are there any other costs or fees, such as duties and customs fees, imposed on prize awards?

Ordinarily, prizes are regarded as fortuitous income and winners would not be liable for tax thereon. If prizes have to be sent to winners from abroad, customs and excise duties would be applicable if customs authorities regard the prizes as imported goods.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (i.e., in any and all media, now or hereafter devised, worldwide in perpetuity)? Can such ownership exist in perpetuity? Can copyright be transferred electronically or must the transfer occur in writing?

South Africa's exchange control regulations regulate the transfer of ownership in entries to sponsors that are not resident in South Africa. Exchange control approval has to be obtained from the South African Reserve Bank in order for the transfer to be effective. Ordinarily, a grant of rights would not require approval, but this depends on the Reserve Bank's policies from time to time. Ownership in entries can exist for the lifetime of the underlying intellectual property. Copyright must be transferred in writing.

Is it generally permissible to require that a winner sign a liability and/or publicity release in order to receive a prize?

Generally, liability and/or publicity releases are permitted. However, the terms of releases must comply with relevant laws and limitation on the usage of winners' images.

Must the Official Rules and advertising materials (including website) be provided in the native language? Or must the Official Rules and website only be provided in the native language if the promotion is advertised/promoted in that language (e.g., if all advertising is in English, can the Official Rules and website only be in English)?

There is no requirement that Official Rules must be provided in a particular language. English is generally understood in South Africa, depending on the target audience. It must be noted that South Africa has eleven official languages. If members of the target audience might not understand English, the Official Rules would have to be translated into a language which can be understood by them.

Are there restrictions on the use of personal information collected from entrants?

Yes. The Protection of Personal Information Act ("POPI") sets conditions for how personal information can be processed. POPI is not yet in force, but will regulate the processing of personal information in detail when it becomes law. In the interim, the use of an individual's personal information is protected by the right to privacy under the Constitution of the Republic of South Africa and common law.

Where the personal information is collected from entrants by electronic means, the processing of the personal information must also comply with the Electronic Communications and Transactions Act if the sponsor has subscribed to the relevant provisions.

If the chance-based game or skill-based contest is solely online and no promotion takes place in your country, is it subject to the laws of your country?

Yes.

Are there key cases and/or regulatory decisions involving promotions of which a company should be aware?

At present, there are no cases or decisions relating to the current relevant legislation, although numerous cases were brought under previous legislation. Some of those decisions might be useful for interpreting the current legislation.

Are there any other important issues a company should consider or be aware of when structuring a chance-based game/skill-based contest that will be open to residents of your country?

There are a number of requirements that relate to prize promotions, but most of them pertain to chance-based games. For examples, the conducting of chance-based games must be overseen by someone who is a prescribed independent professional. Sponsors must also comply with the statutory requirements that relate to advertising materials and promotional competition offers. In addition, sponsors must retain the information and document prescribed by law. Last, sponsors need to ensure that there competitions

comply with the relevant industry codes, to the extent applicable.

SPAIN

Are chance-based games (i.e., random draw promotions, instant win games) generally permissible?

Yes, chance-based games are generally permissible, unless participants 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 messages are required). Prior purchases of products without extra charges or requiring the condition of being a client are not considered to be additional payment.

Are skill-based contests (i.e., essay contests, photo contests, user-generated content contests) generally permissible?

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. In contrast, 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.

Is any type of registration or filing required to offer a chance-based game and/or a skill-based contest? If so, what are the costs and deadlines associated with such registration or filing?

For Prize Draws, it is best practice to file the Official Rules 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, even if there was a pre-selection of winners based on skill).

Are promotions (chance-based or skill-based) in which someone is required to purchase the product in order to enter permitted? If a purchase is required, must a non-purchase method of entry be offered?

As indicated above, the purchase of a product in order to enter is permitted. This is known in Spain as random combinations: Sweepstakes aimed exclusively at advertising or promoting a product or service, whose sole compensation is the consumption of said product or service, without surcharge or tariff, which offer cash, in-kind or service prizes and, in certain cases, require registering as a client of the entity being advertised or promoted. If a purchase is required by the terms of the promotion, a non-purchase method must not be offered.

Are there other forms of “consideration” which are prohibited in connection with entry into a chance-based game (e.g., posting a photo on Instagram, tweeting a response to a call-to-action, completion of a survey, taking a quiz and be required to answer questions correctly to be entered, watching a short video)?

No.

Are promotions in which the winner(s) are determined in whole or in part by public voting permitted?

Yes.

If a chance-based game or skill-based contest is open to residents of several countries, must the random draw/winner determination process occur in your country or can it be conducted in another country? If the selection process must occur in your country, is there an exception for promotions taking place solely online?

Only in the cases of skill-based contests open to residents of several countries, the random draw/winner determination process can be conducted in another country. But, in the cases of chance-based games the winner determination process must occur in Spain. It is therefore advisable to create a separate prize pool for the Spanish participants.

There would be no exception, even if the promotion takes place solely online, for the chance-based games. As explained above, it would be different for the skill-based contests.

If a chance-based game or skill-based contest is open to residents of several countries, is it permissible to combine all entries from all countries to determine the winners for a single prize pool or must there be a separate prize pool for residents of your country?

The chance-based game must be addressed to Spanish residents; this means that there should be a separate pool for the Spanish residents only.

Creating a single pool for all participants of several countries bears the risk that the Spanish tax administration requests the sponsor to pay the taxes, even if the winner is not from Spain. In light of this, we recommend creating a separate pool for the Spanish participants and select the winner from this pool.

The requirements explained above only apply to sweepstakes/prize draws and do not apply to games of skills where there is no chance element.

Are there any restrictions on the type, nature or value of the prizes (e.g., travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

No. The details of the prizes offered must be clear in the Official Rules, and also set out any additional costs for the participant (e.g. travel prizes, where the winner should pay the costs for the travel to the airport).

Is there a tax liability associated with prizes? If yes, who is responsible for the taxes, winner or sponsor? Are there any other costs or fees, such as duties and customs fees, imposed on prize awards?

For chance-based games, the sponsor is responsible for the taxes. A gaming tax of 10 % of the market value of the prizes must be paid to the Spanish Tax Authorities within 30 days of the beginning of the sweepstakes. A company with a Spanish tax number must be designated as the responsible organizer for the sweepstakes (especially for the payment of the 10% tax mentioned above). The organizer is also obliged to withhold the corresponding incoming tax rate from the prize received by the winner(s).

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (i.e., in any and all media, now or hereafter devised, worldwide in perpetuity)? Can such ownership exist in perpetuity? Can copyright be transferred electronically or must the transfer occur in writing?

The submissions of the participants are protected by intellectual property rights according to the Spanish Intellectual Property Act (the "IPA"). The IPA classifies intellectual property rights as moral rights and economic rights.

Moral rights cannot be transferred according to article 14 IPA. In exercise of his moral rights the author may, among other aspects: (i) decide about the publishing of the work; (ii) demand recognition of the work; (iii) demand that the work's integrity is respected; (iv) modify the work; and (v) withdraw the work from any commercial use.

Nonetheless, Spanish Law allows economic rights to be transferred. However, a transfer of rights "in perpetuity" is not likely to be enforceable in Spain. We therefore advise the inclusion of a definite period of time specifying the duration of the license (e.g. 10 years). Otherwise, where the time limit is not specified, article 43 of the IPA establishes the period of 5 years as the legally acceptable time for the transmission of rights. The transfer of copyright must occur in writing according to article 45 IPA.

Is it generally permissible to require that a winner sign a liability and/or publicity release in order to receive a prize?

Yes.

Must the Official Rules and advertising materials (including website) be provided in the native language? Or must the Official Rules and website only be provided in the native language if the promotion is advertised/promoted in that language (e.g., if all advertising is in English, can the Official Rules and website only be in English)?

The Official Rules and advertising materials must be provided in the native language (Spanish) where the promotion is addressed to Spanish participants.

Are there restrictions on the use of personal information collected from entrants?

Yes. In the event that personal data will be collected, the Spanish Data Protection regulations must be observed. In order to collect personal data in Spain, consent of the participants is at all times necessary. The participants must be informed in a clear manner of the kind of data, the existence of a personal data file, and the identity and address of the entity responsible for processing the data in order to enable the participant to manage the treatment of its data.

According to the Spanish Data Protection Act (the “DPA”), the international transfer of data outside of the EU requires an authorization by the Director of the Spanish Data Protection Agency, unless the country the data is transferred to provide an adequate level of protection or the transfer is covered by an exception foreseen in the DPA. In case of United States, the data protection level is considered adequate with regards to companies that have adhered to the Safe Harbour principles.

Please note that the above mentioned provision does not apply if the data will not be stored and processed on servers located in the European Union.

If the chance-based game or skill-based contest is solely online and no promotion takes place in your country, is it subject to the laws of your country?

The Spanish laws would be applicable for Spanish participants, even if the chance-based or skill-based contest is solely online.

Are there key cases and/or regulatory decisions involving promotions of which a company should be aware?

No.

Are there any other important issues a company should consider or be aware of when structuring a chance-based game/skill-based contest that will be open to residents of your country?

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

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

The Official Rules of chance base-games must contain, at least, the following information:

- territory where the sweepstakes will take place (inside Spain)
- eligibility
- starting and ending dates of the sweepstakes
- mechanism of the selection of the winner (notary, lottery, etc.) and date of the draw
- rules about how to enter
- type, value and detailed description of the offered prizes
- use of the collected personal data
- information about the sponsor

SWEDEN

Are chance-based games (i.e., random draw promotions, instant win games) generally permissible?

No. Promotion of participation in lotteries (which include sweepstakes or other contests and games where the outcome is determined primarily by chance) organized from abroad, or which are organized within Sweden, are illegal given that lotteries require permits which are never granted for advertising purposes.

Are skill-based contests (i.e., essay contests, photo contests, user-generated content contests) generally permissible?

Yes, skill-based contests are allowed provided that all material information about the contest (such as terms and conditions, time limits etc.) is presented to the participants prior to entering the contest.

Is any type of registration or filing required to offer a chance-based game and/or a skill-based contest? If so, what are the costs and deadlines associated with such registration or filing?

No, there is no requirement for registration or filing of a skill-based contest (chance-based games for advertising purposes are illegal as such; see above).

Are promotions (chance-based or skill-based) in which someone is required to purchase the product in order to enter permitted? If a purchase is required, must a non-purchase method of entry be offered?

Yes, a purchase requirement is permitted provided that the cost for participation in the promotion is specified. A non-purchase method of entry must then not be offered.

Are there other forms of "consideration" which are prohibited in connection with entry into a chance-based game (e.g., posting a photo on Instagram, tweeting a response to a call-to-action, completion of a survey, taking a quiz and be required to answer questions correctly to be entered, watching a short video)?

All chance-based games for advertising purposes are illegal as such; see above.

For skill-based contests, it is not prohibited to request some form of action in connection with entry, but this may trigger liability for promoter if the entrant's action is carried out in breach of applicable marketing or intellectual property laws, etc. Moreover, if sponsor uses a third party platform (such as Facebook, another social media or the like), it should also consider whether the required action is permitted under the terms of that platform.

Are promotions in which the winner(s) are determined in whole or in part by public voting permitted?

Yes, but the criteria for the elements that are subject to the voting procedure should be explained.

If a chance-based game or skill-based contest is open to residents of several countries, must the random draw/winner determination process occur in your country or can it be conducted in another country? If the selection process must occur in your country, is there an exception for promotions taking place solely online?

No, the selection process may occur outside Sweden.

If a chance-based game or skill-based contest is open to residents of several countries, is it permissible to combine all entries from all countries to determine the winners for a single prize pool or must there be a separate prize pool for residents of your country?

Yes, it is permissible to use a single prize pool.

Are there any restrictions on the type, nature or value of the prizes (e.g., travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

Alcohol and tobacco products, or other products for which use is restricted (e.g. prescription drugs, weapons, etc.), should not be used as prizes.

Is there a tax liability associated with prizes? If yes, who is responsible for the taxes, winner or sponsor? Are there any other costs or fees, such as duties and customs fees, imposed on prize awards?

Yes, depending on the value and nature of the prizes. Smaller prizes of lesser value (currently SEK 1,300) in forms other than bills may not be associated with tax liability.

If there is tax liability, the prize winner must account for the prize in his/her income-tax return form and the organization arranging the contest must submit a statement of income for the prize to the tax authorities. If there is tax liability the organizer must also pay payroll taxes, provided that the organizer is a tax subject in Sweden. Additionally, if the prize winner is subject to the Swedish social security system, then the organizer may be liable to pay social security contributions.

Normally one would prescribe in the Official Rules that winners are liable for all taxes and contributions relating to the prizes; in such case, the organizer may be excluded from payroll taxes, as the case may be, as well as social security contributions.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (i.e., in any and all media, now or hereafter devised, worldwide in perpetuity)? Can such ownership exist in perpetuity? Can copyright be transferred electronically or must the transfer occur in writing?

Yes, it is permissible for the sponsor to own submitted entries. Such ownership may exist in perpetuity.

Generally, copyright may be freely transferred either by oral, written or even implied agreement, but a documented (written or electronically) transfer is recommended. Moral rights, however, cannot be transferred in full but only waived for a specific purpose.

Is it generally permissible to require that a winner sign a liability and/or publicity release in order to receive a prize?

Yes, it is generally permissible (and recommended).

Must the Official Rules and advertising materials (including website) be provided in the native language? Or must the Official Rules and website only be provided in the native language if the promotion is advertised/promoted in that language (e.g., if all advertising is in English, can the Official Rules and website only be in English)?

If a promotion is directed to Sweden it is recommended that the Official Rules and the website are in Swedish. However, if the promotion and the website have an international approach, and for instance entrants compete against other nationalities, it is usually sufficient if the Official Rules and website are in English.

Are there restrictions on the use of personal information collected from entrants?

Yes. Processors of personal data must adhere to Swedish and European data privacy legislation. For instance, use of personal data for marketing purposes may require a prior and adequate consent from the registered person.

If the chance-based game or skill-based contest is solely online and no promotion takes place in your country, is it subject to the laws of your country?

The contest will be subject to Swedish law if it has effects within Sweden. A contest solely promoted online that is considered to target Swedish entrants may sometimes be enough to trigger application of Swedish laws.

Are there key cases and/or regulatory decisions involving promotions of which a company should be aware?

There are a few older cases from the Swedish Marketing Court which confirms the necessity of providing all material information in a clear manner (see e.g. MD 1997:18 and MD 1973:18).

Are there any other important issues a company should consider or be aware of when structuring a chance-based game/skill-based contest that will be open to residents of your country?

In the event that a contest targets companies/employees, sponsor must usually consider Swedish anti-bribery legislation. Under such rules the offering or taking of unfair rewards may lead to criminal liability.

When a contest targets minors, it is important that the contest is presented in a clear and easily comprehensible manner. It is then also advisable to secure relevant consents from parents.



SWITZERLAND

Are chance-based games (i.e., random draw promotions, instant win games) generally permissible?

Yes, chance-based games are generally permissible under Swiss law. The basic legal and regulatory conditions for advertising in Switzerland apply. Most relevant are laws protecting trademarks, works of authorship, privacy, and fair competition. In addition, the Lottery Act (which will likely be replaced by the Gaming Act in 2018) and – depending on the promoted product/prize – the laws regulating advertising of alcohol, tobacco, pharmaceuticals, or foodstuffs may apply. Chance-based promotions are also subject to the Principles of Fairness in Commercial Communication, a self-regulatory code of conduct enforced by the Swiss Commission for Fairness.

Are skill-based contests (i.e., essay contests, photo contests, user-generated content contests) generally permissible?

Yes, skill-based contests are generally permissible. The above-mentioned laws and regulations that may apply to chance-based promotions may also apply to skill-based promotions.

Is any type of registration or filing required to offer a chance-based game and/or a skill-based contest? If so, what are the costs and deadlines associated with such registration or filing?

Federal law does not require any government pre-approvals, as long as a non-purchase route to participate is offered. Some Cantonal and municipal laws, however, may require pre-approval, namely if the game or contest will take place on the streets, on public squares, or otherwise on public ground. Cantons may issue permission to run chance-based games or skill-based contests requiring a purchase method of entry (*i.e.* lotteries or lottery-like games or contests) if the proceeds are used for non-profit purposes (which, in relation to promotions, will rarely be the case).

Are promotions (chance-based or skill-based) in which someone is required to purchase the product in order to enter permitted? If a purchase is required, must a non-purchase method of entry be offered?

A non-purchase method of entry is required if: (i) the sponsor promises a prize or prizes; (ii) the sponsor determines in advance the type and amount of prizes; and (iii) it substantially depends on chance whether or not a participant wins a prize or (if all participants will win) whether a participant wins one of the more valuable (main) prizes. In practice, as these elements are characteristic of chance-based promotions, such promotions will always require a non-purchase method of entry. Without a non-purchase route to participate, chance-based promotions are deemed illegal lotteries or lottery-like games or contests.

A non-purchase method of entry may also be required for participation in skill-based promotions. According to established case law, if the game or contest is skill-based but winners are determined by random draw, a non-purchase route is nonetheless required. Also, Swiss unfair competition law and the Principles of Fairness in Commercial Communication prohibit aggressive sales methods. Promotions that require the purchase of a product may be deemed an aggressive sales method and, therefore, an unfair trade practice, if they limit the customer/prospective participant's freedom to make a purchase decision, *e.g.*, by abusing the participant's gratitude for free samples or for prizes that the participant has won in previous promotions. For these reasons, it has become customary to offer an equivalent non-purchase route to participate regardless of whether the promotion is chance-based or skill-based.

Participants entering via the non-purchase route must be given an equal chance of winning. Thereby, size requirements will apply to information about a non-purchase route to participate. The disclosures must be in such size and format that make it clear to consumers that a non-purchase route of entry exists and is an equivalent method of participation (*i.e.* offers the same chances of winning).

Are there other forms of “consideration” which are prohibited in connection with entry into a chance-based game (e.g., posting a photo on Instagram, tweeting a response to a call-to-action, completion of a survey, taking a quiz and be required to answer questions correctly to be entered, watching a short video)?

Entry methods that require entrants to post a photo on Instagram, tweet a response to a call-to-action, take a quiz, etc., or (if data is collected and processed in accordance with Swiss data protection law, as set forth below) submit and give permission to use Personal Data for marketing purposes are not considered

purchase routes to participate. To date, courts have only qualified monetary considerations (purchases, including without limitation purchases on approval and any requirement to dial premium-rate numbers rather than standard-rate numbers to submit entries) as purchase methods in the sense of the Lottery Act. But it may be the case that, in future cases brought under the Lottery Act (or, once adopted and in force, the Gaming Act), courts might hold that such other forms of "consideration" render the promotion an illegal lottery absent a non-purchase method to participate.

Are promotions in which the winner(s) are determined in whole or in part by public voting permitted?

Yes, subject to the principles of fair competition. In particular, the Official Rules must state it clearly that the winners are determined in whole or in part by public voting. Further the voting must be carried out as announced (i.e. as provided in the Official Rules and as described in promotional material).

If a chance-based game or skill-based contest is open to residents of several countries, must the random draw/winner determination process occur in your country or can it be conducted in another country? If the selection process must occur in your country, is there an exception for promotions taking place solely online?

The random draw/winner determination process may be conducted in any country. However, the Official Rules must state it clearly that the winners are determined by random draw and (ideally also) provide further detail on the random draw/winner determination process, including how and where winners will be announced or informed. Also, the draw/winner determination process must be carried out as set forth in the Official Rules and as described in promotional material.

If a chance-based game or skill-based contest is open to residents of several countries, is it permissible to combine all entries from all countries to determine the winners for a single prize pool or must there be a separate prize pool for residents of your country?

Yes, it is permissible to combine all entries from all countries. But this process must be made transparent in the Official Rules and as described in promotional material.

Are there any restrictions on the type, nature or value of the prizes (e.g., travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

Generally, there are no restrictions on the type, nature or value of the prizes awarded. Some restrictions – in particular age-restrictions – may apply if the prize is a tobacco product, alcoholic beverage, or a "free" sample of a pharmaceutical product, for example. Further, there are restrictions on the method of redeeming the prizes.

Winners must not be required to call a premium-rate (as opposed to standard-rate) number, to cover any costs and expenses of the sponsor (for example, a service charge or other payment to be provided by the winner to the sponsor as a consideration or return service for the prize), or to take part in an additional random draw in order to redeem the prize. The purpose of this rule is to protect customers from the loss-leader effect that prizes may have. However, it is permitted to require the winner to bear additional costs that are not a consideration or return service for the prize; for example, if stated clearly in the Official Rules, the sponsor is allowed to require the winner to pay for the transfer to a concert venue (where the prize is a concert ticket), or to cover any mini-bar expenses (where the prize is a hotel stay).

Is there a tax liability associated with prizes? If yes, who is responsible for the taxes, winner or sponsor? Are there any other costs or fees, such as duties and customs fees, imposed on prize awards?

Yes, prizes are subject to taxes, in particular income taxes (which have to be paid by the winner) and import taxes (for which the sponsor that imports the prize to Switzerland may be liable).

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (i.e., in any and all media, now or hereafter devised, worldwide in perpetuity)? Can such ownership exist in perpetuity? Can copyright be transferred electronically or must the transfer occur in writing?

Under Swiss copyright law, copyrights subsisting in the entries are transferable, and will be valid for the entire term of the copyright. The transfer may occur electronically, *e.g.* by way of acceptance of terms and conditions. The sponsor may be required to attribute authorship to the participants, as there are restrictions on the transfer of moral rights.

Is it generally permissible to require that a winner sign a liability and/or publicity release in order to receive a prize?

The signing of a liability and/or publicity release is generally permitted. However, if participants grant the release by accepting the Official Rules or signing a standardized form that is not individually negotiated (nor negotiable), Swiss unfair competition law requires that the scope of the release is not disproportionate to the consideration, *i.e.* to the value of the prize or service that the participant receives in return for the release. Also, if the release is so broad in scope and duration that it goes to the core of a winner's personality rights, in particular, if the release substantially or entirely limits the winner's freedom to enter into contracts, the release may be deemed void.

Must the Official Rules and advertising materials (including website) be provided in the native language? Or must the Official Rules and website only be provided in the native language if the promotion is advertised/promoted in that language (e.g., if all advertising is in English, can the Official Rules and website only be in English)?

There are no such language requirements. English or any of Switzerland's official languages (German, French, Italian) is sufficient.

Are there restrictions on the use of personal information collected from entrants?

Data that identifies a person or renders them identifiable is considered Personal Data. Such data may only be processed in accordance with the fair data processing principles provided in the Swiss Federal Data Protection Act (currently under revision). Personal Data must be processed legally, only for specified purposes, in good faith, in a transparent manner, and proportionate in relation to the specified purpose. In addition, technical and organizational security measures must be taken to protect the integrity of and prevent unauthorized access to Personal Data of the entrants, and the entrants' Personal Data may be transferred to third parties only if the purpose of the promotion so requires, and if the sponsor has clearly informed entrants of the transfer and its purpose.

With regard to data transfers to an establishment of the sponsor outside of Switzerland, the EU/EEA or another country with a standard of protection that the Swiss Data Protection Commissioner deems adequate, further limitations may apply. With regard to companies that have self-certified to the U.S.-Swiss Privacy Shield framework, the Swiss Data Protection Commissioner deems adequate the standard of protection offered by the U.S.. Absent such self-certification, a sponsor who wishes to transfer Personal Data (within its corporate structure or to an independent service provider) in the U.S. will need to rely on alternative justifications such as valid consent by the participants or (with regard to transfers between companies) a data transfer agreement entered into between the data exporter in Switzerland and the data importer in the US.

If the chance-based game or skill-based contest is solely online and no promotion takes place in your country, is it subject to the laws of your country?

Even if the game or contest is solely online and no promotion takes place in Switzerland, the game or contest may nonetheless be subject to Swiss law. Promotional games or contests, by their nature, seek to promote the sale of the sponsor's products. If the sponsor offers its products for sale in Switzerland, the promotion will be subject to Swiss unfair competition law, as it may affect the relationship between competitors or between suppliers and buyers on the Swiss market. Also, if customers in Switzerland are allowed to participate, once they accept the Official Rules and enter the game or contest there will be a sufficient jurisdictional link to Swiss law.

Are there key cases and/or regulatory decisions involving promotions of which a company should be aware?

In a leading case concerning the promotion of the (James Bond 007) film "GoldenEye", the Swiss Federal Supreme Court held that a non-purchase route is required to participate in a skill-based contest if winners are determined by random draw from all correct and valid entries. Participants had to choose, from a list of actors, five actors that have previously played "James Bond". The only method of entry was to dial a premium-rate (as opposed to a standard-rate) telephone number and enter the numerical code of the correct answer (BGE 123 IV 175, September 10, 1997, at para. 2a, pp. 179 *et seq.*).

In a case concerning a dial-in TV show where viewers could participate in quiz games or in solving a riddle or puzzle, the Swiss Federal Supreme Court held that TV viewers must be clearly informed that there is an equivalent non-purchase method of entry. It was not sufficient to merely display and refer to a website or WAP site without a clear and conspicuous disclosure that the relevant site offers a non-purchase route to participate with the same chances of winning (Case 6B_775/2009, February 18, 2010, at para. 4).

In a case concerning the promotion of a printer, the Swiss Commission for Fairness held that random draw promotions infringe the Principles of Fairness in Commercial Communication (Rule 3.9) if the only available method of entry and winning a printer was to first order a product from the sponsor and then enter the order confirmation number (Case 185/14, September 24, 2014).

Are there any other important issues a company should consider or be aware of when structuring a chance-based game/skill-based contest that will be open to residents of your country?

No.

TURKEY

Are chance-based games (i.e., random draw promotions, instant win games) generally permissible?

Yes, chance-based games are generally permissible. However, they are strictly regulated by the National Lottery Administration.

As a general rule, article 41 of the Decree Law No. 320 provides that chance-based games where cash is given as a prize can only be conducted by the National Lottery Administration itself. Lotteries where the prize is not in cash can be conducted by real or legal persons, such as commercial enterprises, sport clubs and media organizations, but will be subject to the permission of the National Lottery Administration. By way of exception, there is no need to obtain official permission if the monetary value of the non-cash prize per individual is less than TRY 74.22 (approximately 20-25 euros).

The conditions for staging chance-based games where the prize is not in cash are comprehensively laid down in the Regulation on Lotteries and Drawings for Non-Cash Rewards No. 26309 (the "Regulation").

Are skill-based contests (i.e., essay contests, photo contests, user-generated content contests) generally permissible?

Yes, skill-based contests are generally permissible.

The Regulation defines a "contest" as *"an arrangement in which the winners are determined from amongst the participants depending on the knowledge and skill of the participants and by a method of elimination that takes into account their degree of success, or by the assessment of a jury according to the same principles, and at the end of which an in-kind and/or cash prize is given; and also puzzles, riddles, entertainment programs and similar arrangements."*

Lastly, the Official Rules of skill-based contests must comply with the Turkish Consumer Protection Law No. 6502 ("Turkish Consumer Law"). In particular, the Official Rules must be clear and understandable by Turkish participants and not contain any misleading elements.

Is any type of registration or filing required to offer a chance-based game and/or a skill-based contest? If so, what are the costs and deadlines associated with such registration or filing?

For chance-based games with a cash prize: These can only be conducted by the National Lottery Administration itself.

For chance-based games with non-cash prizes: The following types of contests and draws fall outside the scope of the Regulation and do not require the permission of the National Lottery Administration before they are organized:

- Contests in which participants are not charged for entry and which are not used for the promotion or sale of certain goods or services; and
- Contests or similar arrangements in which (a) there is no draw and in which the winners are chosen according to pre-specified rules or (b) the winners are chosen by a draw that is held in front of all the participants; and
- Promotions where the monetary value of the non-cash prize per individual is less than TRY 74.22 (approximately 20-25 euros).

In cases where official permission is required for a chance-based game, the organiser must apply to the National Lottery Administration for permission at least 15 days before the commencement of the promotion.

The required documents and information include: an application petition, the name, surname, title, domicile, work address, trade registry no, tax no, or identity number of the promoter, beginning and end dates of the promotion and the geographical determination for which the promotion will be run, the terms and conditions for participation, the number, quality, total and per unit value of the prize, the date, time address and form of the draw, the date and form of the winner announcement, a document indicating that the deposit requirement is met and other official documents as may be required by the National Lottery

Administration. The application fee is equal to 2% of the market value of total prize pool plus VAT (18%). In any case, the application fee cannot be lower than TRY 2000 (approximately €650) plus VAT.

The organiser must also deposit an amount to the National Lottery Administration which corresponds to more than 10% of the total market value of the promised prizes. If the period between the commencement date of the promotion and the final delivery date of the prizes exceeds six months, then the National Lottery Administration can require a deposit which exceeds 50% of the total market value of the prizes. The deposits are returned to the organiser after all the prizes are duly delivered to the winners provided that there are no complaints raised against the promotion.

Upon submission of the required application documents, the National Lottery Administration will review the application and reach a decision within 5 business days.

For skill-based contests: Generally speaking, skill-based contests do not require official permission or a deposit. However, each contest mechanism needs to be evaluated individually on a case-by-case basis in order to determine whether it might fall within the Regulation and therefore entail official permission.

Are promotions (chance-based or skill-based) in which someone is required to purchase the product in order to enter permitted? If a purchase is required, must a non-purchase method of entry be offered?

Yes, this is allowed for skill-based promotions.

Chance-based promotions in which the participants are required to purchase a certain product in order to enter are also permitted. However, in chance-based promotions, the purchase must relate to a product or service of the contest-organiser. According to article 13(1)(f) of the Regulation, the purchase of a third party's product cannot be made a pre-condition to entry.

Are there other forms of "consideration" which are prohibited in connection with entry into a chance-based game (e.g., posting a photo on Instagram, tweeting a response to a call-to-action, completion of a survey, taking a quiz and be required to answer questions correctly to be entered, watching a short video)?

No, any form of "consideration/prerequisite" for entry is permitted provided that it does not violate other laws, public order, public decency, Turkish general customs and moral values and the rights of the individual. The "consideration" must also not include racism, discrimination, sexual content and must not encourage harmful or bad habits, including alcohol, tobacco or drug consumption. Likewise, the organiser must not betray the public's trust in lotteries in any way.

Are promotions in which the winner(s) are determined in whole or in part by public voting permitted?

This issue is not specifically regulated under Turkish law. Therefore, such promotions should in principle be permissible.

If a chance-based game or skill-based contest is open to residents of several countries, must the random draw/winner determination process occur in your country or can it be conducted in another country? If the selection process must occur in your country, is there an exception for promotions taking place solely online?

If the promotion is open to residents of several countries, there is no requirement that the selection process take place in Turkey. The random draw/winner determination process can be conducted overseas (whether or not the promotion takes place online). However, if the selection is to take place in Turkey, it will be subject to Turkish law and must comply with the requirements mentioned above (such as the requirement for official permission).

Even if the selection is to take place overseas, the instructions must be clear and understandable for Turkish participants. For instance, all the content on the website should be in Turkish for Turkish participants.

Turkish law allows the organiser to choose the promotion's governing law and jurisdiction. However, the Turkish participant will still be deemed to be a consumer under the Turkish Consumer Law, in the event that any of the Turkish participants raise claims in respect of consumer law issues relating to their participation in the promotion, the Turkish Consumer Law can also be applied.

If a chance-based game or skill-based contest is open to residents of several countries, is it permissible to combine all entries from all countries to determine the winners for a single prize pool or must there be a separate prize pool for residents of your country?

Yes, a joint prize pool is permissible. Turkish law does not require a separate prize pool for Turkish participants.

Are there any restrictions on the type, nature or value of the prizes (e.g., travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

Chance-based games cannot offer cash prizes (only the National Lottery Administration is authorised to conduct such draws).

Skill-based contests may offer cash or non-cash rewards.

In respect of promotions for which official permission is required, article 13 of the Regulation prohibits the following prizes:

- Promotions cannot award (or promise to award) the same person more than one prize of the same kind.
- For lotteries organised for charitable purposes, the total value of the prizes cannot be less than 10% of the amount the organiser expects to collect.
- For promotions which do not involve a draw but instead award the prize(s) to people whose entry ticket (e.g. scratch cards) contains a predetermined number or symbol, the unit prize cannot exceed TRY 74.22 (approximately 20-25 euros).
- The number of prizes promised by a promotion must not exceed the number of prizes deemed appropriate by the National Lottery Administration (the wording of the Regulation is purposefully vague on this point).

Other than these prohibitions, there are no restrictions on the type, nature or value of prizes which may be awarded, provided that the arrangement does not violate other legislative provisions, public order, public decency, Turkish general customs and moral values and the rights of the individual. However, there may be tax and customs related issues depending on the nature and value of the prize.

Is there a tax liability associated with prizes? If yes, who is responsible for the taxes, winner or sponsor? Are there any other costs or fees, such as duties and customs fees, imposed on prize awards?

Yes, prizes are subject to taxation. The general rule is that the winner is responsible for all tax liability associated with the prize. In fact, for promotions subject to the Regulation, article 8(1)(ğ) of the Regulation expressly prohibits the organiser from bearing the taxes and other legal obligations that must be borne by the participant (other than taxes which are included in the value of the goods and/or services awarded, namely VAT).

Where inheritance and transfer tax is payable, the organiser must deduct the amount that is subject to taxation at source before delivering it to the winner and declare such deduction at the relevant tax office. The tax corresponds to 10% of the prize amount, as per article 16(4) of the Law No. 7338 on Inheritance Tax ("Inheritance Tax Law"). For the year 2015, the first TRY 3,711 (approximately 1,084 euros) of the prize is immune from inheritance tax (Inheritance Tax Law, article 4(e) as amended). Accordingly, the winner's obligation to pay inheritance tax only arises if the prize amount exceeds this limit.

If the non-cash award is sent from outside Turkey, customs fees may also be payable. These too will be borne by the winner.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (i.e., in any and all media, now or hereafter devised, worldwide in perpetuity)? Can such ownership exist in perpetuity? Can copyright be transferred electronically or must the transfer occur in writing?

Yes, it is generally permissible for the sponsor to own the entries and/or obtain a broad grant of rights. Under Turkish law, copyright expires 70 years after the death of the original creator of the works, even if the creator assigned his rights to another person. Therefore, the sponsor will be “stepping into the shoes” of the creator and its ownership will subsist for the remaining duration of the original creator’s copyright. Copyright must be transferred by a separate deed of assignment in writing in which all of the rights subject to assignment are specified in detail.

Is it generally permissible to require that a winner sign a liability and/or publicity release in order to receive a prize?

The requirement to sign a liability and/or publicity release can be introduced into the Official Rules of the promotion; however, these cannot be set forth as a “requirement” to win the prize.

The wording is the key here. A clarification in the Official Rules such as “the winner agrees to a publicity release in relation to the announcement and publication of the promotion without asking for any additional benefits other than the prize” is permissible. However wording such as “the winner must sign a publicity release in order to receive the prize” will be open to challenge. In short, the signing of a publicity release can be made a condition to entry into the competition, but not to receipt of the prize.

With respect to liability releases: Where the participants enter into a skill-based contest by creating an original work, the sponsor may obtain a liability release wherein the participant declares that his entry is original, does not infringe third parties’ intellectual property rights and that the sponsor will have recourse against him if these representations turn out to be false. However, like publicity releases, the signing of a liability release can only be made a condition to entry and not to receipt of the prize.

Must the Official Rules and advertising materials (including website) be provided in the native language? Or must the Official Rules and website only be provided in the native language if the promotion is advertised/promoted in that language (e.g., if all advertising is in English, can the Official Rules and website only be in English)?

For Turkish participants, all of the advertising materials, website and Official Rules must be provided in Turkish. Please note that Turkish participants will be deemed “consumers” under the Turkish Consumer Law and will benefit from its protection.

Are there restrictions on the use of personal information collected from entrants?

The “Personal Data Protection Law entered into force on April 7, 2016. The main principle is that personal data can only be processed once the data subject has provided explicit consent. As a general rule, sponsors must not share personal data with third parties or use it for any other purpose without the explicit consent of the data subject. Entrants should also be given the right to access, withdraw and correct their personal data any time.

If the chance-based game or skill-based contest is solely online and no promotion takes place in your country, is it subject to the laws of your country?

A mere chance-based game or skill-based contest with no award will not be subject to Turkish law if it is conducted solely online and does not involve any product promotion. However, if any products/services are promoted and/or a prize is offered, a Turkish court might deem the Turkish participants to be “consumers” under the Turkish Consumer Law and therefore entitled to its protection.

Are there key cases and/or regulatory decisions involving promotions of which a company should be aware?

No

Are there any other important issues a company should consider or be aware of when structuring a chance-based game/skill-based contest that will be open to residents of your country?

For complicated mechanisms where there is uncertainty about the legality of the proposed arrangements, we advise making a formal application to the National Lottery Administration to obtain their opinion prior to launching the promotion. This system enables the sponsor to be on the safe side both commercially and legally.

UKRAINE

Are chance-based games (i.e. random draw promotions, instant win games) generally permissible?

Yes, chance-based games are generally permissible. However, an organizer should ensure that the games and contests it organizes as promotion campaigns do not fall under the definitions of “game of chance” or “lottery”.

Game of chance. By and large, the Law of Ukraine "On Prohibition of Gambling Business in Ukraine" ("**Gambling Law**") prohibits organizing, carrying out, granting a possibility of access, and participating in “game of chance”. By definition “game of chance” requires (i) paying money, including through e-payment system, as a mandatory precondition for participation in the game; (ii) winning (prize) in any form which (iii) a participant may get (or not) depending on chance.

When it comes to interactive establishments and electronic (virtual) casinos, the location of server is not relevant. Consequently, the Gambling Law should apply in its entirety.

Lottery. The Law of Ukraine “On State Lotteries in Ukraine” ("**State Lotteries Law**") defines “lottery” as: “a mass game – irrespective of its name – condition of which sets forth a competition for a prize (winning) pool between gamers where the win has random character, where the territory of gaming (game distribution) extends to more than one building and irrespective of how participation fee is received“. Currently, the state has a monopoly on organization of lotteries. Expansion of lotteries organized outside Ukraine, including their advertising and participation in such lotteries, are explicitly prohibited by the State Lotteries Law.

Lawful chance-based games are usually organized as a *public promise of award with contest* according to provisions of the Civil Code of Ukraine.

Are skill-based contests (i.e. essay contests, photo contests, user-generated content contests) generally permissible?

Skill-based contests are generally permissible. Usually, skill-based contests are also organized as *public promise of award with contest* according to provisions of the Civil Code of Ukraine.

The Gambling Law specifically excludes the following skill-based contests from its regulation (*i.e.* does not treat them as “games of chance”):

- art, sport and other similar contests, irrespective of whether or not their rules offer prizes in money form or in kind;
- pool, bowling and other games which do not result in awarding a prize (winning) to a gamer;
- free of charge drawings with respect to advertising (promotion) of a specific product, service, trademark, trade name or directions of business of a legal entity, and commercial program with a prize in money form or in kind;
- drawings in the form of contests (games, quizzes) which rules do not set forth any pay-to-play fee and prescribe awards to a participant who showed the best personal knowledge and skills (personal win award) in money form or in kind; and
- free of charge drawings for entertainment, charity and educational purposes.

Is any type of registration or filing required to offer a chance-based game and/or a skill-based contest? If so, what are the costs and deadlines for such registration or filing?

Ukrainian laws currently do not require any type of registration or filing. However, obtaining of preliminary approval of the Antimonopoly Committee of Ukraine is optional to prevent unfair advertising.

Are promotions (chance-based or skill-based) conditioned by a requirement to purchase the product permitted? If so, is there any option to join without making the purchase?

Such promotions are generally permitted as long as they do not fall within the notions of ‘game of chance’ and ‘lottery’. Notably, the requirement to purchase the product to participate in the promotion may be still treated as an indirect consideration (participation fee) by regulatory authorities, although there is no court practice or official explanation of Ukrainian authorities in this regard. However, Ukrainian authorities tend to consider practice of foreign jurisdictions in respect of those issues, which are new for Ukraine.

Non-purchase method of entry is usually advisable in Ukraine.

Are there other forms of “consideration” which are prohibited in connection with entry into a chance-based game (e.g. posting a photo on Instagram, tweeting a response to a call-to-action, completing survey, taking a quiz, giving correct answers to questions, or watching a short video)?

There is no clear legal guidance or developed practice on the issue. However, by definition, only payment of money – including through e-payment system – is treated as consideration (participation fee).

Are promotions in which the winner(s) are determined in whole or in part by public voting permitted?

Yes, such promotions are generally permitted.

Does a chance-based game or skill-based contest open to residents of several countries require that the random draw/winner determination is held/occur solely in a particular country? If the selection process must occur in your country, is there any exception providing for online promotions?

Applicable laws and regulations do not expressly regulate this issue or prohibit such activity. Consequently, it is generally permissible to conduct random draw /winner determination process in any country even if the respective selection process occurred in Ukraine.

If a chance-based game or skill-based contest is open to residents of several countries, is it permissible to combine all entries from all countries to determine the winners for a single prize pool or required to have a separate prize pool for residents of your country?

Applicable laws and regulations do not expressly regulate this issue or prohibit such activity. Consequently, commonly it is permissible to combine all entries from all countries to determine the winner for a single prize pool.

Are there any restrictions on the type, nature or value of the prizes (e.g. a foreign trip, or cash, or other) awarded in a chance-based game/skill-based contest?

No.

Is there a tax liability associated with prizes? If so, who is responsible for payment of taxes: the winner or the sponsor? Are there any other costs or fees, such as duties and customs fees, imposed on prize awards?

Tax residents (*i.e.* citizens of Ukraine) are subject to Ukrainian personal income tax of 18 per cent irrespective of the country from which such income originates. Nonresidents are subject to Ukrainian personal income tax of 18 per cent in respect of their income generated in Ukraine. As a precondition to obtaining a prize by nonresidents, the latter may first need applying for local tax registration. Ukrainian Tax Code may stipulate that a certain prizes of minor value is not subject to personal income tax (regulation on what is minor value may change annually or even more frequently).

By law, sponsor is responsible for payment of all Ukrainian taxes due (acts as a tax agent for the purposes of payment by personal income tax and other taxes, such as for example military duty, payable by the winner).Further, any customs fees should be paid by importer of the prize, but express delivery / courier companies may establish their own rules for payments for their services. Some goods are also subject to temporary import duty.

Generally, for skill-based contests is it permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (i.e. in any and all media, now or hereafter devised, worldwide in perpetuity)? Can such ownership exist in perpetuity? Can copyright be transferred electronically or solely in writing?

It is generally permissible for the sponsor both to own in perpetuity the entries and to obtain a broad grant of rights. However, such ownership and acquisition of broad rights are rather exemptions from the general rule where:

- (i) Conditions of the contests according to which the entry is not returned to the participant are null and void. Therefore, as a general rule sponsor should return the entry after completion of the contest.
- (ii) Sponsor can further retain the entry upon consent of the participant (consent may also mean giving a gift or purchasing of the entry).
- (iii) If there is no consent of the participant, the sponsor can still continue to possess (possession does not mean in Ukraine complete ownership) the entry if within one month after completion of the contest the participant did not claim for returning of the entry. In the latter case, the participant has the right to demand returning of the entry at any time. In such case, the sponsor can acquire the ownership in the entry.
- (iv) To be valid, the assignment of copyright should be executed in writing. Moreover, all assigned rights should be itemized (e.g., in any and all media), otherwise they are not deemed as assigned.

Is it generally permissible to require that a winner sign a liability and/or publicity release in order to receive a prize?

Applicable laws and regulations do not expressly regulate this issue. However, a liability release will be likely unenforceable in Ukraine. Signing of the publicity release as a pre-condition for taking a prize is generally permissible under Ukrainian laws, but the Official Rules should expressly stipulate this, so that the participant is aware of it prior to entering the contest.

Must the Official Rules and advertising materials (including website) be provided in the Ukrainian language in all cases or solely if the promotion is advertised/promoted in that language (i.e. if all advertising is in English, can the Official Rules and website be published only in English)?

There are no strict requirements for provision of Official Rules and advertising materials in Ukrainian, as Ukrainian legislation allows choice of languages of advertising. However, according to Ukrainian laws, advertising should not mislead the consumers. Any use of foreign language (without translation into Ukrainian) may be considered as misleading and, therefore, be qualified as a violation of the Ukrainian unfair competition laws. Below we address misleading advertising in some more detail.

Are there any restrictions on the use of personal information collected from entrants?

Collection of personal information from entrants require their consent (it must contain, among others, specific purpose of personal data processing and scope of personal data subject to processing). Express consent is required for collection of sensitive personal data and cross-border transfer of personal data.

Furthermore, there is also a statutory requirement to notify about the fact of collection of personal data as soon as it is collected or within 30 days. The notification should contain such information as stipulated by the Law of Ukraine “On Personal Data Protection”.

Finally, once sensitive personal data is collected, it should be notified to the Ukrainian Parliament Commissioner for Human Rights (Ombudsman) in accordance with the established special procedure.

Is a chance-based game or the skill-based contest played/held solely online, without any promotion taking place in your country, subject to the laws of your country?

Such chance-based game or skill-based contest will be subject to the Ukrainian laws, provided that entrants from Ukraine (residents of Ukraine) have a possibility to take part (compete) in such contest.

Are there any key cases and/or regulatory decisions involving promotions the company should be aware of?

There were several landmark cases / decisions where sponsors were sanctioned with fines by the regulator in connection with misleading advertising:

- General promotional claim on the package of a product (coffee sticks) stating that this product is a part of promotional campaign (promotional product) without provision of information about conditions of the promotion campaign (contest) and term of the promotion (contest);
- General promotional claim on the package of a product (femcare product) stating that this product is a part of promotional campaign (promotional product) where in order to learn about conditions of the promotion campaign (contest) a consumer should open (damage) the package (inside packing). Same happened with drinks where information about conditions of the promotion was placed on inside part of the label;
- Sale of promotional products (soft-drink) after the date of completion of the respective promotional activity;
- Using a promotional claim "Prize is 100 % guaranteed" with indication that a consumer will receive a prize within 10 days upon sending a request. However, there was no possibility to control (capture) exact date of receipt of the request by the sponsor.

Are there any other important issues a company should consider or be aware of when structuring a chance-based game/skill-based contest that will be open to residents of your country?

Development of gambling laws

As of today, Ukrainian legislation regarding gambling is in the transitional period. Before 2009, gambling in Ukraine was legal but caused some controversy and public debates regarding its negative impact on society, crime level and insufficient regulation. In order to deal with these issues and to address concerns of the public, the Ukrainian Parliament adopted the Gambling Law in 2009. Today the said law totally prohibits gambling business and participation in gambling. The Gambling Law was designed as a temporary measure that would no longer apply once new gambling laws in special zones are enacted. As a part of this temporary measure, state monopoly on lotteries was established in 2012. Currently legalization of gambling in Ukraine is subject to public debates.

Misleading advertising

You should always be aware that misleading advertising is a big issue in Ukraine, as the law stipulates quite extensive definition of such actions. As the consequence, any incomplete or incorrect information provided during advertising and promotion can be qualified as misleading. A fine for misleading advertising can be significant – up to 5 per cent of the offender's turnover for the year preceding the year when the fine is imposed, for each such violation.

Additionally, the "average consumer" concept is underdeveloped in Ukraine and lacks legal regulation. Instead, the Antimonopoly Committee of Ukraine has quite formal approach to what can mislead a consumer, as the consumer is deemed to be naive and to perceive advertising straightforwardly.

Promotion activities related to alcohol and tobacco

Promotion activities connected with alcohol and tobacco are subject to numerous regulations and severe restrictions in Ukraine. For example, promotion activities related to alcoholic beverages and tobacco should not, among others:

- create an impression that alcohol or tobacco consumption contributes to solving personal problems;
- encourage alcohol or tobacco consumption in whatever way or discourage refraining from alcohol or tobacco consumption;
- create an impression that most people consume alcoholic beverages or tobacco; *and*
- show the act of alcohol or tobacco consumption.

Also, no models under the age of 18 and/or celebrities of whatever age should be used for promotion activities related to alcoholic beverages or tobacco.

UNITED KINGDOM

Are chance-based games (i.e., random draw promotions, instant win games) generally permissible?

Yes, they are generally permissible. However, a promoter needs to take care with the promotion mechanism to avoid a chance-based game falling within the definition of a “lottery”, “gaming” or “betting” within the Gambling Act 2005 (the “Act”). For example, a lottery comprises: (a) payment by or on behalf of the entrant; (b) allocation of prizes; (c) such allocation by chance. Promoters often look to remove the payment element to avoid conducting an illegal lottery (see Question 4 below).

Are skill-based contests (i.e., essay contests, photo contests, user-generated content contests) generally permissible?

Yes, they are generally permissible. However, a promoter needs to take care with the promotion mechanism to avoid a skill-based game falling within the definition of a “lottery”, “gaming” or “betting” within the Act. For example, the skill based element should not depend on the winner guessing the result of a football match or horse race (particularly if there is a requirement to pay to enter), and should not take the form of casino style games such as roulette or blackjack.

For example, to take a skill-based contest out of the potential “lottery” definition, a promoter can remove the need for payment to enter by entrants. Alternatively, if a promoter wants the entrant to pay, it will need to ensure that the level of skill is sufficient to deter a sufficient proportion of potential entrants from entering or prevent a significant proportion of those who do enter from winning a prize.

Is any type of registration or filing required to offer a chance-based game and/or a skill-based contest? If so, what are the costs and deadlines associated with such registration or filing?

No. Provided that the promotion mechanism has been constructed to avoid falling into the definitions of “lottery”, “gaming” or “betting” within the legislation referred to above, then there are no registration or filing obligations. (Otherwise, certain operating licences would need to be obtained from the Gambling Commission to avoid committing a criminal offence. Generally, marketers would be seeking to avoid illegality or the need for a licence).

Are promotions (chance-based or skill-based) in which someone is required to purchase the product in order to enter permitted?

Yes, provided that the purchaser of goods or services pays the normal price or rate for those goods or services, and not an adjusted price or rate that reflects the opportunity to participate in the promotion.

If a purchase is required, must a non-purchase method of entry be offered?

No. If such regular purchase prices/rates are used as described above, then there is no need to make a “No Purchase Necessary” route of entry available. Standard postage and telephone calls at normal rates will not constitute “payment”. On the other hand, premium rate entrance routes, special delivery entrance routes or payments which are required to claim a prize will all constitute “payment”.

Are there other forms of “consideration” which are prohibited in connection with entry into a chance-based game (e.g., posting a photo on Instagram, tweeting a response to a call-to-action, completion of a survey, taking a quiz and be required to answer questions correctly to be entered, watching a short video)?

Generally, such actions are not treated as ‘payment’, so the requirements for entrants to post to social media or submit a photo, etc., are fine. However, if entrants are required to provide extensive personal data (more than is needed for the purposes of processing their entry), for example by answering detailed questionnaires, and where it is intended to sell that information to a third party, this could constitute payment and can be a problem particularly for prize draws.

The most up to date guidance on the Gambling Commission’s website, published in 2009 and not legally binding, states that as a general rule, the Gambling Commission do not think that the ‘provision of data’ by individuals amounts to “payment” under the Act. However, this statement is made with the caveat that the collection of a large quantity of data, particularly where it is intended to be sold to third parties could potentially constitute “payment”.

In addition, it is always worth checking the terms and conditions of any relevant platform (*e.g.* Twitter, Facebook, etc.) to see whether the action required in order to enter is permitted by the platform.

Are promotions in which the winner(s) are determined in whole or in part by public voting permitted?

Yes, the regulations do not prohibit public voting. However, commercial consideration should be given to the fact that vote rigging and fraudulent voting in online user generated promotions is an issue. We often recommend that the promoter is given the final decision rather than the public.

If a chance-based game or skill-based contest is open to residents of several countries, must the random draw/winner determination process occur in your country or can it be conducted in another country? If the selection process must occur in your country, is there an exception for promotions taking place solely online?

There is no regulation requiring the draw/winner determination to take place in the UK. However, promoters will need to be mindful of complying with data protection legislation if transferring data outside of the UK and particularly outside the EEA.

If a chance-based game or skill-based contest is open to residents of several countries, is it permissible to combine all entries from all countries to determine the winners for a single prize pool or must there be a separate prize pool for residents of your country?

Yes, all entries can be combined provided this is made clear in the terms and conditions. There is no need for a separate prize pool for residents of the UK.

Are there any restrictions on the type, nature or value of the prizes (e.g., travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

No. However, the prizes must be age appropriate and lawful. For prize draws, the winner must not be required to pay anything in order to take up the prize.

Is there a tax liability associated with prizes? If yes, who is responsible for the taxes, winner or sponsor? Are there any other costs or fees, such as duties and customs fees, imposed on prize awards?

Subject to the following comments, those who win prizes do not have to pay tax on those prizes in the UK.

The UK does not generally subject prizes to income tax if they are won as part of prize draws, lotteries, or similar recreational activities. However, there is no general exemption for prize winnings, and care should be taken in specific circumstances. If an employer offers prizes to their employees then those prizes may be subject to Pay As You Earn tax and National Insurance Contributions (which are both the responsibility of the employer). If, alternatively, a self-employed person enters a competition as part of their trade, then they may have to count the prize towards their taxable income. For example, if a freelance filmmaker produces a film as part of a competition to promote a sponsor, and wins a prize, then the value of that prize will be counted as a profit of their trade. The sponsor will not have a liability in this scenario.

The value added tax treatment of prizes is complex. In general terms, cash prizes should not create a VAT (Value Added Tax) liability, but goods and services may either be subject to output VAT, or lead to a restriction on the ability to claim input VAT, either or which would impact the sponsor rather than the winner.

The sponsor should also consider duties and customs fees if goods constituting the prize are imported/exported.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (i.e., in any and all media, now or hereafter devised, worldwide in perpetuity)? Can such ownership exist in perpetuity? Can copyright be transferred electronically or must the transfer occur in writing?

There is no law preventing ownership by a sponsor of the entries submitted by an entrant. Transfer of ownership or a licensing arrangement is possible. However, in the UK, for a legal transfer of ownership of copyright to be effective, there needs to be an assignment which is signed in writing by the assignor. Otherwise, there will only be an equitable ownership of the copyright.

From a commercial perspective, entrants are becoming savvier and it may be commercially damaging for a sponsor if entrants consider that the sponsor is acting unfairly in claiming ownership of the entry materials without good reason, especially for non-winning entries or for winning entries where the potential value of the entry outweighs the value of the prize.

If entries are via a third party platform, the platform terms and conditions should be checked to assess what rights to the entry materials the platform owner is claiming to check that the sponsor's promotion terms do not conflict.

Is it generally permissible to require that a winner sign a liability and/or publicity release in order to receive a prize?

It is technically permissible provided that the terms of the liability or publicity release are brought to the attention of the winner prior to entry (*e.g.*, included in the Official Rules). However, it is not common (and usually it is not necessary) in the UK.

Must the Official Rules and advertising materials (including website) be provided in the native language? Or must the Official Rules and website only be provided in the native language if the promotion is advertised/promoted in that language (e.g., if all advertising is in English, can the Official Rules and website only be in English)?

There are no rules requiring English to be used, but the target market must be able to understand both the Official Rules and advertising materials. It is advisable to ensure that the Official Rules are in the same language as the advertising materials, otherwise it will be difficult to show that entrants have readily understood and agreed to the Official Rules.

Are there restrictions on the use of personal information collected from entrants?

All collection and use of data must be in accordance with data protection legislation and in particular the Data Protection Act 1998. As a general rule, the personal data must be used fairly and consumers should be told what their information is being used for. Entrants' personal data may only be used if you have informed consent from entrants. We recommend that you do not collect and use personal data from those aged under 16 (or 13 in some cases) for marketing purposes.

If the chance-based game or skill-based contest is solely online and no promotion takes place in your country, is it subject to the laws of your country?

Marketing communications originating in foreign media, including prize promotions, are generally outside of UK regulation. However, if the Advertising Standards Authority in the UK finds that such communications or promotions are targeting UK consumers, they will refer any complaints to the relevant regulatory authority of the originating jurisdiction or if such a cross-border complaint system is not in place, the Advertising Standards Authority will take action itself.

Are there key cases and/or regulatory decisions involving promotions of which a company should be aware?

There are hundreds of regulatory decisions in this area (too many to list). Broadly speaking, they do not create new law or rules, they simply apply the UK's CAP Code rules on Promotions.

Are there any other important issues a company should consider or be aware of when structuring a chance-based game/skill-based contest that will be open to residents of your country?

If the selection of a winning entry is open to subjective interpretation, there will need to be an independent judge or one independent judge member if there is a judging panel.

It is only in very exceptional circumstances that a promoter can change the terms and conditions of entry once a promotion has begun. The closing date should not be pushed back merely because a disappointing number of people have taken part.

We see a lot of promotions going wrong creating reputational problems for promoters in addition to regulatory problems. Accordingly, we advise promoters to obtain legal advice at promotion concept stage.

NOTE: The law in Northern Ireland relating to promotions law is currently different to the law in the rest of the UK. Reform to Northern Ireland's lotteries and gambling regulation which will closely align it to the current law in Great Britain is expected but has been delayed and is not yet in place. The responses below concentrate on the position under the law of Great Britain (England, Scotland and Wales), rather than Northern Ireland.

UNITED STATES

Are chance-based games (e.g., random draw promotions, instant win games) generally permissible?

Yes, promotional games of chance are permitted in the United States. They can take the form of random drawings, instant-win games, or a variety of other forms that involve predominantly the element of chance.

Are skill-based contests (e.g., essay contests, photo contests, user-generated content contests) generally permissible?

Yes, skill-based contests are generally permissible in the United States.

Is any type of registration or filing required to offer a chance-based game and/or a skill-based contest? If so, what are the costs and deadlines associated with such registration or filing?

There are three states in the United States that require registration and bonding when you are conducting certain chance-based games.

If the aggregate value of all prizes to be awarded exceeds \$5,000, New York and Florida both require that the sponsor of the chance-based game register and bond the sweepstakes. Currently, the cost to register is \$100 in Florida and \$150 in New York. The sponsor must also file a surety bond with each state that equals the aggregate value of all prizes in the sweepstakes. The cost of the bond is approximately 1% of the value of the bond. Registration must be completed in New York at least 30 days prior to the start of the promotion or, if you are promoting the promotion prior to the start date, 30 days prior to any promotion of it. In Florida, registration must be completed at least 7 days prior to the start of the promotion or, if you are promoting the promotion prior to the start date, 30 days prior to any promotion of it.

If a chance-based game is being sponsored by a company that has brick and mortar stores in Rhode Island and the aggregate value of all prizes to be awarded exceeds \$500, then the sponsor must also register the sweepstakes in Rhode Island. There is a \$150 registration fee in Rhode Island. Registration must be completed prior to the start of the promotion.

In certain limited situations, Arizona also requires registration.

Are promotions (chance-based or skill-based) in which someone is required to purchase the product in order to enter permitted? If a purchase is required, must a non-purchase method of entry be offered?

In the United States, it is generally not permitted to require participants to make a purchase in order to compete for prizes in a game in which chance is the predominant factor. For chance-based promotional games involving prizes, a non-purchase alternative entry method will be required in order to make the game lawful. Note that the non-purchase alternative entry method will make a game lawful if the payment method involves the purchase of the promoted good or service. However, a non-purchase alternative entry method may not make a game lawful if the payment method involves an entry fee that is not connected to the promotion of the organizer's goods or services.

Except in a few states (which will vary depending on the specific type of game), it is generally permissible to require participants to pay to compete for prizes in a game in which skill is the predominant factor.

Are there other forms of "consideration" which are prohibited in connection with entry into a chance-based game (e.g., posting a photo on Instagram, tweeting a response to a call-to-action, completion of a survey, taking a quiz and being required to answer questions correctly to be entered, watching a short video)?

Prohibited types of consideration generally take the form of an entry fee or other cash payment or a purchase of a product or service. Theoretically (at least in some states), the expenditure of a *significant* amount of time or effort could also amount to prohibited consideration, but there has been no recent enforcement on this basis. Generally speaking, posting a photo on Instagram, tweeting a response to a call-to-action, completion of a survey, taking a quiz and being required to answer questions correctly to be entered, and watching a short video should *not* be prohibited activities.

Are promotions in which the winner(s) are determined in whole or in part by public voting permitted?

The general view is that public voting promotions are permitted, so long as they are conducted properly.

If a chance-based game or skill-based contest is open to residents of several countries, must the random draw/winner determination process occur in your country or can it be conducted in another country? If the selection process must occur in your country, is there an exception for promotions taking place solely online?

The law in the U.S. does not address this issue specifically. Promotional offers, regardless of whether they are chance-based games or skill-based contests or other types of offers, must be conducted in a non-deceptive, non-misleading manner. The drawing or winner determination must be conducted in a fair and unbiased manner. Where the drawing or winner determination occurs is less important than the fairness and objectivity of the drawing or determination.

If a chance-based game or skill-based contest is open to residents of several countries, is it permissible to combine all entries from all countries to determine the winners for a single prize pool or must there be a separate prize pool for residents of your country?

There is no prohibition on combining all entries from all countries to determine the winners for a single prize pool. Note, however, that other considerations may come into play here. For example, a prize with a travel component could be impacted depending on the residence of the winner. In addition, a sponsor could have to take into account varying tax consequences for entrants from other countries.

Are there any restrictions on the type, nature or value of the prizes (e.g., travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

As a general matter, there are no restrictions on the type of prizes that can be awarded. There are, however, some limited restrictions for particular types of products, such as dairy, alcohol, and gas. The appropriateness of the prize should also be considered in light of the potential pool of entrants (*e.g.*, you should not give away a car as a prize to a child under driving age).

Is there a tax liability associated with prizes? If yes, who is responsible for the taxes, the winner or the sponsor? Are there any other costs or fees, such as duties and customs fees, imposed on prize awards?

Yes. In the U.S., the fair market value of the prize won is considered “regular income.” Accordingly, it is treated as part of the winner’s income for the year in which the prize is awarded. Thus, the winner is responsible for paying income tax on any prize awarded. For larger prizes of USD \$600 or more, a U.S. entity awarding the prize must declare to the U.S. Internal Revenue Service (IRS) the value of the prize and the identity and tax identification number of the winner. The IRS then knows that a U.S. taxpayer has received a prize of substantial value that should appear in his or her tax return for the year in which the prize was awarded. For sponsors who reside outside of the U.S. and have absolutely no contacts within the U.S., there usually is no withholding tax obligation imposed on that foreign, non-resident sponsor. U.S. sponsors who award prizes to non-resident winners in some instances will need to pay a withholding tax to the IRS based on a percentage of the prize value awarded outside of the U.S.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (i.e., in any and all media, now or hereafter devised, worldwide in perpetuity)? Can such ownership exist in perpetuity? Can copyright be transferred electronically or must the transfer occur in writing?

A contest sponsor can own the copyright in a contest entry so long as the contest entrant assigns that copyright to the sponsor in a signed writing. In lieu of copyright ownership, a contest sponsor also can obtain a broad copyright license to a contest entry from the contest entrant, and that license, if exclusive, must be made by the entrant in a signed writing. For a non-exclusive license, a signed writing is advisable, even though not legally required, because it evidences the scope of the license granted for the entry and also evidences that the sponsor and the entrant are in agreement regarding that scope. Copyright assignments and licenses from a contest entrant to a contest sponsor are often granted through the contest rules, contest submission form and/or contest Affidavit of Eligibility. In each of these documents, the

contest entrant explicitly agrees that by submitting a contest entry the entrant thereby assigns or licenses, as applicable, all copyright and other rights in and to the entry to the contest sponsor.

Despite any language in such documents to the contrary, a contest sponsor cannot be guaranteed that it holds by assignment or license all copyright to a contest entry “in perpetuity,” since the Copyright Act permits an author of a copyrightable work to terminate assignments and licenses in certain circumstances.

A contest sponsor also cannot hold all copyright in a contest entry “in perpetuity” for the separate reason that copyright is a right of limited duration, with the term of copyright for a particular work established by the Copyright Act. After that term expires the copyright in the contest entry will fall into the public domain.

Is it generally permissible to require that a winner sign a liability and/or publicity release in order to receive a prize?

Yes, it is generally permissible. However, in Tennessee, you cannot condition a prize award on obtaining a publicity grant from the winner.

Must the Official Rules and advertising materials (including website) be provided in the native language? Or must the Official Rules and website only be provided in the native language if the promotion is advertised/promoted in that language (e.g., if all advertising is in English, can the Official Rules and website only be in English)?

In the U.S., most people speak English. If a promotional game or contest originates from outside of the U.S. and is not translated into English it is likely that few residents in the U.S. will understand the rules and instructions, even if they are eligible to participate. But, there is no law that requires all offers to be in English. Generally, under U.S. law, if advertising is in one language (*e.g.*, Spanish) the material terms or official rules must also be available in that language. In the U.S. territory of Puerto Rico, the official language is Spanish. The chance-based game law in Puerto Rico specifically says that the Official Rules must be in Spanish if the advertising is presented in Spanish.

Are there restrictions on the use of personal information collected from entrants?

There may be restrictions on the use of personal information collected from entrants, but that will vary based on the type of information collected and the purposes for which it is used. Generally speaking, personal information must be used in accordance with the sponsor’s privacy policy. In addition, if information about children under the age of 13 is collected, there may be severe restrictions imposed on collection and use of such information under the Children’s Online Privacy Protection Act. Finally, financial and personal health information may be regulated by the Graham Leach Bliley Act and the Health Insurance Portability and Accountability Act, but this will vary depending on the type of information collected and the nature of the sponsor or its business.

If the chance-based game or skill-based contest is solely online and no promotion takes place in your country, is it subject to the laws of your country?

If U.S. residents are permitted to enter, then, most likely, the promotion is subject to U.S. law.

Are there key cases and/or regulatory decisions involving promotions of which a company should be aware?

The following are a few recent, key decisions:

Cole Haan. In 2014, the FTC investigated a contest conducted by Cole Haan on Pinterest, which required entrants to post a picture of a Cole Haan shoe in order to enter. In a closing letter, the FTC indicated that if a contest entrant posts content in social media in order to enter, in order to comply with the FTC’s guidance on the use of endorsements and testimonials in advertising, he or she must disclose that the post is a contest entry.

South Carolina Attorney General Opinion. In 2010, the South Carolina Attorney General indicated that a contest essay contest where entrants had to pay to enter was an illegal lottery because the sponsor did not give sufficient criteria for evaluating the essays.

Premium text message entries. In September 2011, after four years of litigation, Fox, NBC and several major production companies settle a class action which alleged that the defendants ran illegal lotteries by charging premium text message fees in order to enter various sweepstakes (even though there was a free method of entry). As part of the settlement, the premium text message fees were refunded.

Subway v. Quiznos. In February 2010, the U.S. District Court for the District of Connecticut held that it could not conclude, as a matter of law, that Quiznos was not responsible for the creation and development of user-generated videos submitted in connection with a contest that Subway alleged contained false and misleading claims about its products. Subway brought a false advertising action against Quiznos arguing that Quiznos was responsible for the content of the contest entries and therefore responsible for the false claims about products contained in them. Quiznos defended the action on the ground that it was immune from liability for the videos under the Communications Decency Act (“CDA”).

Are there any other important issues a company should consider or be aware of when structuring a chance-based game/skill-based contest that will be open to residents of your country?

I. Chance-Based Games

If a purchase or considerable effort is required to enter a chance-based promotion, the sponsor should provide an alternate method of entry that does not require a purchase or considerable effort. The cost of a standard rate text message may still be determined to be prohibited consideration, even though the cost is less than a first class postage stamp (which is permissible).

II. Skill-Based Contests

Most states follow the “dominant element” test in order to determine whether a promotion is chance-based or skill-based. To satisfy the “dominant element” test, in general, (a) participants must have a distinct possibility of exercising skill and must have sufficient data upon which to calculate an informed judgment, (b) participants must have the opportunity to exercise their skill, and the general class of participants must possess the skill, (c) skill or the competitors’ efforts must sufficiently govern the result, and (d) the standard of skill must be known to the participants, and this standard must govern the result.

III. Other

Any promotion that includes a text message component should be reviewed both for compliance with the applicable promotions law but also for compliance with state and federal telemarketing laws, such as the Telephone Consumer Protection Act (“TCPA”).

Always consider the terms and conditions of social media sites before conducting a promotion involving social media platforms in the U.S. Most have their own set of rules that govern sweepstakes and skill contests on the applicable platform.

All promotions, whether chance-based or skill-based, should have a comprehensive set of official rules, which act as the contract between the sponsor and the entrants.



URUGUAY

Are chance-based games (i.e., random draw promotions, instant win games) generally permissible?

There are three types of chance-based games regulated under Uruguayan regulation.

- (i) Chance-based games in which money is given as a prize or the disbursement of a sum of money is required for the participation in the same, are legally restricted and can only be carried out with the prior authorization of the National Directorate of Lotteries ("*Dirección Nacional de Loterías y Quinielas*") and in particular cases such as for charitable activities, for educational activities, among others.
- (ii) Chance-based games related to the consumption or promotion of certain products or services (random draw promotions) are generally permissible, and are regulated by Law 15.851 and Decree 449/99, requiring the prior authorization of the General Trade Directorate. The main aspects considered to catalog an activity as such are the encouragement to consume the product or service promoted, and the existence of a random element in the determination of the winner of the prize.
- (iii) Chance-based games not related to the consumption or promotion of a certain product or service (*e.g.* brand promotions) are generally permissible.

Are skill-based contests (i.e., essay contests, photo contests, user-generated content contests) generally permissible?

Yes, skill-based contests are generally permissible.

Is any type of registration or filing required to offer a chance-based game and/or a skill-based contest? If so, what are the costs and deadlines associated with such registration or filing?

Regarding chance-based games:

- (i) those in which money is given as a prize or the disbursement of a sum of money is required for the participation can only be carried out in exceptional cases (charitable activities, for educational activities, among others) with the prior authorization of the National Directorate of Lotteries ("*Dirección Nacional de Loterías y Quinielas*"). There is no specific procedure determined, however the authorization must be obtained before the beginning of the game.
- (ii) chance-based games related to the consumption or promotion of certain products or services (random draw promotions) require the prior authorization of the General Trade Directorate, which has to be requested at least 30 days before the beginning of the promotion. There is no cost for the authorization (save for notary costs involved).

An additional authorization from the Municipal Government of Montevideo must be filed in case the prize value with taxes included exceeds 100 index-linked units ("*Unidades Reajustables*") (approximately USD 3.530), and the game takes place in said state, regardless whether the promotion also takes place in other states (even when it is a national scale game). The authorization must be filed following the General Trade Directorate's authorization, and within 20 days before the draw or the determination of the winner (in this case, it is not required to previously obtain the approval to begin with the promotion). This authorization implies the payment of certain fees (USD 200 approx.), a tax equal to 5% of the value of the prizes to be awarded including taxes, and a safety deposit equal to 20% of the prizes value including taxes (which is returned once the promotion is properly ended).

Note that the costs previously indicated do not include the notary costs involved in the proceedings. Each of the authorizations requires a minimum of 2 public notary certifications (one for the request and other for the closing).

- (iii) chance-based games not related to the consumption or promotion of a certain product or services do not require any type of authorization, as far as said game does not fall in (i or ii). Skill based contest do not require a registration or prior authorization.

Are promotions (chance-based or skill-based) in which someone is required to purchase the product in order to enter permitted? If a purchase is required, must a non-purchase method of entry be offered?

Chance-based promotions in which the purchase of a product or service is required to participate are permitted, however in the case of promotions related to the consumption of products a non-purchase method of entry ought to be offered. In general, promotions requiring the hiring of a service do not require the organizer to offer a non-purchase method to entry the promotion, unless the same ought to be authorized by the Municipal Government of Montevideo, in which case such offering is indeed required.

Skill-based promotions in which the purchase of a product is required to participate are also permitted, in these cases there is no need to offer a non-purchase method of entry.

Are there other forms of “consideration” which are prohibited in connection with entry into a chance-based game (e.g., posting a photo on Instagram, tweeting a response to a call-to-action, completion of a survey, taking a quiz and be required to answer questions correctly to be entered, watching a short video)?

No other forms of “consideration” are prohibited in connection to the entry into a chance-based game.

Are promotions in which the winner(s) are determined in whole or in part by public voting permitted?

Yes, they are.

If a chance-based game or skill-based contest is open to residents of several countries, must the random draw/winner determination process occur in your country or can it be conducted in another country? If the selection process must occur in your country, is there an exception for promotions taking place solely online?

As far as Uruguayan local residents can participate in the chance-based game or skill-based contest, in principle, the local regulation would apply. Although there is no express regulation setting forth an obligation for the random draw/winner determination process to occur in Uruguay, the local regulation requirements should be met. Therefore, in the case of chance-based game the random draw/winner determination process should be held before a public notary. As for skill-based contest, there is no particular regulation on the matter, accordingly, there is no obligation for the winner selection process to be held in Uruguay, nor any other requirement to be met.

If a chance-based game or skill-based contest is open to residents of several countries, is it permissible to combine all entries from all countries to determine the winners for a single prize pool or must there be a separate prize pool for residents of your country?

It is possible to combine all entries from all countries to determine the winners from a single prize pool. However, the latter must be explicitly declared within the game’s terms and conditions.

Are there any restrictions on the type, nature or value of the prizes (e.g., travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

The only restriction as for prizes that can be awarded in chance-based games/skill-based contests is the prohibition to award prizes in cash. Notwithstanding the foregoing, the local regulators on chance-based games for promotions linked to the consumption of a certain product or service have accepted the granting of credit or debit cards for a determined amount of money as part of a prize.

Is there a tax liability associated with prizes? If yes, who is responsible for the taxes, winner or sponsor? Are there any other costs or fees, such as duties and customs fees, imposed on prize awards?

No. The only taxes linked to chance-based games connected to the consumption of a certain product or service are those indicated above charged by the Municipal Government of Montevideo.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (i.e., in any and all media, now or hereafter devised, worldwide in perpetuity)? Can such ownership exist in perpetuity? Can copyright be transferred electronically or must the transfer occur in writing?

Yes, it is permissible for the organizer to own the entries submitted and/or obtained a grant of rights on such entries, and such ownership can exist in perpetuity. Nevertheless, the only rights that can be granted or owned by the sponsor/organizer are those of a patrimonial nature, and not those of a personal nature.

Is it generally permissible to require that a winner sign a liability and/or publicity release in order to receive a prize?

Yes, it is permissible, provided that it is stated in the game's/contest's terms and conditions that the winner is required to sign a liability and/or publicity release in order to receive the prize.

Must the Official Rules and advertising materials (including website) be provided in the native language? Or must the Official Rules and website only be provided in the native language if the promotion is advertised/promoted in that language (e.g., if all advertising is in English, can the Official Rules and website only be in English)?

As far as the local regulation is applicable the Official Rules as well as the advertising materials must be provided in the native language (Spanish).

Are there restrictions on the use of personal information collected from entrants?

Yes. According to local data protection regulation, Law 18,331 on Personal Data Protection and Habeas Data Action, in order to comply with the purpose limitation principle, the personal information provided by entrants/participants on a game/contest can only be used for the participation on the latter, and should be eliminated once it is no longer necessary for the purpose it was collected. In case the organizer wished to use the information for promotional/marketing purposes, the prior consent of entrants for the use of their data for such purpose ought to be obtained. Note that participants should not be prevented to participate on the game/contest if they do not want to grant their consent for the use of their data for purposes other than the mere participation on the game/contest.

If the chance-based game or skill-based contest is solely online and no promotion takes place in your country, is it subject to the laws of your country?

As long as the chance-based game or skilled-based contest has effects within Uruguayan territory, it would be subject to Uruguayan regulations. However, in practice there is few to none active control on online games/contest regarding which no promotion takes place in Uruguay.

Are there key cases and/or regulatory decisions involving promotions of which a company should be aware?

The main relevant regulatory decision worth mentioning issued by the General Trade Directorate, regulatory body for chance-based games involving the purchase of a product or service, is one that declared that the only promotions to be authorized by such body were those involving (besides the purchase) a random manner to determine the winners.

Are there any other important issues a company should consider or be aware of when structuring a chance-based game/skill-based contest that will be open to residents of your country?

Concerning chance-based games, it is important to consider the timeframes detailed above, as well as the requirements solicited by local regulators in order to authorize such type of promotions. Moreover, it should be considered that no advertising will be approved without the proper authorizations (except regarding the Municipal Government of Montevideo's authorization), and that all advertisement shall include some mandatory information on them, regardless of the means used for such advertisement.

 VENEZUELA 

Are chance-based games (i.e., random draw promotions, instant win games) generally permissible?

Yes, the chance-based games are allowed. An authorization granted by the Venezuelan National Superintendence for the Defense of the Socio-Economic Rights (“SUNDDE”) is mandatory.

Are skill-based contests (i.e., essay contests, photo contests, user-generated content contests) generally permissible?

Yes, the skill-based contests are allowed. An authorization granted by the Venezuelan National Superintendence for the Defense of the Socio-Economic Rights (“SUNDDE”) is required.

Is any type of registration or filing required to offer a chance-based game and/or a skill-based contest? If so, what are the costs and deadlines associated with such registration or filing?

Yes, both the chance-based games and skill-based contests require an authorization from the Venezuelan National Superintendence for the Defense of the Socio-Economic Rights (“SUNDDE”). The authorization shall be requested no later than 15 days prior to the contest or game’s start date. Official fees for filling an authorization request usually do not exceed the amount of USD \$120.

Are promotions (chance-based or skill-based) in which someone is required to purchase the product in order to enter permitted? If a purchase is required, must a non-purchase method of entry be offered?

The law does neither sets forth nor prohibits this option; in consequence, it is permitted.

Are there other forms of “consideration” which are prohibited in connection with entry into a chance-based game (e.g., posting a photo on Instagram, tweeting a response to a call-to-action, completion of a survey, taking a quiz and be required to answer questions correctly to be entered, watching a short video)?

The above-mentioned forms of consideration are allowed, however, it may also depend on the photo or video material.

Are promotions in which the winner(s) are determined in whole or in part by public voting permitted?

The law neither sets forth nor prohibits this option; in consequence, it is permitted.

If a chance-based game or skill-based contest is open to residents of several countries, must the random draw/winner determination process occur in your country or can it be conducted in another country? If the selection process must occur in your country, is there an exception for promotions taking place solely online?

The random draw/winner determination may occur in another country. In case it occurs in Venezuela, it should be certified by a Notary. When the winner determination process occurs through software, the authorization should include a description of such software. There is no specific regulation in case the promotion taking place solely online, but in all cases a local entity must be responsible for the contest.

If a chance-based game or skill-based contest is open to residents of several countries, is it permissible to combine all entries from all countries to determine the winners for a single prize pool or must there be a separate prize pool for residents of your country?

The law does neither sets forth nor prohibits this option; in consequence, it is permitted. However, travelling restriction (e.g. visas) are to be taken into account, as well as other prohibitions (e.g. a currency exchange control is in force, restricting metals prized that must be given in local currency).

Are there any restrictions on the type, nature or value of the prizes (e.g., travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

See above. There are no additional restrictions regarding the prizes. However, the legislation requests that the submission for authorization include the prize’s invoice, and in case a travel prize offered an estimate budget and itinerary should be filed.

Is there a tax liability associated with prizes? If yes, who is responsible for the taxes, winner or sponsor? Are there any other costs or fees, such as duties and customs fees, imposed on prize awards?

As mentioned before, a local entity must be appointed as responsible for all legal obligations, including taxes. The tax liability should be analyzed in case by case basis, in order to determine if a contest applies for Lottery Tax Act.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (i.e., in any and all media, now or hereafter devised, worldwide in perpetuity)? Can such ownership exist in perpetuity? Can copyright be transferred electronically or must the transfer occur in writing?

A contract should be signed with the winner, which should establish the rights transference terms, according to the Venezuelan Copyright Act. Note that some rights cannot be assigned (moral rights).

Is it generally permissible to require that a winner sign a liability and/or publicity release in order to receive a prize?

Yes, it is permissible to request a winner sign a liability and/or publicity release.

Must the Official Rules and advertising materials (including website) be provided in the native language? Or must the Official Rules and website only be provided in the native language if the promotion is advertised/promoted in that language (e.g., if all advertising is in English, can the Official Rules and website only be in English)?

Since chance-based game and the skill-based contest are subject to authorization, the Official Rules should be filed in Spanish. The Official Rules should be also be made available in Spanish.

Are there restrictions on the use of personal information collected from entrants?

The Official Rules shall expressly establish the participant's authorization for collection of their personal information, and the intended use of such data.

If the chance-based game or skill-based contest is solely online and no promotion takes place in your country, is it subject to the laws of your country?

No.

Are there key cases and/or regulatory decisions involving promotions of which a company should be aware?

No.

Are there any other important issues a company should consider or be aware of when structuring a chance-based game/skill-based contest that will be open to residents of your country?

Grounds for refusal of authorization for promotions and offers: The SUNDDE will not authorize any promotions in the following cases: (i) where the promotion is contrary to public order and morality; (ii) establishes prices outside the legal limits set forth in the regulations on fair costs and prices; (iii) applications filed by those who have been sanctioned under the regulations on fair costs and prices and have failed to make the payment of the imposed fines. With regard to these grounds for refusal, the legislature strangely failed to include subliminal, false or misleading advertising, which are also prohibited within this regulatory framework.

Pertinent exclusion of cases NOT subject to the authorization scheme: The legislature correctly lists activities not subject to this regulation (which wording was confusing in certain cases), clarifying doubts that had been dragging on for years, namely:

- Launching of a product
- Tastings
- Delivery of free samples
- Acts of mere advertising of products and/or services

Companies subject to additional requirements:

- Hotels, inns and other companies providing tourist accommodation services must attach a copy of the notification of the promotional rate sealed by the Ministry of Tourism.
- Companies which offer products for weight loss, cellulite reduction, among others, must attach a previous study establishing the effectiveness and safety of the products. As in many other cases, the standard is incomplete because it fails to clarify the characteristics of such studies or the entities that must issue the studies in question, leaving the issue again at the discretion of the officer on duty.
- If the promotion will also take place in establishments located in one of two free port areas in the country, the processing of the permit must be made separately from those subject to the standard tax regime.

Duration of promotions: Promotions may not exceed three (3) consecutive months from the entry into force of the authorization, but the regulation fails to provide the penalty applicable in case of noncompliance.

Special rights of consumers: It is worth noting that in the event of infringement by the responsible for the promotion, sweepstake or contest, and in addition to the imposition of penalties, the consumer or user may:

- Enforce benefits or awards.
- Terminate the contract, if it the consumer or user prepaid (entry fee) to participate in the activity.
- Request a refund of the entire amount paid, if there is good reason to establish dissatisfaction with the service provided or the product purchased.

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