GALA

GLOBAL ADVERTISING LAWYERS ALLIANCE

Sweepstakes & Contests: A Global Legal Perspective

SECOND EDITION

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This publication provides general guidance only. It does not provide legal advice.
Please consult your attorney for legal advice.

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INTRODUCTION

We are very pleased to share with you the Second Edition of 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 seventy 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 Melissa Steinman from Venable LLP, one of GALA's United States members, and Stacy Bess, GALA's Executive Director, for their work in helping us to publish this.

ABOUT GALA

The Global Advertising Lawyers Alliance (GALA) is the leading network of advertising lawyers in the world. With firms representing more than 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.

For further information about GALA, please contact the relevant member directly or alternatively GALA's Executive Director, Stacy Bess at:

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TABLE OF CONTENTS

Argentina	8
Australia	15
Austria	24
Belgium	29
Bolivia	33
Bosnia & Herzegovina	39
Brazil	46
Bulgaria	54
Canada	65
Chile	70
China	75
Colombia	81
Costa Rica	87
Croatia	92
Cyprus	97
Czech Republic	103
Denmark	111
Dominican Republic	118
Dutch Caribbean	123
Ecuador	128
Egypt	134
El Salvador	140
Estonia	147
Finland	155
France	164
Germany	172

Ghana	179
Greece	187
Guatemala	193
Honduras	199
Hong Kong	204
Hungary	211
India	218
Ireland	226
Israel	232
Italy	239
Japan	250
Kenya	255
Lativa	263
Lithuania	268
Luxembourg	273
Malaysia	279
Malta	284
Mexico	289
Netherlands	297
New Zealand	304
Nicaragua	311
Nigeria	317
Norway	323
Panama	329
Paraguay	334
Peru	339
Poland	345

Portugal	353
Puerto Rico	361
Romania	366
Russia	373
Serbia	381
Singapore	387
Slovakia	392
South Africa	398
Spain	403
Sweden	409
Switzerland	415
Trinidad and Tobago	423
Turkey	430
Ukraine	440
United Arab Emirates	448
United Kingdom	456
United States of America	464
Uruguay	473
Venezuela	480
Zimbabwe	486
List of GALA Members	491

ARGENTINA

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

Yes.

Are skill-based contests (ie, 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?

Although an authorization by the National Lottery was previously required, the National Lottery was dissolved in 2018.

Argentina is a federal country and is subdivided into 23 provinces and the city of Buenos Aires. In some of these provinces, there are registration requirements for sweepstakes, raffles, and contests. This is the case in Neuquén, Mendoza, Río Negro, Salta and Tierra del Fuego. Each of these provinces has established a different set of conditions that must be met, but—since most restrictions are cumbersome—one possible solution is to exclude these provinces from the contest or sweepstake's territory.

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?

Argentina's Fair Trading Law No 22,802 ("FTA") has established a new normative regime for this matter, under which 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 is expressly forbidden. Consequently, a non-purchase method of entry, offering the same chance to win, must be offered in order to avoid the FTA prohibition.

Are there other forms of "consideration" which are prohibited in connection with entry into a chance-based game (eg, 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. However, chance-based games conducted through social media or other platforms must comply with terms or restrictions of each platform (eg, Twitter, Facebook, Snapchat).

Are raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

At the national level, the main difference is that prizes awarded in charitable sweepstakes and raffles are exempted from taxation. At the local level, depending on the province, charitable sweepstakes may or may not be treated differently.

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.

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 (eg, travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

No.

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

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?

On one hand, the winner, if resident in Argentina, must report the amount received from the sponsor to the Argentine tax authorities and pay income tax on it.

On the other hand, if the sponsor is located in Argentina, it will have to pay a prize tax, provided by Law No 20.630, acting as a withholding agent for the Argentine government. This tax amounts to 31% on 90% of the amount of the prize. Sponsors located abroad are not required to pay nor withhold this tax. It only applies to chance-based sweepstakes and contests (charitable contests being exempted). 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 (ie, 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 their works and to control the destination of their works. So, even if the Official Rules stipulate an assignment of the entries, those entries should 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 the winners and should be limited for a certain period of time. This is because a court could find that the organizer did not pay for the assignment and that the participant should therefore 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 (eg, 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. Moreover, there are specific wordings that marketing materials must include 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 to request the access, rectification and erasure of their personal data. Participants also have the right to refuse data collection, under certain circumstances. The sponsor must clearly inform participants which personal information is being collected and for what purposes. Participants' express consent to use their personal information is required, except in some special cases provided 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, local laws will apply.

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 SA, the Argentine subsidiary of the Mexican mobile company, Claro. A consumer claimed that she had participated in a promotion, in which a Mini Cooper car was offered as a prize. 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 SA, claiming breach of contract. The complaint stated that on 2 November, 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 SA 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 3 November 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.

To sum up, 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 consumer 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 23 provinces 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 and comply with the relevant registration procedures (when applicable) or exclude those provinces from the territory scope to avoid sanctions.

The organizer/sponsor must include within the Rules the following information:

(i) list of prizes to be awarded, including its specifications, nature and number;
(ii) start date/closing date/territory scope;
(iii) the mathematical odds of winning a prize (or at least an estimation);
(iv) any costs that may arise from winning a prize;
(v) how to enter;
(vi) the criteria and mechanism for winning a prize;
(vii) when and how the adjudication of prizes will be published;
(viii) how and when winners will receive their prizes; and
(ix) inform what will happen with prizes that are not awarded.

Furthermore, within 10 days of the end of the promotion/sweepstakes, a list of winners must be published by the same means used to promote it. The list of winners must be kept for 3 years, together with the proof of receipt of the awarded prizes, in case the authority requires it.

With regard to promotional materials, note that information about the conditions, prizes and territorial scope of the contest/sweepstakes must be published on the website and/or a toll-free hotline indicated in the corresponding advertisement.

AUSTRALIA

Are chance-based games (ie, 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 (ie, 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:

1. ACT

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

Prize Value in ACT	**Fee**
Greater than AU$3,000 and less than or equal to AU$5,000	AU$223
Greater than AU$5,000 and less than or equal to AU$10,000	AU$326
Greater than AU$10,000 and less than or equal to AU$50,000	AU$627
Greater than AU$50,000 and less than or equal to AU$100,000	AU$896
Greater than AU$100,000 and less than or equal to AU$200,000	AU$1,788
Greater than AU$200,000	AU$3,586

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

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

2. NSW

The fee to apply for a trade promotion permit (now called an "authority") in NSW will depend on the prize value. An authority is required if the total prize value for a single trade promotion exceeds AU$10,000.

An authority can be issued for a selected period of 1, 3 or 5 years allowing multiple promotions to be run under a single authority.

The application fee depends on the length of the authority as follows:

Duration	Fixed Fee	Processing Fee	Total Fee	Total fee if lodged online
1 year	AU$106	AU$319	AU$425	AU$393
3 years	AU$319	AU$319	AU$638	AU$606
5 years	AU$532	AU$319	AU$851	AU$819

For online applications, there is a 10% processing fee discount.

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

3. SA

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

Prize Value	Standard fee	Premium Fee
Instant prize only: AU$0–10,000	AU$223	AU$446
Major trade promotion only: AU$5,000–10,000	AU$223	AU$446
Both instant and major trade promotions: AU$10,000–50,000	AU$818	AU$1,638
AU$50,000–100,000	AU$1,430	AU$2,855
AU$100,000–200,000	AU$2,453	AU$4,904
More than AU$200,000	AU$4,498	AU$8,997

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

No permit fee is required in SA if the total prize pool is AU$5,000 or less (referred to as a minor trade promotion).

4. 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 (ie, "major" trade lotteries), then a NT permit is required.

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

Applications will generally be assessed within 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 (eg, 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, a trade promotion lottery that surrounds the sale and supply of alcohol cannot encourage the excessive consumption of alcohol; and so any requirement to purchase or drink an alcoholic beverage as a condition of entry must be considered carefully to ensure that it does not encourage irresponsible, rapid or excessive consumption of liquor or any behavior that is likely to result in intoxication.

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. Thus "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 raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

Yes raffles, which are a type of lottery in which an entrant purchases a ticket and is entered into a draw to win a prize, are regulated separately to "trade promotion lotteries". Specific rules apply to raffles in each state and territory of Australia. Most states/territories require that raffles are conducted for a charitable purpose and the proceeds of the raffle (or a percentage of the proceeds) are provided to a specific charitable organization (which may be the sponsor or a charitable organization on whose behalf the sponsor is conducting the promotion).

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.

For games of chance, the states and territories are silent about where the draw needs to take 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, 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.

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

Are there any restrictions on the type, nature or value of the prizes (eg, 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.

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

Yes. In NSW, it is a requirement not to publish any advertisement promoting a game of chance trade promotion that depicts children participating in a trade promotion.

In the ACT no permit is required for a game of chance where:

(i) the total prize pool does not exceed AU$3,000;

(ii) it is a private lottery not advertised publicly, with participation restricted to members of the same association or employees of the same employer; or

(iii) the prizes or rewards involve rebates, discounts, allowances or refunds that are also available to customers who do not enter the promotion.

Age and quantity restrictions also apply to prizes that include alcohol in all states/territories.

In NSW, there is now a requirement that the terms and conditions of trade promotion lotteries must prohibit the following persons from participating in the trade promotion:

(i) a person conducting trade promotion (including any person who determines who is to win a prize in the trade promotion); and

(ii) a person involved in the management of any benefiting organization.

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 part 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 ("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 (ie, 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 licenses 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 license 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 (eg, 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 so, 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.

However, information or advertising material may be considered to be published in Australia, even if 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.

In addition, if the terms and conditions state that the promotion is open to Australian residents, even though no other active promotion takes place to Australians, this is likely to be considered as a promotion to Australian residents and, therefore, such a promotion could be subject to the state/territory lottery legislation.

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. Recent changes in NSW allow the NSW Fair Trading Office to issue a penalty notice in relation to a minor breach of the regulations. The promoter/sponsor can pay the penalty without admission of liability, in order to resolve the matter—or can choose to go to court, and potentially face a higher penalty. For more serious breaches, the NSW Fair Trading Office might be inclined to commence court proceedings immediately rather than issuing a penalty notice.

In summary, always get advice if you are unsure of anything relating to your promotion that you intend to run in Australia.

AUSTRIA

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

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

Are skill-based contests (ie, 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, promotions in which someone is required to purchase a product are generally permitted. A non-purchase method of entry is not generally 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 (eg, 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)?

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

Are raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

Raffles and charitable sweepstakes are qualified as gambling, as an entry fee has to be paid for participation. Raffles and charitable sweepstakes are allowed, provided that they do not exceed certain limits.

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 (eg, 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, the excessive value of a prize could lead to the promotion being qualified as an illegal aggressive sales practice.

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

There are no special rules dependent on the audience that may enter. General legal requirements, such as parental consent for children, or tax implications for prizes paid to employees, must be observed.

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 (ie, 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, particularly consumer protection laws. A contravention 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 (eg, 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 games and contests which require the prior purchase of a product. Misleading statements in the promotion, or its 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 inadequate or non-transparent clauses being deemed invalid.

BELGIUM

Are chance-based games (ie, 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 (ie, 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 need not be offered. The opposite applies for chance-based games.

Are there other forms of "consideration" which are prohibited in connection with entry into a chance-based game (eg, 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 sorts of activities do not stand in the way of organizing a chance-based game.

Are raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

No, but there is an exception to the prohibition on lotteries for lotteries, including sweepstakes, organized by promotors in conjunction with and under the leadership of certain not-for-profit associations that have received a special license to organize lotteries. This list is published annually in the Belgian State Gazette. These specially licensed lotteries require that sufficient preparation time is given, and that a large portion of the proceeds of the lottery has to go to the specially licensed not-for-profit association.

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 (eg, 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.

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

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, 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 (ie, 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 certain 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 (eg, 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 by 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 (ie, random draw promotions, instant win games) generally permissible?

Yes, chance-based games are generally permissible in Bolivia. There is a specific regulation for this activity (Law 060 on Lottery Games and Gaming), and it is controlled by an authority created for this purpose ("Gaming Authority").

By article 7 of Law 060 "random draws" may be a mechanism used to participate in "business promotions". This article defines "business promotions" as those activities intended to increase sales or attract customers in exchange for prizes in money, in kind, or in services granted by random draw or by chance, as long as access to the game is not conditional upon payment for the right to participate.

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

Yes, business promotions are generally permissible and are fairly common in Bolivia. The Gaming Authority's regulation "Rules to Grant Business Promotions Authorizations" states "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 for development" of the promotion, which sets out all relevant information, such as:

- period of duration,
- method of awarding prizes,
- place, date and method of drawing,
- prizes offered, with an indication of its commercial value, and
- place and date of delivery of the prizes.

The Gaming Authority must then grant or deny authorization to launch the business promotion within 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 (eg, 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 article 3 of Law 060, 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 raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

No, in both cases there is control and supervision by the Gaming Authority. Under Law 060, both for-profit and charitable activities must be authorized by the Gaming Authority. However, there are fewer documentary requirements for authorizing charitable activities than for lucrative activities; in this particular case, the requirements include a written request and a project for development of the charitable activity.

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

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

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 article 18 of Law 060, the random draw/winner determination process does not necessarily have to occur in Bolivia. However, 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 (eg, 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 application for authorization, and gaming taxes must be paid on the basis of the declared amount.

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

No, there is no specific regulation, and so it is understood that there is no special rule based on the audience that may enter. The scope of application of Law 060, which establishes the enforceability of licenses and makes State controls possible, excludes any activity that is not subject to lucrative exploitation, either by the participants themselves or by outsiders, this being the parameter of exceptions to the regulations applicable in Bolivia.

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:

(a) 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 amount payable is 30% of the gross income, excluding VAT
- In the case of business promotions, the amount payable 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.

(b) Tax on gaming participation: This 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 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 (ie, 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 participants to agree to assign all their monetary rights to the sponsor, and this is allowed under the Bolivian Copyright Law. However, by law, the copyright 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 (eg, 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 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 out outside Bolivia (or online), this restriction would seem to be pointless. However, 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 extrapolating from article 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. In case of doubt, the Gaming Authority has shown that it is in favor of an inclusive interpretation of the norm.

BOSNIA AND HERZEGOVINA

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

Yes, promotional chance-based games are generally permissible in Bosnia and Herzegovina ("BH"), as long as the game does not qualify as a "gambling game" or a "classic chance-based game" (eg, games in which the participants are specifically charged for entry), in which case there are other requirements to consider in accordance with applicable laws and regulations.

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

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

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 or filing with the competent authorities is generally required, and their approvals are mandatory when conducting promotional chance-based games. Associated administrative costs may differ depending on where in BH the promotional chance-based game is being organized. BH is composed of two entities: Federation of Bosnia and Herzegovina ("FBH") and Republika Srpska ("RS"); and Brčko District ("BD"), a special administrative unit. There are different laws and regulations for different parts of BH that regulate the same issues. Thus, for promotional chance-based games:

(a) In FBH, the organizer must pay 6% of the total prize fund for charitable purposes.

(b) In RS, the organizer must pay 10% of the total prize fund to the competent authority.

The documentation to prove such payment has to be delivered alongside the filing. There may also be other administrative costs connected with the procedure, such as costs for publishing the rules of the promotional chance-based game in a local newspaper.

Organizers must not conduct promotional chance-based games without prior approval, and there are no specific timescales within which the competent authorities must give approvals; it is decided on a case-by-case basis, taking into consideration the specifics of each 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 in which someone is required to purchase the product in order to enter are permitted, but additional entry specific payments are prohibited. 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 (eg, 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 general, there are no explicitly prohibited forms of entry. But the competent authorities will decide on a case-by-case basis, as they have to approve the rules of promotional chance-based games (see above).

Are raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

Raffles may fall within the categories of "gambling" and/or "classic games of chance" (see above), in which case there are other requirements to consider in accordance with the applicable laws and regulations.

Charitable sweepstakes are not specifically regulated in the applicable laws and regulations; and so the answer would have to be given on a case-by-case basis. But in some parts of BH (such as FBH), all organizers must pay a percentage of the total prize fund for charitable purposes in advance of organizing the game (see above).

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

Yes, in general, public voting promotions 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?

Promotional chance-based games draw/winner determination process must occur on the territory of BH. As for promotions taking place solely online, this has not been regulated in the applicable laws and regulations. In practice, exceptions would depend on the approval of the competent authorities.

Skill-based games are not specifically regulated; therefore, the answer depends on several factors, such as contractual or other relations between the organizer and the participants, and would have to be given 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?

There must be a separate prize pool for BH residents in relation to promotional chance-based games.

As for skill-based games, they are not specifically regulated in the applicable laws and regulations; therefore, the answer depends on several factors, such as contractual or other relations between the organizer and the participants, and would have to be given on a case-by-case basis.

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

The prize pool for promotional chance-based games is limited to goods and services; therefore, it is prohibited to give cash as a prize.

As for skill-based games, the answer would have to be given on a case-by-case basis, as such games are not specifically regulated by the applicable laws and regulations.

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

Rules of the promotional chance-based games have to be approved in advance by the competent authorities (see above), and the applicable laws and regulations do not provide for any specific limitations related to the audience that may enter; therefore, any exclusions/limitations are decided on a case-by-case basis by the competent authorities when reviewing/approving the submitted rules of such games.

As for skill-based games, the answer would have to be given on a case-by-case basis, as there are no specific applicable laws or regulations. However, the organizers may have to consider the age of majority of the potential participants (the age of majority in BH is 18). If participants are below 18 years old, they do not have full legal capacity, and approval from their statutory representatives may be required.

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; for both promotional chance-based games and skill-based games the taxes are levied on the winners.

In relation to promotional chance-based games, taxes are levied at source (withholding tax):

(a) In FBH, the amount of tax is 10%, but the tax is not levied on prizes with a market value under BAM 100.00 (approx US$ 61.20), or under BAM 1,000.00 (approx US $611.99) if the awarded products are from the organizer's own production line.

(b) In RS, the amount of tax is 10% for prizes with a market value between BAM 1,000.00 (approx US $611.99) and BAM 10,000.00 (approx US $6,119.92), 15% for prizes with a market value between BAM 10,000.00 (approx US $6,119,92) and BAM 50,000.00 (approx US $30,599.60), 20% for prizes with a market value between BAM 50,000.00 (approx US $30,599.60) and BAM 100,000.00 (approx US $61,199.20), and 30% for prizes with a market value over BAM 100,000.00 (approx US $61,199.20).

(c) In BD, the amount of tax is 10%, excluding prizes with a market value under BAM 1,000.00 (approx US $611.99) if the awarded products are from the organizer's own production line.

As for skill-based games, the amount of tax is 10%; whether tax should be withheld at source or reported individually by the winner depends on the legal status of the winner, their location, as well as the terms of skill-based contests.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (ie, 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 a sponsor to own the entries submitted and to obtain a broad grant of (material) rights; but the conditions and modalities for transferring such rights have to be examined on a case-by-case basis.

Transfers of copyright may occur only 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 that a winner to sign a liability and/or publicity release in order to receive a prize (for promotional chance-based games if approved in advance by the competent authorities).

However, it is not possible to exclude liability for intent and/or gross negligence in accordance with the applicable laws on contracts and torts.

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 (eg, if all advertising is in English, can the Official Rules and website only be in English)?

In relation to promotional chance-based games, the Official Rules and all connected materials must be localized (available in and submitted to competent authorities in local languages).

As for skill-based games, the Official Rules and connected materials do not have to be localized per se, but they should be in line with general principles of contractual relations. However, it is best practice to localize the Official Rules or terms in order to ensure that the entrants, in accordance with BH consumer laws, have undisputable full understanding of them.

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. The use (processing, transfer and other) of personal data must be in accordance with Data Protection Law of BH. In general, a data controller may only process personal data with the data subject's prior approval; written approval for certain categories of personal data; in line with general principles set forth in the law, which are similar to those set forth in the General Data Protection Regulation in the European Union; and for the purposes of organizing/holding the promotional chance-based game/skill-based game.

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?

BH citizens and residents are not prohibited to participate in foreign promotional chance-based games and/or skill-based games; if rules of such games allow them to participate. However, in case they win a prize, they would have to pay the tax in BH (unless otherwise excluded).

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

No, there are no key cases and/or regulatory decisions involving promotions. Companies should consider issues on a case-by-case basis.

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, in addition to industry-specific laws, the principles contained in "general" laws (eg, consumer protection laws, laws on contracts and torts) are applicable to all relationships between parties in BH.

Also, administrative procedures (eg, getting approval for holding promotional chance-based games) may be slow and complicated. It is advisable to seek for professional legal support when conducting any such activity in BH.

BRAZIL

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

Decree Law No 70,951/1972, regulating Law No 5,768/1971, regulates promotions involving the free distribution of prizes (contests, sweepstakes, and gift certificates). Thus, drawings are generally permissible in Brazil.

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

(a) Exclusive or preponderant dependence on luck as the factor for winning or losing the game;

(b) Horse racing in places lacking the necessary authorizations; and

(c) 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 indicates that betting in games of chance is prohibited.

Nevertheless, with the enactment of Federal Law No 13,756/2018, fixed-odds sports betting, either online or land-based, was authorized. The Brazilian Ministry of Finance still needs to issue further specific enforcement regulation and operation and licensing requirements, which should have taken place within a two-year term from the enactment of the law (ie, by December 2020), but the period has been extended for another two years (ie, to December 2022). More recently, Decree No 10,467/2020 authorized private companies to operate fixed-odds sports betting, with the National Bank for Social Development ("BNDES") appointed as the authority responsible for creating the rules and guidelines for its operation.

Are skill-based contests (ie, 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 commercial promotions involving the free distribution of prizes (contests, sweepstakes, and gift certificates) require authorization by the Secretariat of Public Policy Evaluation, Planning, Energy and Lottery ("SECAP") prior to being implemented in Brazil.

Authorization requests must be filed before SECAP between 40 and 120 days prior to the beginning of the promotion. SECAP has 30 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.

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

Value of the prize (in Real)	Fee (in Real)
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 R$ 1,667,000.01	R$ 66,667.00

Upon the grant of authorization, applicant companies must pay a fee for the prize award. Such fee corresponds to 10% of the total amount authorized for the promotion, which includes the total sum of the amount of the prizes to be awarded.

A 20% income tax is due upon delivery of the prizes, calculated on the total amount of the prizes, which needs to be paid to the Ministry of Finance. The total amount of the prize is that charged to the end customer.

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 (eg, 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)?

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

Are raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

Yes. Charitable sweepstakes are regulated by SECAP and must be organized by institutions with exclusively philanthropic purposes and declared of public utility through a Decree by the Brazilian Federal Executive

Power. Also, charitable sweepstakes' sole aim must be the gathering of resources for the maintenance of the institution or funding of the social work to which they are dedicated.

According to Federal Law No 5,768/1971 and Federal Law No 13,019/2014, the following entities may carry out a charitable sweepstake: private non-profit entities, co-operative societies, and religious organizations. These entities, however, must, on their Corporate Taxpayer's Registry, enter one of the following purposes as the entity's social objectives:

- promotion of social assistance;
- promotion of culture, defense, and conservation of historical and artistic heritage;
- promotion of education;
- health promotion;
- promotion of food and nutritional security;
- defense, preservation and conservation of the environment and promotion of sustainable development;
- promotion of volunteering;
- promotion of economic and social development and the fight against poverty;
- experimentation, non-profit, of new socio-productive models and alternative systems of production, trade, employment, and credit;
- promotion of established rights, construction of new rights, and free legal advice of supplementary interests;
- promotion of ethics, peace, citizenship, human rights, democracy, and other universal values;
- religious organizations engaged in activities of public interest and of a social nature other than those intended for exclusively religious purposes; and
- studies and research, development of alternative technologies, production and dissemination of information and technical and scientific knowledge concerning the abovementioned activities.

The applicant for authorization for the charitable sweepstake is responsible for transferring 2% of the funds collected to Brazilian federal funds.

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?

It is not permissible to combine all entries from all countries to determine the winner, thus there must be a separate prize pool for residents of Brazil.

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

The following may be awarded as prizes:

- goods manufactured in Brazil or regularly imported;
- public debit titles approved by the Ministry of Finance;
- home apartments located in Brazil in urban zones;
- tourism trips; and
- 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 the future by the Ministry of Finance.

Finally, the conversion of prizes into cash is prohibited.

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

There are no special rules for giveaways based on the audience that may enter; however, when it comes to commercial promotions targeted at children (under 12 years of age), the company needs to obtain prior consent from the child's legal representatives to enter the sweepstake.

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 (ie, 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 the Brazilian Copyright Law (Law No 9,610/1998) 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 Protection Code (Law No 8,078/1990):

(a) abusive practices towards consumers are prohibited and unenforceable; and

(b) 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 Protection 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 (eg, 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. The main piece of legislation that governs the collection of personal data in Brazil is the Brazilian General Data Protection Law (Federal Law No 13,709/2018, "LGPD"), which provides rules, principles, and restrictions for the processing of data subjects' personal data by companies.

Under the LGPD, one of the requirements to be observed by the sponsor of a commercial promotion is that an informed and specific consent must be collected from the participants for the processing of their personal data. Also, if the commercial promotion is targeted at children (under 12 years of age) the company must obtain a written, informed, and specific consent from at least one of the legal representatives of the child. Please note that this requirement is not mandatory for adolescents (between 12 and 17 years of age).

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 70,951/1972, contests that are exclusively cultural, artistic, sportive, or recreational shall not require prior authorization from SECAP, 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, until 2013, the interpretation of what constitutes a contest that is purely cultural, artistic, sportive, or recreational, had, been subject to conflicting opinions within the Brazilian National Savings Bank ("CEF", which was SECAP's predecessor responsible for registering sweepstakes and contests). 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. Nowadays, as an example, if the commercial promotion is in any way linked to a trademark, product or service, prior authorization from SECAP 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 the assistance of a local specialist lawyer is advisable. As an example, authorizations are granted by SECAP only to Brazilian legal entities, 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 company is responsible before SECAP for all legal purposes.

BULGARIA

Are chance-based games (ie, 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") (eg, that the promotion should not be organized in such a way that involves non-objective comparison with the product/service of a competitor; that the value of the prizes in a purchase-related promotion should not significantly exceed the price of the product/service sold, etc) and the Consumers Protection Act ("CPA").

Also, the CPA provides that a 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,

(ii) provides material information in an unclear or ambiguous manner,

(iii) provides such information in an untimely manner, or

(iv) does not identify the commercial intent of the campaign.

The CPA also provides that 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.

The National Ethical Standards for Advertising and Commercial Communication in Bulgaria, issued by the National Council for Self-Regulation, may 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 on which 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 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 games where enrolment mechanics involve "investment" in money or assets on part of the eligible customers, which could be lost. Generally, a promotional chance-based game does not qualify as gambling as long as it is organized with the purpose of

promoting the product and/or services of particular producer and/or distributor and participants do not lose their "investment" (the product or service they have purchased).

Are skill-based contests (ie, 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, the advertising activity 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 (eg, game of chance, skill-based contest, prize contest etc), so its requirements as to non-misleading communication (discussed above), as well as to limitations on the value of prizes (discussed below) apply equally to skill-based contests.

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, the entire prize pool has to be distributed between them. However, this exemption does not apply to online contests.

Additional rules on the organization of promotional games of skills are imposed by the Bulgarian Contracts and Obligations Act ("COA"), as 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; and on completing the task 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:

(i) If the prize is announced publicly (via print or electronic media or otherwise), the prize must be awarded to the participant(s) who completes the task in accordance with the announced conditions. Once an eligible participant provides the correct answer or correctly performs the task, 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, and the winner could sue for the value of the prize plus any additional damages (if any).

(ii) 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 proportion to their contribution (if applicable).

(iii) 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.

Note that where a 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, 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 game can be classified as gambling, under the GA, the organizer should obtain a license for organization of gambling games from the National Revenue Agency ("NRA"). The fee payable depends on the type of games to be conducted and may reach up to BGN 100,000 (approx €50,000). In addition, organizers of gambling games should pay, on a monthly basis, a fee for maintenance of the respective license, the amount of which is based on the bets collected during the respective period. A 60-day period is prescribed for verification of the documents for gambling license, which might be extended by an additional 30 days in case of factual or legal complexity.

Note also that, following a major legislative reform in 2020, a license to organize lottery games, with the exception of raffle, bingo and their variants, can only be issued to the Bulgarian state (ie, the state-owned Bulgarian Sports Totalizator ("Sport Toto")).

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 such a case, stating that they cannot significantly exceed 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 times the price of the respective product or service. In any case, the value of the prize should not exceed the sum of 15 minimum monthly wages (at present, BGN 9,750, approx €4,974).

The existence of an alternate, non-purchase, method of entry does not exempt the game from the statutory limitations. CPC case law indicates that this is the case even where it could be proven 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 (and thus the chance of winning a prize) is not conditional on purchasing a particular product or service, no restrictions 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 (eg, 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/service or wagering a bet. All forms of entry into a chance-based game are permissible.

Are raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

Charitable raffles and sweepstakes are regulated by the GA, which provides that only non-profit organizations may run such charitable events. Before the start of the charitable raffle or sweepstake, the organizer should publish on its website what are the charitable objectives. The organizer should also apply to the NRA for a one-time license for the respective raffle/sweepstake. The spending of the amount collected during the charitable event is subject to review by the NRA.

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 a separate prize pool for Bulgarian residents under Bulgarian legislation; therefore, combining the entries should be deemed to be permissible.

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

As stated 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.

Where participation in the promotional game is not tied to the purchase of a particular product and/or service, there are no restrictions on 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 something use of which is limited or prohibited by law, for example weapons or drugs.

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

There are no special rules as to the audience that may participate in giveaways.

However, under the Bulgarian legislation, where a game is open to participation by minors (ie, persons under the age of 18) greater care and restraint should be exercised:

- For participation by those between the ages of 14 and 18, a parental consent is required. For participants below 14 years, entry in a promotional game should be made by the parents/guardians on behalf of their children.
- 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).
- Promotional activities should be clearly distinguishable as targeting minors, and should not suggest that possession or use of the promoted product will provide to the child physical, psychological or social advantages over other children.
- Prizes should be suitable for minors, and so the sponsor/organizer must make sure that minors cannot participate in promotions related to alcoholic beverages, tobacco products, gambling games or genetically modified products.

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 Taxes on Income of Individuals Act ("TIIA") provides that cash and non-monetary prizes from promotional games (that are not provided by an employer/assignor) should be treated as personal income and are subject to income tax at a flat rate of 10%. The tax is for the account of the individual recipient of the prize. However, the TIIA requires organizers/sponsors of promotional games (if the organizer/sponsor falls under any of the categories listed below) to withhold and remit the tax levied on the winner of the promotional game.

The obligation to withhold and remit this tax is incumbent upon the enterprise or the self-insured person which is the payer of the income, insofar it is either:

(i) a trader under Bulgarian law,

(ii) a branch of a foreign-based trading entity,

(iii) a local (Bulgarian) legal person that is not a trader,

(iv) a consortium and/or an association under Bulgarian law,

(v) a commercial agency under Bulgarian law, or

(vi) a foreign legal entity engaged in business activities in the Republic of Bulgaria through a permanent establishment in Bulgaria.

In all other cases (ie, where the payer of the income is not obligated to withhold and remit the tax, since it does not fall under any of the above-listed categories), the tax liability associated with prizes rests with the person who has acquired the income (beneficiary of the prize). Non-monetary prizes with a value not exceeding BGN 100 (approx €50) provided in a game of chance are exempt from personal income 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 (ie, 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 cases where Bulgarian law is deemed applicable to the contest, the sponsor may own copyright in the submissions if the works/performances are considered to be made under commission. In a commission scenario, IP rights may arise directly for the sponsor, if explicitly agreed by the parties—ie, the sponsor becomes the initial owner of all economic and moral rights (except for the author's rights to claim recognition for authorship and to claim their 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 rules of the contest should contain all the essential elements of an assignment, such as requirements with regards to the artistic form of the work, specifications, etc. In addition, it is of the utmost

importance that the submitted material should have been created specifically for the contest, ie, it should be new (not existing prior to the contest). The rules on commissioning normally require that authors receive remuneration for their work. Therefore, so that copyright may arise directly for the sponsor, the contest prize should be clearly indicated as remuneration for the winning author; otherwise additional consideration may be required to ensure sufficient remuneration. As a general rule, once arisen, copyright enjoys protection for the lifetime of its creator and 70 years following their death.

In cases where the work submitted for the contest is not "new", and not created specifically for the contest, the sponsor might sustain that it is entitled to use the award-winning work for the purposes initially disclosed in the contest rules. Still, it is recommended that a license agreement is in place with the creator of the material, in which the contest participant should authorize the sponsor to use the relevant material. The broadest grant of rights may be without limitation in use, purpose and territory. However, 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 compensation is deemed disproportionate to the profits generated by the sponsor through the use of licensed materials. 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, a license of exclusive rights is required to be in writing, whereas no special form is prescribed for a license of non-exclusive rights. However, for evidentiary purposes, it is strongly recommended to ensure written forms of IP license agreements.

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

The organizer/sponsor could ask the winner to sign a liability and/or publicity release but cannot make the receipt of the prize conditional upon the execution of such document, unless the requirement has been included into the announced Official Rules and other communication regarding the game. From a data protection perspective, when the public release condition is incorporated in the Official Rules, it shall be proportionate to the goals of the promotional campaign (eg, it shall not grant a right for making publications for indefinite periods of time in the future).

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 (eg, if all advertising is in English, can the Official Rules and website only be in English)?

The CPA explicitly requires distance contracts, 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") and the GDPR). The organizer, acting as data controller of the personal data of entrants, must ensure that there is a valid legal ground for processing. Depending on the specifics of the promotion, the data controller can rely on either:

(i) active consent of the data subject,

(ii) processing undertaken at the request of the data subject for entering into a contract for participation in a promotional public campaign or

(iii) processing as necessary for compliance with a legal obligation to which the controller is subject—especially when collecting personal data of game winners for tax purposes.

Further, the organizer must collect only such data, that is relevant and necessary for the purposes pursued. Once the data is no longer needed and there is no legal ground for processing, the data should be deleted or anonymized.

In addition, before any personal data is collected, organizers must take appropriate measures to provide information such as:

(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, etc.

When transferring personal data, organizers must also observe the applicable data transfer limitations, including in the light of the newly established case law of the European Court of Justice. Data transfers must be undertaken only when these are necessary, proportionate to the goal pursued, and appropriate safeguards are in place.

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. If the chance-based game or skill-based contest is solely online and neither targets Bulgarian customers, nor is marketed in Bulgaria, there is no requirement for the organizer to comply with the Bulgarian legislation.

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

The CPC has a long record in investigating and sanctioning organizers of promotional games. As discussed above, the most relevant statutory requirement is the limitation in the PCA on the value of the prizes that may be offered in chance-based or skill-based sales promotions.

The CPC applies a case-by case analysis with respect to each investigated promotional campaign, so it is rather difficult to identify "key decisions". Nevertheless, the CPC has always strictly evaluated compliance using the ratio of 1:100 as the upper limit for the ratio between the price of the main product or service sold and the value of the prizes. Also, the CPC has ruled on several occasions that "value of the prizes" means the average market price of the respective product or service (provided as a prize) and not the price actually paid by an organizer of a promotional game to acquire the prize (the value indicated in an invoice or receipt issued to the organizer).

The CPC's decisions are 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?

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:

- Name and address of the sponsor (and organizer if different—ie, PR agency);
- Territorial coverage of the promotion;

- Period of time during which the game is open for participation;
- Promotional mechanics (ie, conditions for enrolment and procedure for selection of winner(s));
- Description of the prizes or premiums, including number and individual value;
- The date of draw(s);
- The manner of announcing/notifying the winners;
- Conditions for receipt of the prizes;
- A statement that a minor below the age of 18 years may participate in the promotion only subject to the parent's consent (if open to minors);
- A statement that if the winner is between 14 and 18 years, the award can be received only with the parent's consent (if open to minors);
- The manner in which the official rules are made available, together with possible other information regarding the promotion;
- The manner in which complaints can be filed and the procedure that will be followed in such an event; and
- A data privacy notification in cases where personal data is collected and processed by the sponsor/organizer, including 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 information and, in addition, specific rules on:

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

CANADA

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

Yes, chance-based games are generally permissible, provided that there is a component of skill (eg, 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 license.

Are skill-based contests (ie, 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 (ie, 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 may be 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 (eg, 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 raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

Yes, by obtaining a government-issued lottery license, charitable or religious organizations, among others, are exempt from prohibitions normally applicable to contests and sweepstakes. Generally, for-profit corporations are not eligible to obtain lottery licenses.

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

Yes. However, note that the results determined by 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 (eg, 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 (eg tobacco, alcohol, etc).

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

Generally, while there are no special rules directed to specific types of participants, in terms of individuals that are under the age of majority, any contract and/or release should be signed by the individual's parent or legal guardian. Employees entering a promotion should not be involved in its administration, and care

should be taken to ensure that any special eligibility criteria do not contravene human rights legislation prohibiting discrimination based on protected grounds.

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 (eg 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 (ie, 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 the sponsor's claim of intellectual property rights included in an entry is likely to be 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 50 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 (eg, 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 (eg 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 (ie, 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, in which a certain amount of money is risked in a wager, to be illegal (article 1.466 of the Civil Code) and can only be authorized exceptionally by law (article 63 N 19 of the Chilean Constitution).

Are skill-based contests (ie, 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, under the Consumer Protection Act, the general terms and duration of the promotion must be disclosed to the consumer. Further, when the promotion consists of participating in contests and the award of prizes, the deadline for claiming them must be available to the public. The results of the contest must be adequately shown, as well. 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 (chance-based games are not allowed).

Are there other forms of "consideration" which are prohibited in connection with entry into a chance-based game (eg, 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 note that chance-based contests (gambling contests) are not permitted. In any case, it should be noted that general regulations for the

protection of copyrights and other rights, for example pictures or videos used for entry purposes, are applicable.

Are raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

In 2015 a law was enacted to explicitly allow raffles and sweepstakes, provided that they are held for charitable purposes and that proper notice is given to the relevant municipality, 24 hours prior to the charitable promotion.

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 (eg, 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 also be clearly stated.

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

No. General rules will apply; however, depending on the audience, there may be additional general issues, such as consent of minors and non-discriminatory 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?

Cash prizes will be subject to income tax that will have to be paid by the winner. If the prize is awarded abroad, the person who must pay the applicable duties and customs fees will be determined by the general terms. Note, however, that it is preferable that all costs related to claiming the prize are included in the prize. If not, the winner could file a claim with the relevant local authority on the basis that the prize being offered is unattainable, given, eg, the need for 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 (ie, 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 this 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 (eg, if all advertising is in English, can the Official Rules and website only be in English)?

While there is no specific regulation which 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, by article 4 of the Data Protection Act, an express authorization in writing must be given by the data subject for processing such information. The specific uses for the information should be clearly detailed in the authorization. The use of the information is therefore restricted in the terms contained in the authorization.

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 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 the 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 (ie, those containing more than a certain level of calories, sodium, fat and/or sugar) are not allowed when the consumption of such products is primarily by children. Moreover, commercial hooks for this kind of products are forbidden (article 6 of the Food Composition and Advertising Act).

CHINA

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

In general, gambling is prohibited in China. Chance-based games that are not deemed to be gambling are permissible. 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 publicizing a prize that does not exist. In addition, the maximum allowable prize for any such "lottery-attached sale" is RMB 50,000.

Are skill-based contests (ie, 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?

Generally, China does not require any registration or filing for these kinds of contests, unless the contest involves specifically regulated elements such as sports (which would need to be approved ahead of time by the local sports authority) or online gaming (which would be subject to the many rules on online 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?

Promotions requiring purchase are allowed. But there have been cases of such promotions being banned where they produce a dangerous or socially damaging outcome, such as the rampant food waste caused by the yogurt drink case discussed below.

Are there other forms of "consideration" which are prohibited in connection with entry into a chance-based game (eg, 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 it is important to bear in mind that any invitation/requirement to use a service that is banned in China, such as Twitter or Facebook, could be problematic, both practically speaking and in terms of the government's perception of the sponsor.

Are raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

Yes. Raffles in which a player must pay for a chance of winning (eg, by buying a raffle ticket) are considered gambling and are illegal. Raffles offered for free are generally allowed but must satisfy the regulatory requirements for chance-based games. Charitable sweepstakes are regulated by both the Anti-Unfair Competition Law and the Charity Law. Generally, charitable sweepstakes must be run by, or in co-operation with, a registered charitable organization. Prize promotions (usually tied to product marketing) are generally regulated by the Anti-Unfair Competition Law, the Law on the Protection of Consumer Rights and Interests, the Interim Provisions on Regulating Sales Promotions and other related regulations, which focus on regulating business conduct.

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

Yes, the winner(s) may be determined in whole or in part 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?

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 (eg, 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 50,000. If purchase is not required, there is no limit.

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

The key rule in this respect is that, under the Law on the Protection of Minors, it is illegal to sell lottery tickets to minors or to award minors prizes for a winning ticket.

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 sponsor is 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 (ie, 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 (eg, if all advertising is in English, can the Official Rules and website only be in English)?

There is no such 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 laws and regulations 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. Such cross-border transfers may be subject to reviews and approvals, especially for data collected in certain industries, and various draft laws may increase the restrictions. Generally, any transfers of Chinese user/contestant data outside of China should receive prior consent (eg 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 a 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 a few 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.
3. New data regulations in China are beginning to assert extraterritorial effect, so this could be a concern if China user data is being exported.

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

There have been several illustrative cases recently:

1. One of China's most popular online talent shows was suspended days before its season finale due to a voting promotion, in which viewers could earn unlimited additional votes by buying a yogurt drink product. This drove enormous sales of the yogurt drink, but there were widespread reports of viewers simply throwing away the products, which was seen as a highly inappropriate waste of milk.

2. Easyhome, a housewares company in Shenyang, had a promotion promising a Mercedes Benz as 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 was deemed to have engaged in false propaganda and unfair competition, and faced administrative penalties from the 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 (ie, random draw promotions, instant win games) generally permissible?

Yes.

Are skill-based contests (ie, 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, this is not the case for chance-based games, which may be divided into two categories:

1. Games which have a direct monetary interest.

   In this case, the company concerned must make an authorization request to the competent authority, at least 30 working days beforehand.

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

2. Games excluded from the application of the law, ie:

   - games of chance of traditional, familiar and scholarly character;
   - promotional games made by operators of games of chance;
   - raffles to finance the fire department; and
   - promotional games of the departmental charities and capitalization companies.

   In this case, the company concerned must request a declaration of exception, ie a 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.

The national authority does not accept authorization requests from foreign companies. Hence, the application for authorization must be done by a distributor in Colombia, or a PR company, acting as the entity responsible for the sweepstakes in Colombia, or by a company created in Colombia.

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 (eg, 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 raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

Yes. In that case, no authorization is required.

Games excluded from registration are the following:

- games of chance of traditional, familiar and scholarly character;
- promotional games made by operators of games of chance;
- raffles to finance the fire department; and
- promotional games of the departmental charities and capitalization companies.

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

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 supervision of contests of the place where it is performed.

The drawing and the awarding of prizes must be recorded in minutes, which must be sent to the competent authority within five days of 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?

When the promotion is located in Colombia, it is 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 depends on the laws of the other jurisdiction(s).

Are there any restrictions on the type, nature or value of the prizes (eg, 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 in order to take the prize, the Official Rules have to establish what happens in case the winner cannot obtain such permission. For example, in a case where the prize is a trip outside the country, there has to be a rule providing for the event that the winner cannot obtain the required visa.

In a chance-based promotion, each prize cannot exceed in value 160 monthly legal wages, that is COP$145,364,160 (approx US $41,533). Moreover, cash prizes are not permitted.

In a skill-based promotion, there is no limitation on the amount of cash prizes.

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

In Colombia, minors between the ages of 14 and 17 are considered relatively incapable, thus, their legal capacity lies in their parents or legal guardian's approval or permission. That is, the minor may accept (eg the terms and conditions for entry), but the parents or legal guardian must give the required permission for the acceptance to have effect.

Minors between the ages of 0 and 13 are considered absolutely incapable, hence, their "acceptance" lacks any legal effects. In this latter case, the acceptance must be given by the parents or legal guardian.

Moreover, in Colombia the collection and processing of data of minors is prohibited (Article 7 of the Data Protection Statute).

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 approx USD$1,200, a windfall tax of 10% of the amount of the prize 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 when filing his/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 (ie, 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, perpetual obligations are not valid.

Copyright lasts the length of the life of the author plus 80 years. If the author has transferred or assigned the copyrights during his/her life, the protection would last:

1. if the current owner is a natural person: the length of the life of the author plus 25 years ; or
2. if the current owner is a company or legal entity: the length of 70 years since the publication.

Any act of transfer or assignment of copyrights, whether partial or total, must be done in writing. Furthermore, to be binding on third parties, such 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 (eg, if all advertising is in English, can the Official Rules and website only be in English)?

The Official Rules and advertising materials (including any material on a website) must be provided in Spanish (the official language). They can also be given 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 Law 1581 of 2012 and its regulatory decrees, which deals with the ownership and management of information in databases.
Moreover, in Colombia the collection and processing of data of minors is prohibited (Article 7 of the Data Protection Statute).

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 extra-territorial 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?

Beyond the mere regulatory issues, in Colombia, the Consumer's Protection Law requires that all 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 (ie, 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 they are free. Otherwise, they risk being qualified as an illegal lottery.

Are skill-based contests (ie, 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 (eg, 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 raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

No. Sweepstakes carried out for commercial or for charitable purposes are regulated in the same way.

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 such 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 (eg, 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 operators 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.

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

Generally no. However, to avoid being discriminatory, there should be a valid reason to justify the limitations on participation, and it must be based on objective criteria.

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 (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 (ie, 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 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. It is good practice to state this requirement 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 (eg, 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. The 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 to clarify issues such as the way and time to communicate the Official Rules, the validity of certain restrictions, etc.

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, the regulations 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 (ie, random draw promotions, instant win games) generally permissible?

Yes.

Are skill-based contests (ie, 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, including the Official Rules of the promotion, are prepared by a lawyer. It usually takes up to one month for the Croatian Ministry of Finance, Tax Authorities to approve a 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 (eg, 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 raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

No, in Croatia, raffles or charitable sweepstakes are not regulated differently than prize promotions offered by for-profit corporations?

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 Croatian residents, 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 case.

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

Generally, the prizes cannot consist of cash.

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

Any organization or community is free to put in place its own rules. No mandatory acts or regulations exist that would apply to promotional activities organized by or targeted at such organizations or communities.

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 to prize games. However, 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 (ie, 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 (eg, 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 and EU 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 to be 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.

CYPRUS

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

Yes, generally, they are permissible: however, these chance-based games must not be conducted in a manner that would categorize them as lotteries under the Lotteries Law (Cap 74). Essentially a chance-based sweepstake involving any form of consideration by the participants would fall within the "lottery" definition under the Lotteries Law and is therefore illegal. An unlicensed lottery would also be void. As a result, whether or not a chance-based sweepstake/prize draw is permitted under Cypriot law depends on whether a purchase/fee is required in order to enter the sweepstake.

Please note that sweepstakes are not specifically regulated in Cyprus, albeit Cypriot legislation relating to advertising, consumer protection and data processing may be applicable.

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

Yes, they are permitted, as there is no Cypriot legislation expressly prohibiting the carrying out/organization of skill-based tournaments. However, as for sweepstakes (see above), legislation relating to advertising, consumer protection and data processing may be applicable.

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, no registration, bonding, pre-approval or any kind of permit is required, provided that such chance-based game or skill-based contest falls outside the definitions of “betting” and “lottery”.

If this is not the case, licenses and registration with the National Betting Authority will be required and there will be also a fee for granting an operating license.

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 requirement to purchase a product is permitted in the case of skill-based promotions.

Chance-based promotions may constitute a lottery and will only be permitted in limited circumstances and provided that they constitute a private lottery. “Private lotteries” are usually confined to members of a society established and conducted for purposes that are not connected to gambling.

There is no requirement for a non-purchase method of entry to be offered.

Are there other forms of "consideration" which are prohibited in connection with entry into a chance-based game (eg, 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)?

Such actions will not be treated as consideration and are acceptable. However, in cases where there is a requirement for the entrants to provide personal data for their entry, the data protection laws must be observed. See the response below on personal data.

Are raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

Under Section 10 of the Lotteries Law all lotteries are unlawful. However, under Section 15(b) it is clear that there is an exception to Section 10 for lotteries which are taking place for charitable purposes. In that case, permission may be granted by the Minister of Finance. However, according to the regulations which have been established by the Ministry of Finance, a license for a non-profit institution or organization to carry out a charitable lottery is only permitted once year.

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

Generally, there is nothing prohibiting public voting. However, if the winners are determined partly by a chance-based method and partly by public voting, it is important to check that the chance-based element does not infringe the Lotteries Law. This is a possibility due to the fact that the Lottery Law widely defines the word "lottery" to include "a scheme for distributing prizes by lot or chance". Therefore, if an element of chance is incorporated, this may fall foul of the relevant legislation.

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 for such process to occur in the Republic of Cyprus but, whenever there is transferring of personal data outside of Cyprus or the EEA, such transfer must be made in accordance with the applicable data protection legislation. See the response below on personal data.

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 permissible, but it is advisable that this fact is made clear in the terms and conditions.

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

There are no applicable restrictions, but the prize(s) must not be of an unlawful nature and, in cases where there are any special terms and conditions (eg, limitations as to the dates in case of travel) or other obligations that must be met in order to claim the prize(s), these should be notified in advance.

Depending on the persons competing, certain prizes may be inappropriate or unlawful (eg, alcohol or other age–restricted products awarded to underage competitors).

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

No special rules are applicable.

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 general, there is no tax liability on prizes of such contests, but it is advisable for specific tax advice to be obtained in each case, depending on the type of the prize and whether the prize will be imported or exported (eg, if the prize is a car, registration, import, road and other taxes might 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 (ie, 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 restriction in the law as to the ownership of the entries and it is possible to obtain a grant of rights under a copyright assignment, provided that such an assignment is made in writing.

Copyrighted works in Cyprus enjoy protection for a period of 70 years following the death of the author, and, after the lapse of this period, they then 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 permissible, but this requirement must be included in the terms and conditions and be brought to the attention of the entrants prior to their entry.

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 (eg, if all advertising is in English, can the Official Rules and website only be in English)?

There are no specific rules requiring the use of the Greek language, although it is an official language in the Republic of Cyprus. However, Official Rules and advertising materials need to be clear, should not be misleading and the target market must be able to understand them. As a matter of practice, promoters usually provide the Official Rules and advertising materials both in Greek and English; however, it is advisable that if all advertising is going to be made only in one language (eg English), the Official Rules should also be made readily available in that language.

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

Collection and processing of personal data from entrants must be made in accordance with the General Data Protection Regulation ("GDPR") and the Law providing for the Protection of Natural Persons with regard to the Processing of Personal Data of 2018. In short, the personal information must be collected for a specific purpose and the data collected must relate to the purpose and be used only for that purpose and should not be excessive or irrelevant. The entrants must be provided with an information notice informing them about the use of their data. Presumably the legal basis of collecting and processing the data will be the consent of the entrants, which must meet the consent standards set by the GDPR (ie be informed, freely given, unambiguous). The personal data of the entrants must be deleted when it is no longer necessary for the purpose originally declared.

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 might be subject to the laws of the Republic of Cyprus, depending on where the hosting of the website takes place; but, in general terms, if no promotion takes place in Cyprus and the campaign only involves foreign media, it will be outside the scope of domestic laws and regulations.

However, chance-based games, to the extent that they can be described as "betting", are subject to the provisions of the betting laws and, if the requirements of that law are not met, the National Betting Authority has the right to request all internet service providers to block access to such websites.

Finally, the Cyprus Advertising Regulation Organization, which is a member of the European Advertising Standards Alliance, may, in cases where another EU country has jurisdiction over that website, refer a complaint to the relevant advertising regulator in that country for further handling.

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

There are no relevant cases or regulatory decisions concerning 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 important that the terms and conditions of a contest are available to consumers, and consumers should be informed where and how they can obtain those terms and conditions.

Additionally, if the selection of a winner is subjective, we would advise the appointment of a panel of judges, and this should be clearly stated on the promotional material.

We suggest that any prizes should be delivered within a reasonable amount of time (eg, if the prize must be used by a certain date, delivery of the prize should be made accordingly).

CZECH REPUBLIC

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

Chance-based games are generally permissible under Czech law.

Chance-based games may or may not be considered gambling. The Gambling Act defines gambling as: "a game, bet or lottery in which the better places a bet, the return on which is not guaranteed, and in which the win or loss is decided in whole or in part by coincidence or unknown circumstance." It follows from this definition that the Gambling Act only applies to such games, bets and lot-drawing in which the following two basic features are cumulatively satisfied:

- the better must invest a bet in such gamble, the return on which is not guaranteed, and
- the better's winning or losing the gamble depends fully or in part upon coincidence or an unknown circumstance.

A bet means a non-refundable payment voluntarily invested by a participant, and includes:

- difference between the payment and the result of the game;
- difference between the offered price of the goods or services and their usual price, and
- an amount exceeding the price for calling or sending a text or multimedia message.

It follows from this that, for instance, the purchase of goods at their usual price will not be deemed a bet, nor standard costs of internet connection (whether as part of a household agreement, or connection in a public coffee shop, etc), nor an SMS message sent for a standard price of the mobile operator concerned.

Even where chance-based games do not fall under the definition of gambling, general rules of the Civil Code related to betting and games and rules stipulated in Consumer Protection Act apply. In particular, chance-based games must not be unfair, deceptive or aggressive commercial practices. Therefore, clear and comprehensive rules in Czech language should also be provided to all entrants.

Are skill-based contests (ie, 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?

There is no registration or filing required to offer a skill-based contest or chance-based game not falling under the scope of the Gambling Act.

However, specific registration/publication requirements are set out for games falling under the scope of the Gambling Act, depending on the type of game.

A lottery, an odds bet, a totalizator game (ie, a game in which a win is subject to guessing a betting event), a bingo, a technical game and a live game all require a basic license to operate gamble. Basic licenses are issued by the Ministry of Finance upon meeting specific conditions, including provision of a deposit of between CZK 5M–50M. There is an administrative fee for filing the application of CZK 5,000.

In cases where the gamble must be operated in a gambling premises (as is the case for bingo, a technical game and a live game), a license for the gambling premises (ie, a gaming room or a casino) must also be applied for, which is issued by the relevant competent municipality. The administrative fee for filing the application is CZK 4,000.

Raffles and small size tournaments do not require a basic license. However, raffles whose game receipts exceed CZK 100,000 and small size tournaments are subject to notification—in particular they must be notified to the relevant municipal authority no later than 30 days prior to the envisaged commencement date of the gambling operation.

In case of each lottery, odds betting or totalizator game, the operator must notify the customs administration no later than five business days in advance of the moment from which the operation of any such game starts. A similar obligation is imposed upon the operator of a gambling premises.

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, if such promotion is neither deceptive nor aggressive and fulfills conditions of general legal regulation.

If a purchase is required, a non-purchase method of entry is not necessary.

In the case of a chance-based game, the question of whether or not it is permitted also depends on whether it falls under the scope of the Gambling Act. If so, the Advertising Regulation Act will also apply.

Are there other forms of "consideration" which are prohibited in connection with entry into a chance-based game (eg, 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)?

These forms of "consideration" are generally permissible. However, such consideration must not be regarded a bet (see above).

Are raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

No.

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

Yes, provided that the promotion is neither deceptive nor aggressive and fulfills conditions of general legal regulation.

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 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 (eg, travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

For both chance-based game/skill-based contests, the general rules of the Civil Code relating to bets and games apply, namely:

- If a prize has not been provided, it may not be enforced by the winning party. (This applies only to bets and games, excluding games only requiring skill or physical exercise from both parties)
- The return of a prize which has been provided may not be enforced by the losing party. This does not apply if the losing party was a person with evidently insufficient mental or intellectual capacity. (This applies to both bets and all games)
- If the prize provided was manifestly excessive given the circumstances of the case and the position and potential of the parties, a court may adequately reduce it on the application of the losing party. (This applies only to bets and games excluding games only requiring skill or physical exercise from both parties.)

The provisions on the unenforceability of claims arising from bets, games or lot-drawing and the provisions on the power of a court to reduce the prize do not apply to claims arising from bets, games or lot-drawing operated by the state or subject to official license.

In case of a chance-based game falling under the scope of the Gambling Act, specific restrictions on the type, nature or value of the prizes are set out, depending on the specific type of game:

- prizes may include only money (with the exception of in-kind lotteries, instant win lotteries, supplemental lotteries and raffles);
- prizes in in-kind lottery or raffle may only include tangible items or services (money, stamps and vouchers, securities and other investment instruments are not permitted).
- prizes awarded in instant win lotteries or supplemental lotteries may only include money, tangible assets or services;
- prizes must not include tobacco products (or other plant products designed for smoking), smoking accessories, electronic cigarettes or alcoholic beverages.

There are further game-specific restrictions as to the amount paid out in prizes as a percentage of the game receipts etc.

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

Generally, it is always necessary to comply with the laws prohibiting unequal treatment and discrimination.

Moreover, there are specific rules for personal data protection in the case of children or other groups (such as employees) that may be considered disadvantaged in specific situations.

Children merit specific protection with regard to their personal data, as they may be less aware of the risks, consequences and safeguards concerned and their rights in relation to the processing of personal data.

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 exact rate of the taxes depends on the type of the game and is set out in the Income Tax Act.

In the case of lotteries and raffles, there is a 15% income tax if the prize value is more than CZK 1M (approx €38,500). Prize winnings are not accumulated for this purpose—a single prize must reach the stipulated amount in order to be subject to tax. It is a pay-as-you-earn tax (PAYE) which means that the sponsor is responsible for paying the taxes and the winner gets the prize already taxed.

In the case of a totalizator game, bingo, live game, small size tournament and other gambling, there is a 15% income tax if the prize value is higher than CZK 1M (approx €38,500) and, in this case, it is the winner who is responsible for paying the tax.

In case of a consumer contest, there is a 15% income tax if the prize is higher than CZK 10,000 (approx €385) and it is the sponsor of the contest who is primarily responsible for its payment.

In case of free income (such as gifts for registration), there is a 15% income tax if the income reaches more than CZK 15,000 (approx €575).

There are no other legal costs associated with the prizes; however, there may be duty/customs fee in cases where the prize is in kind.

The Gambling Tax Act imposes a special gambling tax upon gambling operators (whether local or foreign, legal (with the required permit or notification) or those operating illegally (without permit or notification)). This tax is based on the revenue from gambling, both games operated via internet and games operated otherwise. The tax payable is the sum of taxes calculated according to rules for each specific type of gambling.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (ie, 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 and/or obtain a broad grant of rights, but it may not be possible in all cases.

In case of author's rights, granting the authorization to use the copyrighted work does not terminate the rights of the author; the author is only obliged to tolerate an interference with the right to use the work by another person to the extent resulting from such authorization/contract. The personal rights of the author run for the life of the author, the economic (copyright) rights shall run for the life of the author and 70 years after their death.

If the license is granted as an exclusive license, or if it is to be registered into the relevant public register, 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 (eg, if all advertising is in English, can the Official Rules and website only be in English)?

Generally, the Official Rules and advertising materials must be in Czech, where the game/contest is aimed at Czech consumers.

Under the Gambling Act, any and all information and data related to a gambling operation must be easily accessible to anyone in Czech language. In case of internet games (ie, any gambling operated on the internet), these may only be operated via internet pages available in Czech language, and the online game server and device(s) used to operate a numerical lottery as an online game must be located in an EU Member State, or in a country that is a party to the Agreement on the European Economic Area.

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

The General Data Protection Regulation (EU) 2016/679 applies in case of processing of personal data collected from entrants. In particular, there must be lawful legal ground of processing and the general principles relating to processing of personal data must be adhered to.

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 cases where skill-based contests and/or chance-based games (not fulfilling the definition of gambling) are accessible online to Czech entrants, or the game operator undertakes its business within the Czech Republic, the general legal regulation of the Czech Republic shall apply.

In the case of a chance-based game falling under the scope of the Gambling Act, gambling carried out by the use of remote communication using the internet, even where the contest is only partially focusing on or only targeting individuals residing in the Czech Republic amongst those from other countries, will be deemed to be carried out in the territory of the Czech Republic.

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

We have certain case law and regulatory decisions (mainly of the Tax Office and Customs Administration) related to gambling, dealing, eg, with the definition of gambling, gambling operator and confirming that poker or quiz machines fulfil the definition of gambling.

Advertising of gambling is regulated by the Advertising Regulation Act and the Gambling Act; and there is case law and Customs Administration opinion interpreting the specific rule of the Gambling Act, which is that the promotion of gambling may only be located by the entrance to the building/space where the gambling is operated.

We also have case law regarding rules for consumer contests; however, this relates to the previous legal regulation. Currently, consumer contests are generally allowed where they fulfil general principles of consumer protection and should not be regarded as unfair business practice.

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 basic rules that need to be adhered to when structuring a chance-based game/skill-based contest are stipulated in the Civil Code, the Consumer Protection Act and the Gambling Act. Moreover, the company should consider personal data protection rules (in GDPR), advertising law (Advertising Regulation Act) and focus also on tax issues (Income Taxes Act and Gambling Tax Act).

In case of a chance-based game, it also depends on whether such game falls under the scope of the Gambling Act. If so, the legal regulation of the Advertising Regulation Act applies. Three main principles apply to gambling advertising:

- It must not suggest that participation in gambling may be a source of income in a similar way as earning money from dependent, individual or other activity;
- It must not be targeted at persons under the age of 18—in particular, by depicting such persons or using elements, means or actions that predominantly address such persons; and
- It must contain a statement prohibiting persons under the age of 18 from gambling and a visible and clear warning in the following wording: "The Ministry of Finance warns: Participation in gambling may lead to addiction!"

It should also be noted that no ads, communications or other forms of marketing may be placed on a building or a publicly accessible part of a building in which gaming premises are located.

Moreover, the Code of Advertising Practice also includes a special chapter entitled "Lotteries, Betting and Gaming", which sets out the applicable self-regulation rules. Among other things, these provide that advertising in this field should be socially responsible and should not encourage excessive betting. There are also several rules relating to minors, which provide that advertising should not be targeted at or depict minors, and should not be placed in media intended primarily for minors.

DENMARK

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

Yes.

Chance-based games are regulated in the Marketing Practices Act Section 5, 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:

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

Are skill-based contests (ie, 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, registration with the Tax Authorities is needed, since the sponsor is liable for paying tax to the Danish State on the prizes. If the sponsor is resident outside the EU, the sponsor must engage a company resident within the EU to register with the tax authorities.

Furthermore, lotteries, which are chance-based games which require payment of a stake, are conditional upon 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 cost 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. The price of the purchase must also not be inflated in any way. 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 (eg, 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 of the company's products etc, it must be clearly stated that this is done as part of the company's marketing. Consumers must be informed about this requirement so they are able to act accordingly.

Requiring entrants to tag friends on social media content in order to enter a contest is deemed spam and is forbidden per a recent ruling by the Danish Consumer Ombudsman.
Other than that, no.

Are raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

No, such sweepstakes are still considered marketing and must adhere to the rules and regulations in the Danish Marketing Act. For charitable sweepstakes, information about the charitable aspects of the contest is important information and must be, therefore, be clearly explained in a sufficiently detailed manner.

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 this 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 (eg, travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

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

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

The regulation for contests targeting children is stricter; specifically, the marketing and the terms and conditions must be even more easily understandable and clear. People under 18 years of age cannot bind themselves to contracts, unless a parent or legal guardian consents.

Otherwise, there are no special regulations based on audience, but the requirements for entering the contest must be visibly stated in a clear and understandable manner. The selection process must also be explained if it is not a random draw, so as to avoid the contest being deemed discriminatory.

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 should be reflected in the Official Rules. The winner will then have to include the prize in their 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 (ie, 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, copyright holders may wholly or partially assign their rights. However, this is subject to the limitation that, in general, the author of a work has 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. Moreover, 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 that this 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 back title to the work.

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 request this. However, its validity will depend on the content of the liability and/or publicity release—if it is very far-reaching, the winner may not be bound.

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 (eg, 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 must 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. Languages besides Danish and English are not permitted.

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 subject 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, furthermore, it is not permissible to keep such data for longer 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?

1. The supreme court case U.2014.876H (*Noma v Homeenter*): The online advertising agency *Homeenter* 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 its consent, was found to be a violation of Noma's rights according to the Danish Trademark Act and the Danish Marketing Practices Act.
2. The Danish Maritime and High Commercial Court case BS-38371/2018-SHR (*DBU v LeoVegas Gaming*): The online casino, *LeoVegas*, had an extensive marketing campaign in conjunction with the FIFA World Cup 2018, featuring a current and a former Danish National Team football player. The marketing campaign was contrary to good marketing practices as it infringed upon the Danish Football Association's rights to the Danish National Football Team, by featuring current and former players in a similar kit to the official one.
3. Case no 18/08053 and Case no 17/07725: The Consumer Ombudsman issued a fine in August 2019 to a contest provider for misleading consumers and omitting important information. The contest's aim was to have consumers sign up to the contest provider's newsletter. The contest ran for more than 1.5 years. The contest provider violated the Danish Marketing Act by not having clearly informed entrants of the contest's long duration of time and when the winners would be

selected and prizes awarded. In a similar ruling, the Ombudsman issued a fine in July 2017 to a contest provider for omitting important information. In this case, the contest provider's aim was also to gain consent for marketing, but this was not clear in the marketing as the focus was on the contest and the prize. Furthermore, the contest provider did not explicitly, via a separate check box, ask for consent to send direct marketing, but had only mentioned in the terms and conditions that consumers would agree to direct marketing. The takeaway from these cases is that if contest providers want to gain consent to send out newsletters or direct marketing in conjunction with their contests, they must clearly and visibly state this and gain explicit, separate consent.

4. Case no 18/08504: Requiring contest entrants to "like" a Facebook page or post is permitted; but requiring them to tag friends on Facebook posts is not permitted. This was the ruling by the Danish Ombudsman from April 2018, case no 18/08504, as such tagging of friends were deemed unlawful spam.

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 5 when structuring a contest in Denmark. This states that a sales promotion, including one 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 (ie, random draw promotions, instant win games) generally permissible?

Yes.

Are skill-based contests (ie, 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 the winner, there is a mandatory registration in the Consumer Protection Agency (Proconsumidor). The government fee is US $12.00, and the registration request must be filed at least 21 days before the contest starts. The Consumer Protection Agency has 10 days to issue any query or approval. If there are any queries, the sponsor has 5 days to answer/resolve the issues.

There is also requirement to publish all rules of the contest.

As withholding tax is payable on prizes, it is mandatory that a Dominican company with a tax ID number is involved in the registration formality with the Consumer Protection Agency (see 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?

Yes, it is permitted to require a purchase to be made in order to enter a contest. In such a case 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 (eg, 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 raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

There are no different rules for raffles or charitable sweepstakes.

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 (eg, travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

No.

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

Registration is required for promotions directed to a final consumer; however, if games or sweepstakes are targeted to a special and closed audiences (like employee contests), there is no registration requirement.

If the sweepstake is aimed at or its participants includes children, their guardian must authorize the child's participation. Also, the guardian must sign any documentation required to receive the prize, such as a declaration of receipt 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?

In the Dominican Republic, income tax must be paid at a rate of 25% on prizes or winnings earned, in prizes offered through promotional or advertising campaigns, or on any final winnings on any other type of

unspecified bet or draw. Tax must be paid by the person or company that delivers the prize (whether the prize is in cash or in specie). The entity issuing the prize must withhold tax (25% of the prize value), which must be paid to the administration when the Company issues its annual declaration. Usually, there is no inconvenience when the company of the promotion and the winner are in the Dominican Republic. When a foreign company runs a promotion, the Consumer Protection Agency requires that a Dominican company is involved to handle the withholding of taxes with the Dominican IRS.

Duties or customs fees may also be payable, depending 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 (ie, 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 may 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. The Consumer Protection Agency requires release documentation to be sent to it for review. It does not approve broad releases by the winner. Releases are reviewed on a case-by-case basis.

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 (eg, if all advertising is in English, can the Official Rules and website only be in English)?

The Official Rules must be in Spanish.

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.

The Data Protection Law applies and authorization to use personal information and the option to transfer it must be obtained.

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 in the Dominican Republic.

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

There have been cases where the Consumer Protection Agency has issued fines against sponsors/advertisers that have not complied with the rules submitted for the promotion. It has also prohibited and intervened in cases where the companies have not applied for the legal authorization of the promotion or sweepstakes.

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 be in the Spanish language.
- Express written consent and authorization for using the image and other rights of the contestants/winners should be obtained. The use of the image of contestants is limited to that of the winners, and only for the purpose of announcing such winners, for a limited time of 18 months. It is not possible to use the image of 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 (eg, it is not possible to reserve all rights).
- For issues not stated in the Official Rules, the local law applies.
- All Official Rules of a promotion/contest that grants a prize to the winner must be registered at the local authority and the registration number must be shown with the Official Rules.
- Any dispute arising from the promotion must be resolved in the Dominican Republic; the Consumer Protection Authority does not accept other forums.

DUTCH CARIBBEAN

Are chance-based games (ie, 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 (see below).

Are skill-based contests (ie, 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 the game is organized or held by, and is for the benefit of, commercial organizations or companies to stimulate sales or to increase turnover, and if payment of a monetary amount is not 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 for the benefit of, commercial organizations or companies to stimulate sales or to increase turnover.

Are there other forms of "consideration" which are prohibited in connection with entry into a chance-based game (eg, 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 raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

No permit is required if the promotion is organized or held by, and for the benefit of, commercial organizations or companies to stimulate sales or to increase turnover.

Charitable sweepstakes are considered a "lottery of goods", meaning the prizes must not consist of money or monetary paper. Only associations and foundations that are legal persons with articles of associations that allow for the organization of a lottery of goods under the legal requirements can apply for a lottery of goods permit. The proceeds of the game may only be used to realize a charitable objective or for the promotion of culture, science, art, or other public interests.

The organizer of a lottery of goods must put up security to comply with delivery of the prizes (eg, bank guarantee) and the permit of the lottery of goods (deposit).

An official report of the numbers drawn and the corresponding prizes must be drawn up at the drawing (public event) and the organizer must announce the results of the drawing publicly within 24 hours of the drawing.

The organizer of a lottery of goods must keep a sound financial administration, which provides sufficient insight into the revenues and costs, including the prizes that were awarded, and must submit this to the regulator within 2 months of the drawing date. Failure to do so will result in loss of the deposit, and could also have negative consequences for the organizer's next permit application.

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 (eg, 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.

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

In general, for almost any type of lottery, the organizer must obtain a permit from the government.

However, no permit is required if the lottery it is organized or held by, and for the benefit of, commercial organizations or companies to stimulate sales or to increase turnover, provided that, as a condition of participation, the organizer does not request payment of a sum of money. However, conditions could be attached to a lottery permit if such is required.

Lottery tickets may not be sold to people younger than 18 years old. Should the winner prove to be a minor, the prize will not be awarded. It is also prohibited to use minors for selling tickets.

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 (ie, 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, as long as it is not protected by copyright. It is recommended that this agreement should be in writing. Electronic transfer is possible if the electronic transfer clearly identifies the rights transferred and the contracting parties, 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 (eg, 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/Papiamento for Aruba, Curacao, Bonaire, although 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, and 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 (ie, 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 a stake involved (ie, there is a risk of losing money or anything representing money, such as tickets sold), 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 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 (ie, it is omitted or replaced by electronic or computerized systems); or
   (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 (ie, 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 obtained 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 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 no extra payment (besides the price of the product) is required in order to enter the promotion. For chance–based games, see also 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 (eg, 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 those specified in the answer to the first question above.

Are raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

The law makes no distinction regarding the treatment of raffles or sweepstakes, whether charitable or for-profit.

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, regardless of 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, regardless of 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 (eg, 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.

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

There are no special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter. However, any act that includes the participation of minors must be authorized by their parents/guardians.

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 make a profit, they must pay the flat rate tax for corporate profits (around 22–25% of the profit, according to a yearly modified table).

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 (US $11,212 for 2021). Organizers must act as the tax withholding agent of this amount and make sure that, when the prize is given to the winner, this additional cost has been taken into account.

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 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 (ie, 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 into moral and economic rights.

1. Moral rights: Authors, simply by virtue of the act of creating an original work, have inalienable and perpetual moral rights that cannot be transferred (ie, authorship, integrity of the work).
2. Economic rights: These 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 (ie, the 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. Failure to award the prize can carry a fine that doubles the value of the prize, and may even be criminally prosecuted, with a term of 3–6 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 (eg, 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 advertisements broadcast 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 with the owner's prior consent, 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, so that they may 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?

There is none specifically to the point, but it is important to consider the following regulating bodies:

- Law for Sales by Lot and its Regulation;
- Organic Law of Communication and its Regulation; and
- 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.

EGYPT

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

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

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

Yes, skill-based contents are generally permissible in Egypt.

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 must notify the Consumer Protection Agency ("CPA") at least 3 days prior to announcing the promotion/competition; such notification is made via an application including all details of the promotion/competition.

Under Law No 93 of 1973 related to the lottery system and Ministerial Decision No 139 of 1975, an application for a license from the Egyptian Ministry of Social Solidarity must be made at least 2 weeks before the date of the campaign/program, giving full details of the promotion, such as:

- the duration of the competition from start to end;
- method of implementation of the promotion or, in other words, the terms & conditions of participation in the program;
- the number, nature, and value of the giveaways and/or prizes, together with copies of the invoices of the prizes/giveaways;
- the date, timing and place of the draw as well as the method/mechanism thereof.

The Ministry of Social Affairs is competent to issue the required approvals for any competition; however, some competitions or prizes will be subject to special approvals or licenses issued from other governmental authorities (eg, the Ministry of Social Solidarity).

The promotion must be conducted via an Egyptian entity that holds a valid Commercial Register and Tax Card; a foreign company cannot conduct the sweepstakes or competition.

The applicant must pay an amount equal to 15% of the total value of the prizes for charitable purposes (plus 5% in administrative fees unless paid electronically, via Visa or a direct bank transfer).

A definitive letter of guarantee for the total value of the prizes, valid from a date prior to the commencement date of the promotion and for at least 3 months after the promotion has ended must be issued, which will be returned to the applicant once the program has ended, on proof that all prizes have been distributed.

The company must also provide the CPA with the names and details of the winners within 15 days from the date that the prizes are distributed.

Prizes will be subject to tax and stamp duties which must be paid to the relevant authority within 3 days of the draw date.
Once the said documents are ready, the process of granting the license takes 3 working 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?

All requirements to enter a contest must be provided to the Ministry of Social Affairs, and then the CPA, and published before the beginning of the contest. However, in practice, there are no specific restrictions, provided that, upon purchasing a product, a person is granted a free coupon to enter the promotion, since purchased tickets or coupons are categorized as charitable sweepstakes (which are banned as violating Shari'a provisions); and provided that all other principles, laws, etc are complied with.

Are there other forms of "consideration" which are prohibited in connection with entry into a chance-based game (eg, 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 restrictions, provided that winners are chosen randomly, data protection principles are complied with (if applicable), and that the commercial practice is not deemed unfair or misleading, does not violate public order and morals or is otherwise contrary to Law No 93 of 1973.

Are raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

Charitable sweepstakes, along with other similar practices, are banned in Egypt, as a person purchasing a priced coupon or ticket to enter a contest/random draw violates Shari'a provisions. Only free commercial sweepstakes are permitted.

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

There are no regulations regarding this matter. Contests whose outcome depends on the voting of a jury are not regulated by Law No 93 of 1973, since the prize is not granted randomly, but according to the discretionary power of the jury. Typically, the terms and conditions of the promotion establish how to select the winner(s), and the Ministry of Social Solidarity must be represented in the process of selecting and announcing the winners.

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 promotion is open and available to the residents of several countries, there are no requirements in relation to the selection process taking place in Egypt. The random draw/winner determination process can be conducted overseas (whether or not the promotion takes places online). However, if the selection is to take place in Egypt, it must comply with the Egyptian law.

Even if the selection is to take place overseas, the instructions must be clear to the audience.

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 (eg, travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

Generally, there are no restrictions under Egyptian law on the type, nature or value of the prizes, provided that they are not contradictory to public policy rules. However, a stamped, original invoice (or a certified copy) for in-kind prizes must be provided to the Ministry of Social Solidarity (for example: if the prize is TV, then the licensed company must provide the Ministry with an invoice (original or certified copy), stamped by the seller, to show that it has purchased the TV).

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

There are no specific regulations addressing the audience for sweepstakes. However, the general rules of the Civil Code will apply when dealing with minors.

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 will be subject to tax and stamp duties which shall be paid by the company to the relevant authority within 3 days of the draw date.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (ie, 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, it is permissible for the sponsor to own the entries and/or obtain a broad grant of rights. Copyright must be transferred by a separate deed of assignment in writing between the participant and the company, in which all the rights subject to assignment are specified in detail.

Under Egyptian law, copyright expires 50 years after the death of the original creator of the works, even if the creator had assigned their rights to another person.

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

Yes, the Official Rules of the promotion can require the winner to 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 (eg, if all advertising is in English, can the Official Rules and website only be in English)?

Yes, there must be an Arabic text along with the English one for the accessibility of all the Arabic speaking users.

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

Egypt's Personal Data Protection Law must be complied with regarding any personal data matters. This prohibits the processing of personal data except with the consent of the data subject, or where otherwise permitted by law.

Subject to certain exceptions, the Personal Data Protection Law contains a general prohibition on the transfer of personal data to recipients located outside Egypt except with the permission of the (yet to be

established) Egyptian Data Protection Centre. The Executive Regulations (which are due to be issued later in 2021) will specify the policies, standards, guidelines, and rules necessary for transferring personal data across borders. So, for now, data may not be transferred to recipients located outside Egypt.

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 company has the right to announce the chance-based game or skill-based contest by any appropriate means. Any Egyptian entity wishing to announce a chance-based game to Egyptians must obtain a prior license from the competent department as highlighted above.

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.

EL SALVADOR

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

Chance-based games are generally permissible.

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

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?

Yes. The filing and registration requirements to offer a chance-based game and/or skill-based game are regulated in the Ministry of Governance, Normative: Authorization of Commercial Promotions, Raffles, Bingos, Drawings and Lotteries. This law is applicable if the contest is performed in Salvadoran territory and if the prize has a monetary value.

Authorization should be requested at least 15 business days prior to the start date of the promotion, and the request must be set out in a prescribed manner and contain, inter alia the applicant's bases of the promotion, including:

- the objective of the promotional activity;
- details of the sponsor, organizers and brand of the participating product;
- the start and end dates of the promotion, and the last date for participation if applicable);
- details of who can/cannot participate;
- type of promotion;
- the total number and value of the prizes to be awarded;
- mechanics for choosing the winner(s), method of notification and when the prize will be delivered; and
- method, place and time for claiming the prize.

Where the authorization request is granted, the applicant will have to pay US $51.00 for the processing of the authorization, which must be paid within 3 business days after the notification and delivery of admission.

Further, for commercial promotions (such as bingos, raffles, contests, trivia, sweepstakes, lotteries etc) a payment order in the amount of US $500.00, for the authorization and certification of resolution, must be provided after the presentation of the documentation .

There may be also be other applicable laws, depending on the municipality in which the contest/sweepstake will take place (eg the municipal law of San Salvador).

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 the product in order to enter are permitted. For example, gas stations and supermarkets, or even financial institutions (the latter being regulated in a different manner and special legislation) offer such promotions all the time. The method of entry ultimately depends on the terms and conditions of the promotion, as its participation is not obligatory, but voluntary. There is no express legislation specifically regarding this matter, and sometimes permits must be requested at the Municipality as well as the Ministry of Governance.

Are there other forms of "consideration" which are prohibited in connection with entry into a chance-based game (eg, 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 form of consideration in connection with entry into a chance-based game, is completely up to the organizer. There is no express law regulated in that matter.

Are raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

Yes. This can include exemptions from paying taxes, different rules, etc.

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 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?

This is not addressed expressly, but article 2 of the Normative: authorization of commercial promotions, bingos, raffles, sweepstakes and lotteries ends: "… even if the prize is given in a different country". In a wide interpretation, if the prize is given in a different geographical location, then the draw/winner determination

process can occur there as well. Whilst the contest is not strictly limited and obliged to take place in El Salvador, the permits will still have to be obtained in order for Salvadorans to be able to participate.

As for promotions taking place solely online, take, for example, the case where the organizer is domiciled in El Salvador and it organizes the sweepstake here, but the prize is given outside the country. Here, there is no problem, and the Salvadoran law would apply. If, on the other hand, the contest takes place outside of El Salvador, and is carried out, say, through Instagram, and a Salvadoran resident and contestant wins, since there is no specific law that regulated this, the Salvadoran law may not apply, due to the lack of regulation in that matter.

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, that is permissible. There is no express law regulating that matter. The terms and conditions of the contest generally decide the way the process will take place. Therefore, a combined prize pool is permissible and there is no legal requirement to have a separate prize pool for contestants from El Salvador.

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

There are no restrictions on the type or value of the prizes, as long as the prize is not prohibited by the law. The prize must be what was offered since the beginning of the promotion (no substitutions).

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

In the case of sweepstakes for children, a child's legal guardian must grant authority in order for them to participate. Nevertheless, there is a presumption, used by the Ministry of Treasury, in which the participation of a person not yet of legal age (ie, 18) is presumed, and, therefore, so is the authorization of parents. Thus, for promotions by the Ministry of Treasury, the Ministry gives, as one its standard bases: "Minors may participate, through a guardian or representative, duly registered in the application, whose participation will be given under the presumption that the parents have authorized it, without the Ministry of Finance having to verify said circumstance".

However, it is recommended to clearly define, in the promotion's Terms and Conditions, as well as in the bases of participation, that minors must have authorization from their legal guardians, just in order to cover any vague grounds in local legislation.

Regarding other audiences, there are normally no limitations. In case of employee contests, any limitations are usually determined by the company that carries out the promotion, with the internal rules and conditions applying in that case (ie, where a company is carrying out a raffle for its employees, the company may specify that the family members, friends or acquaintances of the organizers cannot participate due to conflict of interests and transparency).

Organizers can freely determine their target market/audience and there are generally no 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?

Yes. The tax code regulates that matter. The sponsor is obliged to retain a percentage of the value of the prize. Where the winner is domiciled in El Salvador, the amount to be withheld, as a tax, is 5%. However, in the case of prizes paid by the National Beneficiary Lottery, or by the foundations or corporations of utility or right public, tax will only be payable on prizes greater than ¢ 50,000.00 (US $5,716.76).

When the beneficiary does not have a domicile in the country, 25% must be withheld by the organizer, whatever the amount of the prize or winnings.

If the prize is imported, the DAI (Import Tariff Right) must be paid on it, as there is no express exception stated in the law.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (ie, 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 this case, the sponsor normally obtains grants or permission every time there is to be a contest. However, since there is no legislation regarding perpetuity, sponsors are able to obtain rights for an indefinite period of time, depending on the contracts they sign with the owners.

Based on the Intellectual Property Law, copyright must be transferred in a physically written mode, however, only economic rights are transferred.

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.

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 (eg, if all advertising is in English, can the Official Rules and website only be in English)?

This is not clearly indicated by law.

Article 27 of the Consumer Protection Law states that the information given by goods or services made available for the public has to be written in the native language, ie, Spanish. This law applies to "All consumers and providers ... whether these are natural or legal persons in terms of legal acts celebrated between them, relating to the distribution, deposit, sale, commercial leasing or any other form of commercialization of goods, or contracting of services". "Provider" is defined as "any natural or legal person, of a public nature or private company, that develops production, manufacturing, import, supply, construction, distribution, rental, facilitation, commercialization or contracting of goods, transformation, storage, transportation, as well as the provision of services to consumers, by paying the price, rate or fee ... Also ... who, by virtue of an eventual commercial contracting, deliver goods or services free of charge".

Contests are not specifically mentioned, but it is important to take this legislation into account, even if it is very vague in this regard.

Article 12 of the Law of Electronic Commerce states that commercial communications carried out by electronic means, that contain offers or promotional discounts, must be clearly identifiable as such, and must set out the terms, conditions and the date until which it is valid. Also, the promoter must be clearly identifiable. It also says that in the case of contests or promotional games requiring authorization (detailed before), they have to be certain of compliance of with the authorization and that the terms for access and participation are easily accessible and are expressed in a clear and express manner.

The recommendation would be to have terms and conditions in Spanish.

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

There are no express restrictions, as the Personal Data Protection Law has not yet been approved by the President (this law was recently passed by parliament but has not been ratified). Nevertheless, it is recommended that it is clearly stated in the terms and conditions what the information will be used for, to prevent future inconveniences and, also, to protect 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?

This may be subject to the Ministry of Governance, since there is no specific regulation. Normally, when raffles or contests are held online, permits are not processed. For instance, various

companies'/entrepreneurs' giveaways through raffles on Instagram, that promote their brands individually or collectively on social networks by making participants follow or "like" their pages and, sometimes, tag other friends and post comments.

However, if the online skill-based contest is promoted in the country and will take place in El Salvador, even if it is online, permits must be obtained.

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

We have knowledge of some claims and decisions made by the Salvadoran authorities. The National Benefit Lottery has filed several lawsuits against a company which, it alleges, does not have permits to carry out and/or sell activities related to gambling, and the counterpart has alleged that the permits were granted by the Municipal Mayor's Office, which also has the authority to grant permissions. However, the court resolved in favor of the National Lottery, since the Mayor's Office stated that the authorization was granted to another corporation and not the one alleged by the counterpart, and the authorization had already expired, so they had no permission related to gambling or similar activities.

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 mostly depends on whether the contest takes place in Salvadoran Territory. Once this is established, the information above covers this matter.

ESTONIA

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

Chance-based games are generally permissible. However, a gambling license may be required from the organizer, depending on the specifics of the game (particularly whenever players are required to pay in order to participate with the possibility of winning prizes). Furthermore, lotteries—chance-based games in which participants purchase tickets in order to win prizes—are generally organized by the State. Private undertakings can only organize lotteries with limited prize pools.

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

Skill-based contents are generally permissible. If the participants are not required to make a monetary contribution, or in cases where the contribution is negligible (eg, participants only carry the cost of mailing their submissions to the organizer), the contests are not subject to the gambling regulation and can be organized without holding a gambling license.

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?

Offering chance-based games or skill-based contests generally requires the organizer to hold a gambling license if participants are required to make a bet for the possibility to win a prize. A bet can either be direct monetary consideration or the undertaking of a monetarily appraisable obligation (eg, purchasing a certain product).

There are various exemptions, in which case a gambling license is not required:

- skill-based games where the only prize is to take part in the game again;
- sports competitions;
- lotteries with a prize pool of €1,000 or less, taking place no more often than once a week; and
- lotteries with a prize pool of €100,000 or less, which are organized to advertise or promote the sales of goods or services ("commercial lotteries").

Additionally, a gambling license is not required in any case where the game or contest does not have at least one of the three characteristics of gambling, ie:

(i) requirement of a bet by the player;

(ii) the possibility to win a prize; and

(iii) an outcome which is determined at least in part by chance.

Acquiring a gambling license is a rigorous and lengthy process. The examination of an application for a gambling license can take up to six months. The state fee charged upon applying for the license depends on the type of game: the state fee is €47,940 for organizing games of chance and €3,200 for organizing skill-

based games. The holder of a gambling license may additionally be required to obtain an operating permit in order to open a gaming location or organize remote gambling, the consideration of which can take a further two months (which can be extended to four months if further investigation is required by the examiner). The state fee charged on applying for an operating permit is €3,200.

Commercial lotteries (ie, lotteries organized to advertise or promote the sales of goods or services) can be held without the organizer holding a gambling license if the value of the prize pool does not exceed €100,000. However, if the value of the prize pool is greater than €10,000, the lottery must be registered with the Estonian Tax and Customs Board prior to commencing. Registration involves filing a notice and the rules of the game with the authority and paying a €10 state fee.

Any games or contests which have been listed as exempt above (excluding commercial lotteries) or which do not display at least one of the three characteristics of gambling do not require a gambling license, 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 in which a person is required to purchase a product in order to participate are permitted; however, chance- and skill-based promotions are treated differently. The purchase requirement is considered a bet within the context of the gambling regulation.

Chance-based promotions in which participants are required to make a purchase are generally classified as commercial lotteries (provided that the objective is to advertise or promote the sales of goods or services). Commercial lotteries can have a prize pool of up to €100,000 and must be registered once the prize pool exceeds €10,000. The organizer of a commercial lottery does not have to hold a gambling license. Lotteries with prize pools exceeding €100,000 can only be organized by the State.

Skill-based promotions in which participants are required to make a purchase are likely to require the organizer to hold a gambling license, provided that the three characteristics of gambling are present. There is no exemption which precludes the need for a gambling license (as is the case with commercial lotteries). As the purchase requirement is considered a bet by the player, the first condition of gambling is thus met, and so the license requirement arises when it is also possible to win a prize and the outcome is at least partly dependent on chance.

A non-purchase method of entry is not required in either of the above cases. The addition of a non-purchase method of entry would not affect the classification of the promotion, ie, the registration or license requirements would remain.

Are there other forms of "consideration" which are prohibited in connection with entry into a chance-based game (eg, 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)?

Prerequisites for entry such as described in the question above are generally permitted. If the consideration is not monetary and does not consist of undertaking a monetarily appraisable obligation (as should generally be the case in the examples provided in the question), the chance-based game will not be subject to the gambling regulation due to the lack of a bet by the player; and thus running it will not require a gambling license or registration. Other limitations may, however, apply, depending on the nature of the competition.

Are raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

Assuming both raffles and charitable sweepstakes display the three criteria of gambling (see above) they will be classified as lotteries.

Lotteries with a prize pool of over €1,000 (excluding commercial lotteries, the prize pool of which can be up to €100,000) can only be run by the State. Non-profit associations and foundations can apply for the State to organize a charitable lottery on their behalf in support of their objectives. This option is not available to for-profit corporations. In other respects, the charitable purpose does not affect the applicable rules—both for-profit and non-profit corporations may run weekly lotteries with a prize pool of up to €1,000; however, (with the exclusion of commercial lotteries), lotteries with a prize pool exceeding €1,000 can only be organized by the State.

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 winner determination 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?

There may be a single prize pool for several countries, provided that the entire prize pool is available to be won in Estonia. In other words, the prizes should not be allocated from the start so as to, eg, divide the prize pool equally between the countries. If the full prize pool could, theoretically, be won in Estonia, combining entries from different countries is permitted. This should, however, be disclosed to the participants in the rules of the game or contest.

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

There are no obvious restrictions on the type, nature or value of prizes. The value of a prize pool may determine whether a license or registration is required to run the game. Lotteries with a prize pool of over €1,000 (excluding commercial lotteries, which may have a prize pool of up to €100,000) can only be organized by the State.

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

Restrictions on participation apply if the game or contest constitutes gambling. Participants of games of chance or skill-based contents must be at least 21 years old if the three criteria of gambling are present (see above). As an exception, persons who are at least 16 years old may participate in lotteries (including commercial lotteries).

The audience does not affect the rules applicable to games or contents which fall outside the scope of the gambling regulation. However, taxation of the prizes may differ depending on the participants. For example, an employer running an employee contest may be required to withhold social tax on the value of the prizes (due to the prizes being considered benefits in kind and thus taxed similarly to wages).

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 generally subject to tax. Prizes awarded within the scope of the gambling regulation are subject to gambling tax. Prizes awarded outside of gambling are generally subject to income tax, provided that the value of a prize exceeds €10. In either case, the company organizing the game or contest and offering

the prize (sponsor) is liable for the tax. Prize recipients are responsible for tax only in rare cases when the prize distribution has not been taxed at the level of 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 (ie, 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 obtain a license to use, distribute, copy etc the submissions for the contest. Full ownership of the entries is not possible, as certain intellectual property rights are non-transferable and inseparable from the author. A license can remain in force for the full period of copyright protection (70 years after the death of the author). Non-exclusive licenses can be granted electronically.

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

Liability waivers and/or publicity releases applicable to all entrants may be included in the terms and conditions of the game, contest or promotion. It is generally permissible to require the winner to sign a further liability waiver and/or publicity release before receiving the prize; however, this requirement should be made known to the participant beforehand (eg, in the terms and conditions of the game, contest or promotion).

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 (eg, if all advertising is in English, can the Official Rules and website only be in English)?

The Official Rules and advertising materials should generally be provided in the native language if the promotion is targeted towards locals. Consumers are generally entitled to information in the Estonian language, and any legally binding agreements with consumers (such as the Official Rules of the promotion) should be concluded in Estonian unless agreed otherwise. Information provided in a foreign language is more likely to be disputed in cases where the participant was entitled to the information in the native language.

On the other hand, the language requirements may not apply in cases where the promotion is not subject to local legislation (eg, promotions held solely online and carried out from abroad, which are not tied to any locally offered goods or services). The advertising language by itself does not directly affect the language requirements for the Official Rules or website. Local advertisements (eg, outdoor, television, radio commercial etc.) must generally be in Estonian.

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

There are restrictions, as the EU's GDPR applies to the collection of personal information from entrants. In general, only personal information which is necessary to run the promotion should be gathered, and the use of such information for other purposes without explicit consent is prohibited.

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 or contest held entirely online with no promotion taking place in Estonia may not be subject to local laws. By default, however, all games or contests in which Estonian residents can take part are subject to local gambling laws; and thus the Estonian Tax and Customs Board (the regulator in the field) is actively blocking all the domains of gambling operators that do not hold an activity license to organize a game or contest in Estonia. Moreover, local laws may also be applicable due to other reasons (eg, the company organizing the promotion being based in Estonia, or goods or services being offered to Estonian consumers in connection with the promotion).

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

Unlike in many other jurisdictions, there is no minimum threshold for the level of chance established in Estonia, and games are considered as gambling acts as soon as there is even 1% of chance involved. Courts generally find games to be at least partly chance-based (ie, one of the characteristics of gambling) whenever there are any aspects outside the control of the participant. For example, case law has established that so-called claw machines are subject to the gambling regulation due to them requiring payment, providing the possibility to win a prize, and the chances of winning being partly dependent on the attributes of the machine. This is true even if the chances of winning are mostly dependent on the proficiency of the participant.

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 most cases, it should first be ascertained whether the game or contest falls within the scope of the local gambling regulation. This is the case whenever the three characteristics of gambling are present (see above). The local gambling regulation will not apply in cases where gambling is organized outside the local territory (eg, if online gambling is made available to locals by a foreign entity). Requirements for games or contents subject to the local gambling regulation are stringent and organizing such games or contests is likely to require a gambling license.

Any secondary requirements arising from, eg, consumer protection laws, language or advertising regulations, are more specific and should be determined on a case-by-case basis. These requirements are, however, likely to be less burdensome to the organizer compared to those which apply under the gambling regulation.

FINLAND

Are chance-based games (ie, 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 (ie, 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 (together "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?

It is basically 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.

Are there other forms of "consideration" which are prohibited in connection with entry into a chance-based game (eg, 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 Finnish Competition and Consumer Authority ("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 Act on Electronic Communication Services (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 raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

Promotional games and contests offered by for-profit corporations 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 and non-profit organizations with a permit are allowed to organize lotteries in Finland. Under certain conditions, small-scale raffles are allowed to be organized by non-profit organizations and other communities for fund-raising.

A chance-based game is likely to be considered a lottery if entry is subject to a charge, and the charge is something other than the purchase of a product or service or submitting a bid, or if the price charged for the product/service is higher for participants in the chance-based game than for other customers. Customary costs for entering a promotion (eg, 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, in so far as the organizer does not gain any benefit from them.

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 must, clearly, in advance, make it known how the winner is to be 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 must, clearly, in advance, make it known that the winner is to be drawn from a single prize pool.

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

Finnish law does not contain any restrictions with 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 be appropriate. Guns, explosives or live animals should therefore not be used as prizes in promotional games. The marketing of some products also requires more consideration as to what is appropriate than others; eg, credit, health and medicinal products and services. For example, the Market Court 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.

In the marketing, the organizer of a promotional game or contest must provide consumers with sufficient information about the prize. If necessary, due to the nature of the prize, it is recommended that consumers be informed about what the prize does not include (eg, if the prize is a vacation but does not include travel expenses to the airport).

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

Children are considered to be in a special position when considered as a target group for promotional games and contests. The FCCA has declared that if a promotion is targeted at children, having purchase as a pre-condition for entry is absolutely prohibited, even if there is an alternate method of entry which does not require a purchase.

Furthermore, the prize must 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 children, the prize cannot consist of a product prohibited for children, such as a movie suitable only for adults.

If the targeted group includes children, it is recommended that the organizer provides the rules in the official languages (ie, in Finnish and Swedish).

Children are in a special position in respect of requiring entrants to provide personal data for the purpose of electronic direct marketing as a prerequisite for participation in the promotional game or contest. 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 15–17-year-olds, direct marketing can be used only for products that they can purchase independently.

Otherwise, there are no explicit rules on promotional games and contests which would concern specific target groups.

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 person responsible, and the applicable tax, depends on whether the promotion is organized as a chance-based game or a skill-based contest:

(i) **Chance-based games**. The organizer of a promotional chance-based game must pay lottery tax in respect of each prize draw, if the combined amount of distributed winnings exceeds €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%. The prize is tax-free for the winner.

(ii) **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 a competition, the organizer must make it clear 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 €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 (ie, 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 a 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 the author 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, therefore, 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, recommended 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 ability to limit its liability is hence, in practice, restricted.

Requesting the winner to sign a publicity release is generally permitted, where this has been clearly indicated 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 the win 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 their 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 (eg, 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 it is recommended that the organizer provides the rules in the official languages (ie, in Finnish and Swedish).

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

The controller may collect the personal data of entrants in the context of events such as a prize draw or competition. However, the controller has the right to collect only personal data necessary for organizing the competition or prize draw. In collecting personal information, the organizer must comply with the rules regarding data privacy as stipulated in the General Data Protection Regulation ((EU) 2016/679) ("GDPR"). Under the GDPR, 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, under the GDPR the data controller must take appropriate measures to provide certain minimum information to entrants regarding the collection and further processing of their personal data in a concise, transparent, intelligible and easily accessible form, using clear and plain language (typically in the form of a privacy notice).

As mentioned above, special caution must be taken if consumers are required to provide their personal data for the purpose of electronic direct marketing as a prerequisite for participation in the promotional game or 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?

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, ie, the sales promotion may not be built entirely upon a promotional game or contest, as this may influence consumers in an improper and inappropriate way to make a purchase decision that they 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 decides that they 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 to which they were invited in order to collect their prizes was a presentation and sales event for shares of the company. Under Government Decree 601/2008, it is furthermore prohibited to give consumers the impression that they will win or have 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 no part 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 regarding 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 (eg, in television or outdoor advertising), it is sufficient that the organizer provides information of where further information can be found (eg, by referring to a webpage).

In order to meet the legal requirements stipulated for promotional games and contests, it is recommended 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 (eg, minimum information to entrants regarding the collection and further processing of their personal data in accordance with the GDPR, typically in the form of a privacy notice, and information on the publication of the name of the winner);
- sufficient information about the prize, including restrictions and conditions regarding usage of the prize;
- copyright issues; and
- possible tax consequences.

FRANCE

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

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

1. When they are offered to consumers, they are licit per se (as "promotional lotteries") under the Consumer Code, provided that they do not constitute an unfair commercial practice. In this type of promotions, neither reimbursement of connection costs nor the filing of the Rules with a process server (*huissier*) are compulsory requirements.
2. When they are offered to professionals, they fall under the provisions of the French Interior Security Code, which prohibits (in Article L320-1) games of money and chance ("lotteries)", namely commercial operations meeting the following criteria:
   - a public offer,
   - the hope of a gain,
   - the element of chance (draw), and
   - a payment or a financial sacrifice (this will be found to exist even when a reimbursement of a payment is offered to the participant).

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

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

As mentioned above, chance-based commercial games are prohibited under Article L320-1 of the Interior Security Code, while commercial promotions/games of chance offered to consumers are allowed, subject to conditions. When it comes to skill-based games, the picture is less clear. The text of the Article states that the 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:

1. Interpretation No 1 (broad interpretation of the scope of Article L320-1): The General Rule prevents the organization of any type of contest/skill-based game (including photo contests, user generated content contests etc) when these 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).
2. Interpretation No 2 (restrictive interpretation of the scope of Article L320-1): 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 set out in a Section of the Security Interior Code dedicated to "games of chance, casinos and lotteries" (not

"contests" (ie, games based on skill only, such as photos contests, user-generated content contests etc)).

The background to the implementation of the General Rule can be used to confirm Interpretation No 2, in that it was implemented in order to contradict a court of appeal decision (Court of Appeal of Toulouse, March 17, 2014) which had held that paid-for online poker tournaments were not prohibited per se under (the former) Article L320-1, because skill played a role in the determination of the winner. In other words, the court had held that the paid-for poker tournaments were not subject to the general prohibition on paid-for games of chance, as set by Article L320-1 on the basis that poker tournaments are not only based on chance (skill is also necessary to win). The French legislator thus decided to amend the law in order to confirm the fact that when paid-for games of chance also need recourse to skill, they are still prohibited under Article L320-1

A decision of the Court of Appeal of Paris dated January 28, 2016 (which held that the Article "only aims at reiterating that paid-for games of chance using the skills of the players are prohibited per se") can also be interpreted as confirming Interpretation No 2, so that one can argue that contests are licit per se, provided that certain general principles are complied with (eg, prohibition against misleading advertising and unfair commercial practices; prohibition against offering certain prizes; etc—see below).

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. Games of chance

Since December 20, 2014, this type of promotion has no longer been subject to registration or filing requirements, although it is recommended to have an "official" version of the Rules filed with a process server, both to proper inform the consumer, and in order to have official evidence of the Rules in the event a dispute is brought by a consumer.

2. Contests

The filing of a set of Rules has never been a compulsory requirement for this type of promotion, though it is recommended, for the reasons set out 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?

1. Games of chance aimed at consumers

Since December 20, 2014, this type of promotional operation is no longer subject to requirements such as the reimbursement of postage or connection fees. As a result, the implementation of an alternate method of entry is no longer required. However, 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 Unfair Commercial Practices Directive 2005/29/EC (as implemented by French law).

2. Games of chance aimed at professionals

When chance-based games target professionals (not consumers), they must be free to enter (an offer to reimburse the connection fees or postage costs of entry does not prevent the game from being deemed an illicit paid-for lottery).

3. Contests

Based on Interpretation No 2 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 (eg, 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 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 raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

The rules governing promotions (sweepstakes/contests) apply, but additional rules have to be complied with.

For instance, associations/foundations wishing to call upon public generosity are required to file a prior declaration with the local French State representative (*Préfecture*). They must also issue (annually) a specific accounting document listing the funds collected (the document must specify the allocation of donations by type of expenditure). The approach differs depending on whether or not the association/foundation has its head office in France.

In addition to the general requirements that advertising must not be inaccurate, ambiguous, exaggerated, or misleading, this applies to statements about the goal of the organization or the way that funds will be used. The charity must be clearly identified in the advertisement and the money must be effectively transferred to this charitable organization in accordance with the ad.

Where the promoter is a French company operating on the French territory, there may be tax issues regarding the amount that may be passed on to the charity organization.

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 entry.

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

There are no specific restrictions, other than a prohibition against offering certain types of items as prizes (eg, alcoholic beverages, tobacco products, drugs, etc).

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

There is no prohibition on offering chance-based, skill-based or other giveaways to a limited group of individuals (provided that the conditions of entry are clearly set forth in the Rules).

However, promotions targeting children raise an issue because, under French contract law, a minor (person under 18) is not able to enter into an agreement, except for small-value contracts (such as those entered into to buy bus or cinema tickets), and any such agreement will not enforceable against the child; as a result, a parent/guardian must enter the sweepstake/contest on behalf of their child.

Sweepstakes/contests open only to employees are not illicit per se. But when offered, for instance, to the sponsor's retailers, it could raise an issue if the retailers are not acting as "consumers" (for personal needs) but as "professionals"/businesses (as games of chance offered to professionals are very strictly regulated—see 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?

There are no tax implications for a sponsor in connection with the organization of a prize draw/contest in France (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.
However, where the prize is imported 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 (ie, 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?

Assignment of copyright in the content submitted by entrants is possible, provided that certain requirements are met. In particular, moral rights cannot be waived, and patrimonial rights cannot be assigned in perpetuity. The assignment of copyright must be for a limited duration. Typically, the rules might state "for the duration of the copyright" (ie, 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. The aim of this is to have evidence of 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, particularly regarding the limitation of liability. Under French law, criminal and tort liability cannot be limited contractually.

In addition, a French consumer has the choice of jurisdiction if wanting to bring an action against the sponsor. A sponsor wanting to bring an action against a French consumer must do so before the French courts.

Moreover, as a general principle, a French consumer who has entered into a contract with a foreign entity cannot be deprived of the protection of the mandatory provisions of French law, notably of French consumer protection law, if such consumer has their habitual residence in France and had been in France when approached by the foreign entity to enter into the agreement.

Finally, as regards publicity releases, French judges have held that a term 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 (eg, if all advertising is in English, can the Official Rules and website only be in English)?

The Loi Toubon, requiring the presentation of any advertising, made in France/aimed at French people, to be 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. Privacy has been regulated in France since the law dated January 6, 1978. This has been amended as from June 20, 2018 to introduce the necessary changes (ie, opening clauses) required by the GDPR.
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 items of information must be provided to the data subject at the time of the data collection (eg, right of access to and rectification of the data and recipients 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?

Yes, if the promotion targets the French market, the following rules will have to be complied with:

- use of French language,
- prohibition of unfair commercial practices,
- enforcement of GDPR and French data protection law etc.

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 their grounds of action, or which imposes an alternate dispute resolution solution (such as an arbitration), is listed as a "clause presumed abusive" and is thus not enforceable if declared abusive by French judges. These principles have been enforced by the Tribunal of Paris (first degree), on March 5, 2015 against Facebook Inc, whose Terms of Use provided that Californian Courts have jurisdiction. This clause was deemed to impose excessive costs on the consumer, and to be all the more unfair/excessive towards the consumer given that Facebook Inc had human and financial resources in France, allowing the company easily to be represented in France. This decision should be taken into account when drafting the Official Rules/Terms and Conditions applicable to a promotion targeting French consumers.
- On June 9, 2020, the Tribunal of Paris (first degree) held that several clauses of Apple's Terms of Use (for its streaming service) were unlawful or abusive. For instance, a clause giving Apple the right to use, free of charge, all user-generated material, including that protected by copyright. This clause was deemed to violate the provisions of the Intellectual Property Code, because it did not specify the content at stake, the nature of the rights assigned and the authorized uses.
- On July 16, 2020, the Court of Justice of the European Union rendered a judgment, declaring the Commission Implementing Decision (EU) 2016/1250 of 12 July 2016 on the adequacy of the protection provided by the EU-US Privacy Shield to be "invalid". As a result, the EU-US Privacy Shield Framework is no longer a valid mechanism to comply with EU data protection requirements when transferring personal data from the EU to the USA.

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 (eg, specific information to be delivered to the data subjects) are very important, and should not be left to one side while organizing a promotion targeting France.

GERMANY

Are chance-based games (ie, 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 bond, prize deposit or license required for promotional chance or skill-based games or contests. The situation is different if skill-based games are offered on a commercial basis with intent to make a profit and the game offers an opportunity to win. In this case, a license is required according to Section 33d of the German Industrial Code. Certain entertainment games are, in turn, exempted from the permit requirement by the Gaming Regulation. Gaming against payment of a stake (lotteries/gambling) is regulated, and is prohibited unless licensed. A license must also be obtained to offer gambling on the Internet.

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

Yes, just as chance-based games, skill-based contests are permissible. There is no bond, prize deposit or license required for promotional chance or skill-based games or contests. If participation is dependent on a fee, the contest needs to be approved by authorities. There is no difference between a chance-based game or a skill-based contest in this regard.

A difference between games of skill-based contests and chance-based games exists only with regard to the Criminal Law, which only criminalizes the organization of chance-based games without the required official permit. Organizing games of skill-based contests without the required permit is merely an administrative offense punishable by a fine.

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 general, there is no registration or filing required to offer a chance-based promotional game and/or skill-based contest, unless the skill-based contest is offered on a commercial basis. If a raffle/lottery is held, it must be registered, although there are exceptions according to state law, eg, in the case of a free or private raffle. The requirements for registration may vary according to national state 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?

The former statutory prohibition of linking entry in a promotional game to a purchase has been removed as a matter of harmonizing German law with EU law. It is therefore no longer illegal to interconnect the entry in a game to a purchase (subject to general fair trade requirements, ie, no misleading, pressuring or

excessively enticing effects on the purchase invitation), and so a promotional game offer may require that the entrant has purchased a given product or service.

Are there other forms of "consideration" which are prohibited in connection with entry into a chance-based game (eg, 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 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 (eg, no incitement to do anything illegal or unreasonable, such as violating a third party's copyright, breaching a third party's right in its own image, breaching data protection laws, etc). If chance-based games are integrated on social media platforms, the guidelines of the respective platform must be taken into account in addition to the legal requirements.

Are raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

With regard to chance-based games, which are generally permissible, there are no differences if the game pursues a charitable purpose. However, exceptions may apply to lotteries and tombolas, which may only be carried out by associations and organizations that serve a charitable or ecclesiastical purpose. Lotteries and tombolas for charitable purposes that are limited to a specific local area and have only a small gaming capital may be covered by a general permit (so-called "small lottery"). Nevertheless, registration with the competent authority is required two weeks before the event. If a non-profit organizer runs a charitable sweepstake, there may be tax advantages.

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 (eg, 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.

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

In principle, the organizer may apply restrictions on participation. In particular, an age restriction may even be necessary if, for example, products for adults can be won or consent for data processing is required (for this, the age limit in Germany is 16 years). If the contest is aimed at minors, a declaration of consent from the minor's legal representative may need to be obtained. If a group of people is excluded from entering, the restriction must not be discriminatory. For example, a certain group of participants may not be excluded without objective reason.

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 (ie, 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 the 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 properly agreed upon (see above), a liability and/or publicity release is acceptable (subject 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 (eg, 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/Terms and Conditions 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 (GDPR) 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. Legal requirements must also be observed when transferring data to a third country outside the EU (especially the US). Since a ruling by the European Court of Justice in July 2020, the so-called EU-US Privacy Shield can no longer be invoked for a transatlantic data transfer. If the EU Commission has adopted an adequacy decision for a country outside the EU, personal data can be transferred. Such adequacy decisions exist, for example, for Canada, Japan or Israel. If such an adequacy decision does not exist, further guarantees are necessary to ensure the level of date protection. The type of guarantees needed will depend on the type of data transferred (eg, higher guarantees are needed when sensitive health data is transferred).

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?

Case law involving foreign or domestic promotions is relatively rare. Because of the various regulations which apply to gambling, the decisions of German courts on chance-based games or skill-based contests are very specific and often only understandable within context of the specific details of the case.

The following ruling of the Federal Administrative Court can be cited as an important one: On October 26, 2017, the court ruled that sports betting and lotteries may be organized and promoted on the Internet. However, the prohibition with regard to the organization and promotion of casino, scratch card and poker games remained in effect, and was considered to be consistent with EU law. However, with the new State Treaty on Gaming, which came into force on July 1, 2021, there were some major changes. This new State Treaty permits the operation and promotion/advertisement of chance-based games on the Internet (online casinos, online poker and online slot machine games) under restrictive conditions. Until now, gambling on the Internet was prohibited in Germany, with the exception of the federal state of Schleswig-Holstein. The new treaty also aims to better protect players by expanding player blocking files, setting a deposit limit of €1,000 per month, prohibiting parallel games on the Internet and requiring online gambling operators to operate servers that record data and thus enable monitoring by the local supervisory authority. In order to monitor these requirements, a joint supervisory authority of the federal states will be established with its headquarters in Halle (Saxony-Anhalt)..

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 the German Act against Unfair Competition 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.

GHANA

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

Yes.

Are skill-based contests (ie, 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?

The Gaming Act 2006 (Act 721) established the Gaming Commission which regulates, controls, monitors and supervises the operation of games of chance in the country. This Act repealed the Lotteries Betting Act 1960 (Act 31) which had previously regulated private betting and prohibited advertising of private lotteries. The Gaming Commission issues promotional permits for the running of promotions which contain elements of games of chance, and gaming licenses for entities set up solely for gaming activities in Ghana.

Promotions offered to the public must be approved and registered by the Gaming Commission before they can run. Offering promotions without a permit is an offence under the Act and the offender is liable on summary conviction to a fine of not less than one thousand penalty units (approx GHS 12,000 (just over US $2,000)) or imprisonment for a term of not less than three years or both.

Application fees are determined by the Gaming Commission based on the prizes being offered in each contest or game. Promoters/organizers of such games/contests are required to approach the Gaming Commission with a detailed proposal containing information about the game or contest, the modalities, timelines for running the game/contest and the prize pool and selection process for the winners. The Gaming Commission also regulates the advertising/promotion of such games/contests in Ghana.

The National Lotto Act 2006 (Act 722) established the National Lotto Authority which regulates, supervises and conducts/manages the National Lotto in Ghana. Section 4 prohibits anyone other than the Lotto Authority from operating any form of lottery in Ghana. Section 5 empowers the Authority to license Lotto Marketing Companies for the distribution and sale of coupons and any other purposes that the Board of the Authority considers appropriate. The Board of the Authority will, within 21 working days after the receipt of the application, grant a license to the applicant if it is satisfied that the applicant has satisfied the conditions required for a license and has paid the applicable license fees. The applicable fees for the issuance of licenses to the Lotto Marketing company are determined by the Board of the Lotto Authority.

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 the products to enter are permissible. There is currently no such requirement.

Are there other forms of "consideration" which are prohibited in connection with entry into a chance-based game (eg, 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 currently no such prohibitions in Act 721.

Are raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

Act 721 regulates all games of chance in the country, and these include raffles or charitable games while Act 722 established the National Lotto Authority, which regulates and licenses lotto operations in Ghana.

There are some differences in the rules when the games or contest are charitable. Section 28 of Act 721 provides for games of chance incidental to entertainment. Where a game of chance is promoted as incidental to a bazaar, sale of work, fête or other entertainment of a similar character, it is lawful and does not require a license if the following conditions are met:

(a) the prizes in the game are not money prizes,

(b) the total value of the prizes does not exceed GHS 500M (approx US $84M),

(c) the whole proceeds of the entertainment including the proceeds of the game after deducting:

  (i) the expenses for prizes, in connection with the game; and

  (ii) the expenses incurred in printing tickets for the game,

  are to be used for a charitable or sporting purpose,

(d) the facilities offered to participate in the game are not the only or a substantial inducement to a person to attend the entertainment, and

(e) the result of the game is to be declared only on the premises on which the entertainment takes place and during the progress of the entertainment.

Note that where any of the above conditions are not met the game becomes an unlawful game and a person concerned with the promotion or the conduct of the game commits an offence and is liable on summary conviction to a fine of not more than one thousand penalty units (approx GHS 12,000 (just over US $2,000))

or a term of imprisonment of not more than three years or both unless that person proves that there was no ground for knowing that the game had become unlawful.

No part of the proceeds of such a game may be used for private gain and no promoter may promote more than one game of chance for the same purpose within a period of three months.

The Income Tax Act 2015 (Act 896) does not extend tax to charitable giving or giving to charities.

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 Gaming Commission regulates all chance-based games/contests, whether they are taking place online or within the country, as long as they apply to residents of Ghana. A license/permit must be sought from the Gaming Commission before they can take place. There are currently no requirements for the winner determination process to occur in Ghana. However, the license/permit application process involves submitting a proposal that spells out the details of the content or game of chance, the prize pool, selection process and all these matters will be taken into consideration before a license/permit is issued.

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 contest can be open to a mix of Ghanaians and non-residents, as there are currently no restrictions in respect of combining all entries from all countries to determine the winners. The prize pool for residents of Ghana must be approved by the Gaming Commission, as this will form part of the proposal submitted when the license/permit application is made. The Gaming Commission aims at ensuring that prizes as advertised/promoted will be available and accessible by Ghanaians upon conclusion of the game/contest, and, upon review of the proposal, will make recommendations or comments where applicable prior to granting its approval for the game/contest to take place.

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

There are currently no restrictions on the type, nature or value of the prizes. The Gaming Commission usually reviews the prize pool in determining the registration fee applicable where necessary and can raise any objections they may have to the prizes at this stage.

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

The rules may vary for games or contests based on the audience. Generally, the Gaming Commission mandates a license/permit to be obtained for commercial based games but does not mandate a license for charitable or games of chance by societies.

The rules will be dependent on the specific details of each game or contest, which will be made known to the Gaming Commission when the sponsor approaches it for permission to engage in the game or contest.

Act 721 provides for games of chance which may be promoted by societies if the sale of the tickets by the society is confined to members of the society and the society is established and conducted for purposes other than for gaming or betting amongst other conditions. Under Section 29(3) a license is not required where the whole proceeds, after deducting expenses incurred for printing and stationery, is devoted to:

(i) the provision of prizes for purchasers of tickets, or

(ii) in the case of a game promoted for the members of a society, either to the provision of prizes or to purposes of the society or partly to the provision of prizes and partly to purposes of the society.

However, the society would still need to notify the Gaming Commission of its intention to organize such a game.

Note that children are not allowed to take part in gaming activities in Ghana. Act 721 defines "child" as any person under the age of 18.

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 Internal Revenue Act 2000 Act (Act 592) (as amended) imposes taxes on gifts in Ghana. Gift tax is payable by a person on the total value of taxable gifts received by that person by way of gift within a year of assessment, subject to certain exceptions.

The Income Tax Act 2015 (Act 896) also imposes taxes on gifts, particularly real estate, shares, securities and any means of transportation, which is payable by the receiver.

Where the prize/gift is monetary, tax is withheld by the sponsor/organizer of the game and remitted to the Ghana Revenue Authority. Where the prize/gift is non-monetary, the gift must be valued, and the tax is payable on the market value of the gift at the time of receipt by the recipient of the gift. Where the gift is received by an individual, the tax return on the gift should be filed with the Ghana Revenue Authority within 21 days of receipt of the gift if that gift is not in respect of business or employment.

Note that the Act does not extend this tax to charitable giving or giving to charities.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (ie, 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, for publication and use of the work, the Copyright Act 2005 (Act 659) is applicable. Under Act 659, the author has a right to authorize any use of his work based on the terms as agreed by the parties. However, the user is not permitted to obtain a broad grant of rights because the personal/moral rights of the author are generally not transferable to another person. Copyright devolves in the person who created the literary work. However, where the sponsor invests some funds in the creation of the work, there could be shared ownership between the author and the sponsor, subject to the terms agreed by the parties.

Copyright cannot be owned in perpetuity, but is protected for a period of 70 years after the death of the author.

An assignment of copyright shall be in writing and signed by the owner of the copyright or by the person authorized by the owner of the copyright for the purpose.

Our laws under the Electronic Transactions Act 2008 (Act 772) recognize the conclusion and execution of an agreement electronically. The signature must be such that is verifiable by both parties.

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

The Gaming Commission has Advertising Guidelines that regulate publicity of such games/contests in Ghana.

Liability disclaimers will ordinarily be subject to contract law (ie, the Contract Act 1960 (Act 25)). A liability waiver is permissible so long as it is not obtained by undue advantage by the sponsor, or designed to deny the winner of the rights he would ordinarily be entitled to by taking part in the contest and abiding by its terms. A liability disclaimer will not be permissible or enforceable in Ghana even after it has been signed where it purports to deny the winner of a constitutional or other right protected by statute.

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 (eg, if all advertising is in English, can the Official Rules and website only be in English)?

The official language in Ghana is English; thus, official documents are issued in English language and there is no official requirement for translation into a local language. However, some advertising materials may be produced in any of the local Ghanaian language, if the target audience is more inclined to understand the local language.

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

Personal information is protected in Ghana under the Data Protection Act 2012 (Act 843) which provides that "a person who processes personal data shall ensure that the personal data is processed without infringing the privacy rights of the data subject…"

Personal data may not be processed without the prior consent of the data subject unless it is necessary for the purpose of a contract, required by law, for performance of a statutory duty or to protect the interest of the data subject. It must be collected for a specific purpose which must be clearly defined, and which is lawful. Moreover, the data subject must be aware of the purpose for which the data is being collected.

Personal data should not be retained for a period longer than is necessary to achieve the purpose for which it was collected and should be deleted, destroyed or de-identified at the expiry of the retention period. Where the data collected is being modified or processed further, processing should be done in connection with the specific purpose for which data was collected.

There is an obligation on the person collecting the data to "take the necessary steps to secure the integrity of personal data in his possession and adopt appropriate measures to prevent loss, damage to or unauthorized processing or destruction 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?

The game or contest will be subject to Ghanaian laws if the participants are Ghanaian residents and the data to be gathered originated from Ghana. Thus, a license will be required from the Gaming Commission before the game or contest can be offered to residents/the public, even if it is solely online.

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

There are no relevant cases as of this time.

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?

A company may need to consider the Electronic Transactions Act 2008 (Act 772), The Electronic Communications Act 2008 (Act 775), the various anti-money laundering laws and regulations and other laws that, whilst not directly regulating games of chance or skills-based contests, generally protect the rights of the Ghanaians who will be participating in such contests; and structure the contest or game to comply with such laws.

GREECE

Are chance-based games (ie, 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 (ie, 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 in claiming/receiving the prize(s).

The self-regulatory advertising code (Hellenic Code of Advertising & Communication Practice—"HCACP") specifies the following 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 in a prize promotion conditional upon the purchase of a product is not forbidden *per se* (provided that there is no mark up in 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 (eg, 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 raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

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 (eg, 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 (eg 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.

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

Yes. Special rules may apply in relation to the participation of children/employees/special groups of people; therefore, in such cases the sponsor/promoter should seek specific legal advice.

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 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 (ie, 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 in media/forms invented after the date of contract.
3. To be valid, any grant or transfer of rights must be 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, the opportunity to enter the competition and claim a prize may be considered to be 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 (eg, 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 relation to 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, the sponsor must disclose to participants the following information, before any data processing takes place:

1. who is the sponsor-data controller (name/address/contact details and contact details of the Data Protection Officer, if any);
2. which personal data will be processed (eg name/address/contact details of entrants/any personal data contained in the entries submitted);
3. the purpose of the process (normally it is the carrying out of the promotion and notification of the winners);
4. the legal basis for processing personal data (eg consent/performance of a contract/legitimate interest etc);
5. whether the personal data are going to be transferred to third parties;
6. whether the personal data are going to be transferred outside the EU;
7. how long the data will be kept;
8. information regarding data subject rights (right of access to data/right to object etc);
9. the right to lodge a complaint with the supervisory authority (Hellenic Data Protection Authority).

It is advisable that the participant confirms (eg, through a checkbox) that he/she has read and understood the Privacy Notice.

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.

GUATEMALA

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

Yes, chance-bases games are generally permissible. However, the following information must be borne in mind:

1. Chance-based games as sales promotions:

When chance-based games are organized by a promotor as a creative means to seek consumer attention in order to promote sales, there is nothing in the laws prohibiting such activities, so it can be extrapolated that they are generally permissible. However, it is important to note that under the Civil Code (Decree Law 106), no legal action is acknowledged to claim prizes won in a chance-based game; and, therefore, this obligation is only deemed to be an act of good faith or a gentleman's agreement between the parties.

2. Chance-based games provided through establishments as their main commercial activities:

In a strict sense, the kinds of establishments that promote chance-based games are not allowed. Under the Criminal Code (Decree 17-73) the owners of such establishments may be punished with prison sentences from 1–5 years and a fine of Q 1,000–10, 000 (approx US $130–1,300). Further, the law also punishes those visiting such establishments with a fine of Q 200–2,000 (approx US $25–255). However, no matter what the law states, in practice, the fact is that there are many establishments of this kind in Guatemala that are clearly operating against the law but no action is taken, either by the authorities or individuals.

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

Yes, skill-based contests to seek consumer attention in order to promote sales are generally permissible, as there is no prohibition against this.

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 need to register or file any kind of request before an authority. However, is important to note that, as best practice with regard to consumer protection guidelines, the rules of the chance-based game and/or skill-based contest should be available to the public before participation and should be complied with, especially regarding prizes matters (with the considerations explained above with respect to chance-based games). All legal controls, if any, are ex-post if any issue arises.

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 of the product is needed in order to enter are permitted, as long as the product is sold at its regular price, and no extra fee is paid in order to participate in the promotion. In these circumstances, no other alternative method of entry is required to be offered.

Are there other forms of "consideration" which are prohibited in connection with entry into a chance-based game (eg, 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 raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

The law does not distinguish between different types of entity that promote a sweepstake, therefore, in a strict sense, any raffle or charitable sweepstake has to comply with the same regulations as a sweepstake organized by a for-profit corporation.

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 types of promotion; however, this should be clearly stated in the promotion 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?

The draw or winner determination may occur in another country, as there is no legal limitation that requires the winner determination process to take place in the country. However, the process must comply with the formalities and requirements of Guatemalan 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 (eg, travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

No, there are no explicit restrictions on the type, nature or value of the prices. However, as best practice and in terms of compliance with the law, nothing should be given as a prize that is against the moral or other applicable laws in the country. Likewise, it is important to note that the promotor is obliged to prove that all prizes offered were handed to the winners.

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

No, there are no special rules per se, except for those that the promoter itself established and made available to the potential audience. Such rules are made on a case-by-case basis, as the promoter is free to structure the chance-based gamed and/or skill-based contest as it wishes, so long as the rules do not infringe the law in general terms.

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 with regard to raffles, lotteries and sweepstakes; the value amounts to 3% of the value of the prize. Strictly, responsibility for paying the tax lies with the winner, unless the sponsor, by its own decision, decides to pay the tax. No other costs or fees are 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 (ie, 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, and customary to do so. However, it must be noted that there is a legal obligation to obtain specific and signed consent for this from the winners before delivering the prizes. Any copyright can only 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?

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 (eg, if all advertising is in English, can the Official Rules and website only be in English)?

Yes. Spanish language is required as the official language of the country.

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?

Currently, Guatemala lacks specific data privacy legislation; therefore, there are no regulations detailing matters such as how data can be collected, legally processed, transferred and enforced, Data privacy protection is based on the Constitution, under which the right to privacy is acknowledged. The Constitutional Court has issued decisions covering the right to privacy, interpreting the extension of such right. The Court has applied the principle of informed self-determination and granted access to databases in which personal information is stored. Therefore, as best practice, if personal information will be collected, then entrants should be provided with the right to access the information at 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?

Yes. All promotions that are open to Guatemalan residents are subject to Guatemalan laws; specifically, the Consumers Protection Law will apply, regardless of where the promotion takes place.

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

Currently, in our experience, there are no key cases or regulatory decisions which can be considered landmark decisions and/or relevant 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?

The regulations relating to this matter in Guatemala have not been updated and are open to be interpreted in different ways. Therefore, as best practice, transparency of the rules of the promotion should always be disclosed in order to avoid misinterpretation and to set the scope of the activities.

HONDURAS

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

Yes, random draw promotions and instant win games are generally permissible in Honduras.

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

Yes, these types of contests are permissible in Honduras.

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, any type of contest or promotion that has a profit-seeking purpose for the promoter must be authorized by the Departmental Regime Directorate of the Ministry of the Interior, Justice and Decentralization.

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, chance-based and skill-based promotions in which someone is required to purchase the product are permitted in Honduras. Promotions will be ruled by their own Official Rules that must be filed before the Departmental Regime Directorate (see above). There is no requirement for a non-purchase method of entry to be offered.

Are there other forms of "consideration" which are prohibited in connection with entry into a chance-based game (eg, 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)?

Promotions must comply with the Consumer Protection Law and regulations; and, as such, they:

- must not create confusion or false statements for potential participants of the promotion,
- must not go against good customs, and
- must not cause unfair competition against potential competitors of the sponsor.

Saying that, a promotion will be ruled by any official rules created by its sponsor, which will later be analyzed by the corresponding authority; and the authority may ultimately approve or suggest amendments to the promotion to be executed in Honduras.

Are raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

No, both raffles and charitable sweepstakes have to follow the same procedure for authorization (see above).

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

Yes it is permitted under Honduran law.

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?

A chance-based game or skill-based contest can be conducted in another country, but results must be transmitted live before an authorized official, who will draw up the minutes of the random draw/winner determination. If this does not happen, the chance-based game or skills-based contest loses validity and participants can file a claim at the Consumer Protection Authority against the sponsor, exposing the sponsor to risk.

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.

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

No, Honduran legislation is silent as to what can be offered as a prize. However, prizes must be duly specified in the promotion's official rules created by its sponsor, and prizes can only be awarded to people over the age of 21, or to minors with the authorization of their parents.

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

The audience must be people over the age of 21, or minors duly authorized by their parents. Minors can participate in this type of contest/game but are unable to claim a prize, rather their parent can do so on their behalf.

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?

It will depend on what the prize is. If the prize is an asset that is subject to registration, fees may apply, and these are usually assumed by the sponsor. In addition, a capital gain tax may apply (10%) for the winner to claim a prize. Registration fees or other associated costs may apply, and will vary depending 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 (ie, 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 permitted. There is no disposition in Honduran law that prohibits it.

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.

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 (eg, 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 language (Spanish).

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

Personal information usage must be authorized by the entrant.

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 no promotion takes place in Honduras, and no one from Honduras could have access to it, then the game/contest will not be subject to Honduran law.

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

Yes, participants can file a claim at the Customer Protection Authority if the Official Rules are not clear or are intended to confuse. If this is the case, the Customer Protection Authority may impose penalty fees or other penalties on the sponsor, according to Honduran 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?

The company promoting the contest should also be registered under the local authority in order for the contest to be authorized.

HONG KONG

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

Gambling is regulated under the Gambling Ordinance (Cap 148) ("GO"), and is defined as including gaming, betting and bookmaking, and gaming is defined as including 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, and is prima facie unlawful unless it falls within one of the five exceptions set out in the GO (see below).

The GO also provides that "trade promotion competitions" (ie, competitions or other schemes promoted, conducted or managed for the purpose of promoting a trade or business or the sale of any product (eg, lucky draws organized by department stores and restaurants to boost sales and promote business)) must be licensed (see below). In a trade promotion competition, any game that carries an explicit gambling connotation or serves as an alternative form of authorized gambling (eg, 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 (ie, 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?

Gaming is unlawful unless falling within one of the five lawful exceptions set out in Section 3 of the GO, namely:

1. 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. the game is one in which dice, dominoes, mahjong or tin kau tiles, or playing cards are used and:
   (1) the game is played at 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 license 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. 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. 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 license under the GO; or

5. 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 must be without charge to entrants. A Trade Promotion Competition License ("TPCL") is required for conducting a trade promotion competition, which can be obtained 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 (excluding the provision of any necessary additional information and/or clarifications) normally takes 7 working days. In the circumstances, applicants are advised to apply for a license 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 (eg, 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 raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

Yes, raffles organized as such are possible. They must be exclusively for a charitable purpose and are subject to substantial inclusive detail of publicity, performance and results as laid down by requirements of the Licensing Authority.

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 (eg, 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.

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

For chance-based games there are no special dedicated audience type rules which may exempt the game from the general prohibition as an illegal lottery. However, as discussed above, a trade promotion competition may be organized as a chance-based game under the specific conditions set out in its license.

A skill-based contest does not have special rules and can proceed under the rules organized by the promoter; however, it would usually be appropriate to pass the rules by the Licensing Authority for review in order to establish that the Authority does not perceive of any chance-based element in the 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?

Prize receipts are not taxable in the hands of the winner. Moreover, 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 (ie, 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 the Copyrights Ordinance (Cap 528), 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.

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 (eg, 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 must be published in one English and one Chinese registered local newspaper (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 must follow the 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 FAQs give the following advice to organizers:

(a) 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) from participants 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;

(b) To 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;

(c) (Under the Code of Practice on the Identity Card Number and other Personal Identifiers) Not to announce the winner's name, together with his/her HKID number, even if altered, on the grounds that it may be possible to deduce the original HKID card number from its altered form. Moreover, to prevent scams, the winner's telephone number should not be published in full; and

(d) Not, without the agreement of the participants, to 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?

If the server from which the online transmission is made is situated in Hong Kong, the law of Hong Kong applies; although, if it does not communicate any promotion, then the TPCL Guidelines will not 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?

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 a contest may form part of a program where no fee is payable either in money or money's worth for participation in the contest, and the contest must offer an opportunity for all contestants on the basis of the skill or knowledge of the participant and not by chance. The contest must also comply with any regulations made by the Chief Executive in Council and with any Code of Practice.

HUNGARY

Are chance-based games (ie, 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, ie, 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 as to 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; and

(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 two exceptions: (a) the raffle (under a certain value) and (b) the promotional prize draw. These types of chance-based game must be reported to the Tax Administration in advance, but no permission is needed.

A 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, drawn at random, and the players can instantly see whether or not they have won a prize.

As for promotional prize draws, please see below.

To sum up, if a chance-based game fulfils the criteria to fall within the definition of gambling, 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 (ie, 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 two types of chance-based game, the raffle, and the "promotional prize draw", which are 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 and raffles must be reported to the Tax Administration at least 10 days before publishing the game. HUF 3,000 (approx €10) must be paid as duty. Also, an administrational fee of 1/1000th of the value of the prize (subject to a minimum of HUF 5,000 (approx €16) and a maximum of HUF 500,000 (approx €1,600)) must be paid. In addition to this, the payment of the administrational fee must be also reported to the Tax Administration on a standard form.

Note, however, 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 no ticket is actually drawn publicly, the Gambling Act does not apply: eg, where, 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.

Prize games organized on social media platforms, which do not involve the purchase of a product or the use of a service or any other payment obligations, and in which the participant only has to comment/share/like a certain content, are not considered as prize draws, and so the Gambling Act does not apply.

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.

However, since the interpretation of a given chance-based game by the Tax Administration can be unpredictable, there is a danger that, if a promotion linked to a purchase does not fall within the statutory word-by-word definition of “promotional prize draw”, the purchase of a product as the condition of

participating may be considered as payment for the participation, and thus the game may qualify as prohibited gambling. In other words, it is advisable to add another element to ensure that the game does not qualify as gambling (eg, an element of skill).

Are there other forms of "consideration" which are prohibited in connection with entry into a chance-based game (eg, 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 kinds of preconditions for participating in a contest; however, the guidelines of such forums must be followed.

Are raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

No, in Hungary regulation is not differentiated on the basis of whether the promotion is offered by a for-profit or a non-profit corporation.

Note that, if participants have to pay for the ticket, the detailed rules on raffles apply (see question 1 above).

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 draw.

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 (eg, 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 within the scope of the Gambling Act, there is no such prohibition.

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

There are no express rules regarding the conducting of promotions related to their audience. However, the specific rules on legal capacity based on age, equal treatment, labor law, etc apply.

If a promotion qualifies as a promotional prize draw, only players above 18 years of age can participate.

As for employees, please note that if the contest is linked to the work performance of employees, it will not be considered as a prize game, since, in such a case, the award provided is a consideration for the work carried out by the employee within the scope of employment, and it is subject to tax and contributions as employment income.

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 liability to pay 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 (ie, 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. Although, if the submitted materials are protected by copyright, according to the Copyright Act, the sponsor is not allowed to completely own the entries submitted by the participants, it is, however, possible to obtain a broad license to use these materials. Such a license can extend for the whole period for 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 (eg, if all advertising is in English, can the Official Rules and website only be in English)?

There is no general requirement in the Act on the Prohibition of Unfair Commercial Practices (Act XLVII of 2008), nor in the practice of the Hungarian Competition Authority, 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. For example, a foreign airline has been 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 consumer is required. In some circumstances, consent may be implied: it is permissible to insert consent into the game rules the consumers agree to by entering the promotion. However, if a company wishes to use the data collected in order to send direct marketing materials to the participants, it will need the prior explicit consent of the participants. 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 states that the Act applies to any commercial practice that can affect Hungarian consumers. In several cases, foreign entities have been fined by the Hungarian Competition Authority based on this; however, the commercial practices concerned were usually intended for Hungarian consumers.

For the interpretation of the territorial scope of the legislation, the judgment of the European Court of Justice in joint cases C 585/08 and C 144/09 may be of help. Here, 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 are fulfilled, the contest or promotion may affect Hungarian consumers, and thus Hungarian law is applicable.

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 for promotions to be held to be unlawful in Hungary is that the chances of winning and the terms of the participation are 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 framework 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 (ie, random draw promotions, instant win games) generally permissible?

Certain pieces of legislation, such as the Lotteries Regulation Act 1998 and Public Gambling Act 1867, regulate and prohibit chance-based games such as lotteries, gambling, etc.

To escape the ambit of lottery laws, any form of purchasing of tickets to enter a chance to win prize(s) should be avoided.

To escape the ambit of the Public Gambling Act 1867, the promoter or sponsor (as the case may be) must be careful not be seen to be running an establishment for the purpose of gambling.

Further, the Consumer Protection Act 2019 prohibits the conduct of any contest, lottery, game of chance or skill for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest.

The following are not considered chance-based games:

- wagering or betting upon a horse-race/dog-race, when such wagering or betting takes place in certain circumstances, and
- games of "mere skill".

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

Yes. Skill-based contests (ie, essay contests, photo contests, user-generated content contests) or games involving a preponderance of skill rather than mere chance are generally permissible upon fulfillment of certain conditions. Skill-based contests should be seen as something more than a simple draw of lots or a game of chance, and involve an element of skill being utilized.

Further, 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 games and/or skill-based contests with any authority in India. See, however, 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 2019. 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. Although the jurisprudence in this regard is not very well developed, and there is a considerable grey area as to whether the purchase method is strictly prohibited for such promotions, we would say that non-purchase methods of entry are 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 (eg, 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 it 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 raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

There is no specific provision for raffles or charitable sweepstakes in India. They are regulated in same way as the prize promotions.

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 can occur in 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 (eg, 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. Thus, we believe that there are no restrictions on this (subject to answer 1 above).

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

There are rules concerning children. Under the Indian Contracts Act 1872, for an agreement to be legally enforceable, the contestant must be of the age of majority (18) to enter into the contract. A contract entered by a minor in India is null and void. The proposition of law that any contract entered into by a minor is void *ab initio* (absolutely void), has been generally followed, but has been increasingly "confined to cases where a minor is charged with obligations and the other contracting party seeks to enforce those obligations against the minor." Thus, if a minor has performed their part of the contract and the other party does not fulfill its part of the contract, then minor is allowed to enforce a contract which is of some benefit to them. But no obligation or liability can be imposed on the minor for the breach of the terms of the contract.

There are no special rules regarding other audiences, and such games, contest or giveaways are not governed differently.

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 and other winnings from games of any sort, lotteries etc in excess of Rs 10,000. This is deducted at source ("TDS").

If prizes are not purely in cash, the tax is deducted from the cash element; 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 will 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 (ie, 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 as being unfair, unreasonable and unconscionable on account of falling under Section 23 of the Indian Contracts Act 1872.

Copyright 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 condition attempting to absolve the promoter or sponsor of liability for any injury or personal damage or loss to property due to the negligent act of the promoter or sponsor or their representatives and associates. Inclusion of such a condition in a liability and/or publicity release clause would be seen as unreasonable, arbitrary and unconscionable under the 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 (eg, if all advertising is in English, can the Official Rules and website only be in English)?

Indian laws do not contain any particular provisions requiring the Official Rules and advertising materials (including website) to be provided in the native language or English. However, a stipulation may be added in the Official Rules that participants to the game/contest should be able to read and understand English in cases where the rules are only 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 enshrined in the Information Technology Act 2000, which makes it an offense to disclose information in breach of lawful contract etc, and in the Indian Contract Act 1872, which provides a civil remedy in the case of violation of contract in disclosing personal information without the consent of the participant.

Further, by Section 43-A of the Information Technology Act 2000, damages are available for failure by an organization dealing or handling sensitive personal data of others in implementing and maintaining reasonable security practices and procedure which results in wrongful loss or wrongful gain to any person.

For this, promoters can devise a 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 to ensure this.

Further, entrants are entitled to have control over their personal information, with the right to access, review, correct, amend, delete or withdraw their 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?

A chance-based game or a skill-based contest (whether or not online) in which Indian residents participate is 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, gaming entities, ie, those carrying out activities for playing games for cash or for kind (including online gaming sites and casinos) are required to adhere to the provisions of the Prevention of Money Laundering Act 2002 and related Rules. Under the Rules, Gaming Entities must maintain records of the identity of their clients both during and after the cessation of the transactions.
- Under the Foreign Direct Investment Policy of India issued by the Ministry of Commerce & Industry, foreign direct investment 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*, the Supreme Court of India specifically considered 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 (ie "flush", "brag" etc).
- The Supreme Court, in the case of *RMD Chamarbaugwalla v the Union of India*, laid down the principle that skill-based or preponderantly skill-based competitions were not intended 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 the publication, distribution and transmission of obscene content. The IPC, inter alia, prohibits the sale, hire, distribution, exhibition, and circulation of any obscene object and also penalizes any person who engages in, advertises, 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 (ie, 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 penalties for infringement.

- The provisions of the Trademarks Act 1999 should be borne in mind when using well-known brands, etc, or names or titles similar to 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 can trigger copyright infringement issues under the Copyright Act 1957.
- The Competition Act 2002 aims are:
    - to prevent practices having an 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 this, anti-competitive agreements (ie, agreements in respect of the 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 cause or are likely to cause an appreciable adverse effect on competition) within India, are prohibited.

IRELAND

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

Yes, although compliance with the Gaming and Lotteries (Amendment) Act 2019 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) outside of certain prize limits is considered a lottery under the Gaming and Lotteries Acts and needs a license or permit to operate legally. There is a very limited exemption for marketing promotion games provided that the total value of the prizes is €2,500 or less and there is no charge for taking part in the lottery or redeeming the prize (aside from the purchase price of the product).

Licenses are only obtainable in limited circumstances from either the local police superintendent (a "permit") or the District Court depending on the value of the prizes. 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 (ie, 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 to follow from the Gaming and Lotteries (Amendment) Act 2019 is presently under consideration to regulate gambling and casinos, and that may also introduce a monitoring body which 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, other than low value marketing promotion games as set out above, they constitute a lottery if a purchase is required, and can only successfully operate with a police permit and /or court issued license 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 (eg, 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 examples would not be considered "consideration".

Are raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

A "raffle" would not be regulated differently than any other prize draw promotion if it is offered by a for-profit corporation. Charitable lotteries have been treated differently ever since the Gaming and Lotteries Acts 1956, as they are seen as a valuable fund-raising tool. That continues to be the position under the updated 2019 legislation. For a charitable sweepstakes with prizes under a value of €1,000, entry fee of less than €5 and a maximum number of 1,500 entry tickets, no license at all is required. Otherwise, the routes highlighted above, through the police superintendent or District Court, are open to the charity and are commonly used.

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 (eg, travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

None, unless the competition is operating as a licensed or permit-based lottery as set out above. If the competition is operating under a lottery license, then the usual District Court license restricts prizes to a value of no more than €30,000 per week. The police superintendent permit would have a restriction on prize values to no more than €5,000 for all of the prizes in the contest.

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

The Gaming and Lotteries (Amendment) Act 2019 places a minimum age limit of 18 on all gaming and lottery activities; therefore, any chance-based games falling within the definitions of the Act would have a minimum age requirement. Skill-based games, or games otherwise not falling under the Act, would not be restricted in the same manner, although promoters should always be cautious when minors are involved in a competition.

The Advertising Standards Authority of Ireland ("ASAI") Code on Marketing Communications has specific rules relating to different sectors to include prize competitions that affect children and employee contests. In theory, any contest that restricts entry on the basis of gender could be seen as discriminatory under the Equal Status Acts 2000–2018 if the contest is linked to the provision of a product or service.

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 (ie, 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. However, the ASAI Code of Practice states that promoters need to be aware of the issues that can arise with excess publicity (eg, 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 (eg, 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 Act 2018 governs 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 in Ireland 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:

1. *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 that 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.

2. *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.

3. *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 that 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 (Amendment) Act 2019. 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 (ie, random draw promotions, instant win games) generally permissible?

The Israel Penal Law 1977 outlaws, subject to qualifications, 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".

However, although draws and instant win games are generally outlawed in Israel, the Minister of Finance is empowered under the Penal Law to authorize certain types of sweepstakes/draws. In accordance with these powers, certain types of draws have been permitted, via an "Announcement of a General License to Conduct Draws for Commercial Advertising/Promotion" ("General License").

Are skill-based contests (ie, 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 require elements of both skill and luck, in certain contexts was held illegal. Also, the Tel Aviv District Court has ruled that a Bingo/Trivia Pursuit game, in which a bingo winner must answer three simple trivia questions in order to claim a prize, constitutes an "unauthorized game".

However, as long as the game/contest involves skill, it is permitted; and, 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, subject to qualifications, chance-based games are outlawed in Israel.

There are no filing requirements for skill-based games.

There is no need to register draws which are allowed under the General License. Nevertheless, the General License sets out 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. The Inspector must notify the MOFGM of their appointment and submit an official report relating to the draw. Additionally, there are requirements relating to the publication of the draw's 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 (eg, 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 (ie, games in which 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, only the skill factor.

With regard to draws allowed under 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 raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

Raffles and charitable sweepstakes are not permitted by the General License, as they are not conducted for the purposes of advertising or promotion.

In order to conduct a charitable sweepstake, a special permit from the Israel Ministry of Finance must be applied for and obtained.

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 process for determining the winner need not occur in Israel.

As for 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 (eg, 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 also permissible to award prizes which involve travel outside Israel. However, before offering Israelis the option of winning travel prizes, we would suggest that it is advisable to determine beforehand that Israelis are allowed to travel to the relevant countries.

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

Under the Israel Penal Law, chance-based games, sweepstakes and gambling may be conducted if they are targeted at a certain type of audience (such as "ladies" in "ladies' night"), for amusement purposes and not conducted in an "illegal establishment" such as a gambling hall.

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 of approx $16,000 and above. 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 (ie, 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. Transfer of copyright must be accompanied by a written document.

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 or 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. That 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 (eg, 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. That said, it is advisable for the sponsor to provide a clause in which the entrant states that they understand the language of the rules. This is usually done by requiring the entrant to tick a box.

Nevertheless, under 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, anyone holding or managing a "database" (ie, "a collection of data, kept by magnetic or optical means and intended for computer processing") relating to people must, in certain circumstances, register this database with the appropriate governmental body.

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, an overseas website, 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. 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.

ITALY

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

Yes. These initiatives fall within the category of "prize promotions" and are subject to a specific Regulation (Presidential Decree no 430 of October 26, 2001) ("the Decree") which:

(a) defines as "prize contests" all promotional initiatives awarding a prize to one or more participants basically on the basis of their personal skills or by mere chance (eg a draw), and

(b) distinguishes them from "prize operations", which assign premiums/gifts, *inter alia*, to:

  (i) All those buying a certain quantity of a product/service, or

  (ii) All those collecting a given number of proofs of purchase, coupons, etc, or

  (iii) All those buying a certain type of goods.

Prize contests and prize operations are subject to different legal and administrative requirements and restrictions. Such requirements are further detailed and specified by the Frequently Asked Questions issued by the State Department on March 30, 2017 and then amended several times ("FAQ"). Note, however, that the content of the FAQ is not law, but reflects the practice of the Ministry of Economic Development which, as such, is subject to change. Therefore, the FAQ should be checked from time to time since their content may vary.

Specific aspects of the Decree have also been further interpreted by the competent Ministry of Economic Development, for instance by means of Ministerial Memoranda (together, with the Decree and the FAQ,, "Regulation").

Are skill-based contests (ie, 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 (eg, 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 the Decree. Only in a few cases, specifically indicated by the Regulation, would such initiatives be exempt from such compliance obligation ie, when 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…". The Regulation gave, as examples of qualifying works, articles/essays on topics such as tobacco dependence, drug addiction, chronic alcoholism, ecology, or a show of an individual's specific literary talent (eg, skill in Latin), or a paper on topics of social interest.

By a Memorandum, issued in 2014, the State Department broadened the range of such exemptions to cover all contests with content created by participants, not involving a purchase obligation, and awarding prizes:

(a) to recognize "personal merits" through a benefit not resulting in a remuneration or where the fact of winning is more important than the value of the awarded prize or

(b) to reward the service or work performed, provided that the promoter of the contest reserves the right to use the winner's content in some way in the framework of its business.

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.

Furthermore, when the Decree is applicable, specific restrictions are provided by the FAQ which have an impact on online contests, such as a restriction on the location of servers. In addition, if the contest is organized on a social network, the restrictions provided by the FAQ and the social network's terms and conditions for promotions must also be complied with.

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 authorization in advance for running a prize contest. However, they do have to file a notice (attaching the Official Rules) about the planned promotion with the State Department at least 15 days before the promotion is to commence. This to allow the State Department's offices to object to—or temporarily halt—a promotion which is patently illegal or non-compliant with the Regulation. The notification procedure can be performed exclusively online by using standard forms (available on the State Department's website).

Costs include:

- **Administration costs**: Companies intending to conduct a prize contest in Italy usually retain a local prize promotion agency to take care of handling and administration. The fee of such agency will clearly depend on the complexity of the planned initiative.
- **Tax representative**: Prize contests can only be carried out by foreign companies by means of a tax representative resident in Italy (although EU companies may instead use Direct Identification to identify themselves in Italy directly). Further costs are connected with these fulfilments.
- **Cautionary deposit**: Besides these, the main costs of a prize contest relate to the requirement meant to ensure the actual availability of all the prizes promised to participants by requiring a "cautionary deposit" to be paid, which must cover the total combined value 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 (eg, whether or not the company is a client of the bank or insurance company).

- **Supervisory costs**: 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. As a rough idea of such costs (which change over time—and will change from office to office), consider that, in the main Chambers of Commerce, daily rates vary from a minimum of €400 + VAT (for work carried out before 6pm on working days) to around €600–700 + VAT for work to be carried out on Saturday, Sundays or bank holidays; with extra charge for the preparation of the promotion's closing report.
- **Taxes**: Finally, taxes (on prizes) must be paid (see 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 "prize 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 (eg, by increasing the price of the promoted product or service). Participation has to be free, other than the ordinary costs for filing the participation form (ie, stamps, phone call or online access at ordinary rates).

This requirement, is intended to prevent the charging of entry fees for participating in a promotion, as such requirement would transform the initiative into a lottery (which, in Italy, is reserved to State Monopoly).

Are there other forms of "consideration" which are prohibited in connection with entry into a chance-based game (eg, 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)?

Not in theory. In practice, the mechanism:

- needs to strictly comply with the "free entry" principle, mentioned in the previous paragraph;
- has to offer fair and equal conditions to all participants; and
- must allow adequate control on all aspects/phases of the promotion's handling.

Moreover, such forms of "consideration" are typical of initiatives such as giveaways on social networks. Some restrictions in connection with the forms of consideration concerned may be imposed by the social network's terms and conditions for promotions, to be checked on a case-by-case basis.

Are raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

Pursuant to the Decree, prize promotions are aimed at promoting, on the Italian territory, knowledge of products, services, businesses, signs or trademarks or the sale of certain products or the provision of services, having, even partly, commercial purposes. Thus, if raffles or sweepstakes have a different purpose than those just mentioned (eg, they are organized for social purposes), they may fall outside the scope of the Decree—a case-by-case assessment should be carried out.

Furthermore, the Decree prohibits any kind of local sweepstakes and raffles, save for specific exceptions listed (eg, promoted by non-profit organizations, having charitable, cultural, leisure and sporting purposes).

Finally, for the sake of completeness, please note that "promotions in which the prizes are destined for public bodies or institutions, or for those with eminently social or charitable purposes" do not qualify as competitions and prize operations.

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 the selection of winners must result in compliance with public faith and has to grant equal treatment and opportunities to all participants. Furthermore, specific formalities in connection with prize assignment must be complied with, pursuant to the Regulation.

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 the Decree, a local promotion needs to be entirely handled and administered in Italy.

The State Department has acknowledged that prize promotions are now frequently using records collected and stored on servers or online platforms (sometimes located outside the country). In such cases, the Department has taken the view that Italian promotions should not, in principle, be allocated on websites not based on Italian territory. Therefore, pursuant to the FAQ, advertisers using a foreign platform will need to have a "mirror system" (or analogous system) in place, which simultaneously replicates locally all operations performed on the foreign platform. Moreover, some phases of the promotion (ie, the eliminatory phases and the phases of selection of winners and assignment of prizes by means of a relevant software program) must

be carried out on a server located in Italy. In addition, the Decree requires that prize assignment is carried out before an Italian notary public or an officer of the relevant Italian Chamber of Commerce.

The FAQ also provide for specific input concerning promotions taking place solely online:

(a) Where held by companies having their legal office in another EU country, the law of that country will apply, while Italy shall monitor only in respect of consumer protection law, provided that the prize promotion does not provide, as a condition of participation, the purchase at points of sale located in the Italian territory;

(b) Where held by companies having their legal office in a country outside the EU, the Regulation will apply;

(c) Compliance with these guidelines allows participation from the rest of the world.

Therefore, where promotions are open to residents of several countries, they are not subject to the Decree if they take place solely online, are carried out by EU promoters and do not require purchases in Italy.

In case of a strictly foreign promotion staying entirely out of the country (eg, 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), it might be argued that the risk of challenge for breach of the Decree (where applicable) is lowered.

The FAQ are frequently amended by the State Department and their interpretation is not always straightforward; further, generally speaking, foreign promotions carried out online are hot topics in Italy, so a careful case-by-case assessment is always needed.

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 a system is permissible for promotions carried out solely online by EU promoters, which are not subject to the Decree provided that all the FAQ's requirements for online promotions are met (see above).

Of course, a foreign promotion can have a section dedicated and specifically targeted to Italian residents, but then this section will have to be handled locally as a domestic promotion, subject to the requirements of the Decree.

Are there any restrictions on the type, nature or value of the prizes (eg, 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.

The Decree states that prizes/premiums may consist, *inter alia*, in products, services, discounts and vouchers, coupons, etc. It is also possible to award "lottery combinations" (ie, 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.

If the prize is travel, some specific provisions apply in connection with the information that must be provided to participants.

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

Any special rules based on the audience will be assessed on a case-by-case basis. For instance, depending on the specifics of the case:

- prize contests addressed to subjects such as retailers, intermediaries, dealers, contractors and employees fully fall within the scope of the Decree; and
- the feasibility of sweepstakes for children should be assessed based on the specific circumstances of the case (eg, they may be unlawful if they concern products for which advertising towards children is not allowed or is restricted, such as alcohol).

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 is not able to claim back the VAT paid when purchasing prizes/premiums to be awarded in a promotion (the tax will therefore result in an additional cost to the sponsor). When VAT does not apply, a subsidiary taxation on the value of the prizes is applied (the current rate is 20%).

Promoters are required 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. If the value of the prizes is lower than €25.82, withholding tax does not apply. Reimbursement of the tax from winners is rarely sought, as this would have a negative effect 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 (ie, 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 the Civil Law, unbalanced provisions could easily result in the agreement being held by local Courts to be unfair and thus void. Waivers relating to rights not yet established are also potentially at risk of being void.

According to Italian Statute Law, individuals may not waive their moral rights.

The transfer of exploitation rights must 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 sign a release is definitely advisable.

It is recommended that special attention is given to use of participants' names and images, which pertain to an individual's "very personal rights" and, as such, are not to be used without permission. Consent-by-implication mechanisms (eg, "by participating winners automatically agree") may not be considered as a valid consent. Winners should, where possible, sign a specific release, covering all planned uses. Should this not be a viable solution, permission for use of name and image should at least be sought through express acceptance of the Official Rules and a specific tick box. Clearly, the uses/purposes specified in such releases must be strictly maintained.

It is important to bear in mind that:

(a) Consent is valid and effective between the parties to an agreement, but is not automatically transferable to third parties (an aspect that could easily become relevant, when participants' submissions are handed over to business partners or affiliates).

(b) In local jurisprudence and commentary, there are differing opinions as to whether consent (once given) is revocable or not.

For the sake of clarity, participants' names and images also qualify as personal data from a privacy law perspective (as to which see answer below).

When drafting liability releases, promoters need to be aware that, under Italian Statute Law, they are not able to achieve a general release from their liability towards participants as to:

- errors contained in the Official Rules,
- misleading information diffused (eg, through advertising) or
- problems faced during the promotion's handling process.

When facing a claim from a participant, promoters may eventually seek to recover damages from third parties as a result of 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 (eg, if all advertising is in English, can the Official Rules and website only be in English)?

All material must be in the Italian language.

Advertising is not subject to formal restrictions under the Decree, but:

(a) must inform consumers about the promotion's terms and conditions, expiry dates and value of prizes to be awarded,

(b) if not providing such indications (eg, due to the characteristics of the audiovisual means or space used), the information offered must explicitly refer to the Official Rules and inform consumers where the full text can be accessed.

In addition, under the Decree, the Official Rules must include specific information, such as, eg, information on the contest's promoter, the contest's duration, territory, types and economic value of prizes, etc.

Consumer protection laws and regulations, of course, apply.

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

Yes. Prize promotions usually imply the processing (eg, collecting, storing and transferring) of participants' personal data. Whenever data handling occurs in Italy, the provisions of the GDPR and the local Privacy Code will become relevant. Therefore, among other requirements, participants must be offered exact, in-advance notice as to the main features of the processing (eg, the purposes of the data collection performed, the uses planned for the personal information collected, the retention period of the data, etc). Such indications must be strictly maintained afterwards, as purposes and uses not covered by the initial information would require an additional notice.

For certain uses and purposes of data processing (eg, monitoring or profiling of data subjects, data transfer to a country outside the EU) there are additional requirements.

Foreign marketers must bear in mind that the GDPR applies to the processing of personal data by entities not having a business presence within the EU whenever: (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", ie, when individuals' online conduct is tracked in order to create profiles (including where such practice is used to analyze or to predict personal preferences, behaviors and attitudes). The mere accessibility of a foreign platform from within the EU is not sufficient to make the GDPR's provisions automatically applicable (unless there is an offer of goods/services addressed to EU residents).

The processing of an individual's personal information for marketing purposes, as a general rule, must be grounded on the individual's consent unless any exemptions apply.

Finally, based on the specifics of the case, if participants are required to provide specific personal data in order to be able to participate in a prize contest, there might be the risk that such requirement is considered as an entrance fee, in violation of the principle that prize contests are free of charge.

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 stated earlier, a local promotion needs to be performed within Italy and must comply with the Regulation.

As regards promotions open to residents of several countries and carried out solely online by EU or non-EU promoters, and for strictly foreign promotions, please see our earlier answer on conduct of draw/winner determination.

The GDPR will, in certain cases, result in an extension of the new provisions to marketers not having a business presence within the EU (see previous answer).

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, has a binding effect on the promoter so that, any time it does not strictly comply with the provisions of the Official Rules, the promoter exposes itself to the risk of performing unfair commercial practices (and, in cases of serious infringement, may find its conduct of interest to a criminal prosecutor).

The Court of Justice of the European Union has held (judgment dated 18 October 2012 of the Sixth Chamber) that giving the false impression that a consumer has 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 "[I]t 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 "[I]t 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?

(a) The Regulation requires promoters to perform a prize contest in Italy within one year from commencement. Such maximum duration includes both the procedure for selection and determination of the winners and the deadline for claiming the prizes. Prizes offered must be delivered to the winners within six months from the promotion's end/the moment of claim.

(b) Promoters must assign all prizes not awarded/claimed by winners to a not-for-profit organization (which should be specified in advance). It is therefore common to provide for "reserve winners".

(c) Sanctions on promoters for illegal initiative (NB: sanctions may also be extended to retailers/distributors involved in the illegal promotion):

  (i) When a prize promotion is ascertained to be illegal, the State Department may serve a fine of up to three times the VAT due for the jackpot, and in any case not lower than €2,582.28. If the promotion is regarded as being of a type reserved to the State or as circumventing the State's monopoly on gaming, a fine of €50,000–500,000 may apply.

  (ii) Holding a prize contest without filing an in-advance notice to the State Department carries a fine of €2,065.83–10,329.14. For notifications filed late—ie, 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.

  (iii) The performance of prize contests not in compliance with their Official Rules, will incur a fine of €1.032,91–5.164,57.

  (iv) Ignoring a cease-and desist-order and continuing an illegal promotion exposes the offender to a fine double the ordinary amount.

JAPAN

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

Yes.

Are skill-based contests (ie, 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 each prize and the total value of prizes awarded.

Are there other forms of "consideration" which are prohibited in connection with entry into a chance-based game (eg, 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 raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

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 (eg, travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

There are no restrictions for open games/contests in which anyone can enter. If a chance-based game/skill-based contest is closed (ie, not for everyone) and a purchase is required, there is restriction on the value of each prize and the total value of the prize pool that can be awarded.

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

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. If the amount of prize exceeds 500,000 yen (approximately US $4,570), the winner is required to pay income tax. The income from the prize would be categorized as "occasional income".

Income tax and special income tax for reconstruction is withheld when monetary awards for advertising and/or promotion are paid to individuals.

The tax amount is calculated using the following formula:
(The amount of money actually paid or the appraised value of the prize, minus 500,000 yen) ÷ 0.8979 × 10.21%.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (ie, 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 that the copyright exists). Copyright can be transferred electronically, although, in practice, it is generally 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?

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 (eg, if all advertising is in English, can the Official Rules and website only be in English)?

No. However, it is highly recommended to provide rules and materials in the Japanese language.

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

Yes. It is necessary to obtain consent from entrants to collect their personal information, informing them of the purpose of use. Such consent can be obtained via a website (ie, 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 businesses,

(ii) magazine businesses,

(iii) real estate businesses and

(iv) pharmaceutical, medical devices and medical technology-related businesses.

KENYA

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

Yes. Chance-based games are generally permissible in Kenya; and they are generally categorized as prize competitions, lotteries or gaming activities.

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

Yes. Skill-based contests are generally permissible in Kenya; and they are generally categorized as prize competitions, lotteries or gaming 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?

Yes. A person who intends to offer a chance-based game or skill-based contest is required to obtain a permit issued in accordance with the Betting, Lotteries and Gaming Act, No 9 of 1966 (Revised Edition 2017) ("BLG Act") and the Betting, Lotteries and Gaming Regulations.

The costs and timelines are as indicated below:

1. Prize competitions

The cost for a prize competition permit is approximately US $1 plus 6% of the total promotion budget (including all advertising and all prizes to be won by participants). It takes approximately 4 weeks from the date of the application for the permit to be issued.

2. Public gaming

The cost for obtaining a public gaming permit is as set out in the table below. It takes approximately 4–8 weeks to obtain the permit.

New Application	Local Applicant	Foreign Applicant
Application Fee	US $10,000	US $10,000
License Grant Fee	US $30,000	US $30,000
Annual Fee	US $ 5,000	US $ 5,000
Investigation Fee	US $2,500	US $10,000
Total	US $47,500	US $55,000

3. Long-term public lotteries

The cost for obtaining a long-term public lottery permit is as set out in the table below. It takes approximately 4–8 weeks obtain the permit.

New Application	Local Applicant	Foreign Applicant
Application Fee	US $10,000	US $ 10,000
License Grant Fee	US $40,000	US $40,000
Annual Fee	US $5,000	US $5,000
Investigation Fee	US $5,000	US $10,000
Total	US $60,000	US $65,000

4. Short-term public lottery

The cost for obtaining a short-term public lottery permit is as set out in the table below. It takes approximately 4–8 weeks obtain the permit.

New Application	All Applicants
Application Fee	US $20
License Fee	US $750 or 3% of the gross ticket sales (whichever is less)
Total	US $770

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 product purchases are required in order to enter are generally permissible. Generally, one of the criteria for entering into a chance-based or skill-based competition, such as a prize competition, is that the entrant should purchase or participate in the product or service being offered for promotion. The BLG Act does not provide clarity on whether there must be an alternative non-purchase method of entry. This will therefore be considered on a case-by-case basis, depending on the type of promotion.

Are there other forms of "consideration" which are prohibited in connection with entry into a chance-based game (eg, 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 is no express prohibition of the use of other forms of consideration, as long as the consideration is legal in Kenya, it will generally be permissible.

Are raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

Yes-raffles or charitable sweepstakes are regulated as lotteries under the BLG Act. A lottery is defined under the BLG Act to include "a sweepstake, a raffle and any scheme or device for the sale, gift, disposal or distribution of any property depending upon or to be determined by lot or chance, whether by the throwing or casting of dice, or by the withdrawing of tickets, cards, lots, numbers or figures, or by means of a wheel, or otherwise howsoever."

Generally, lotteries are more strictly regulated, and the BLG Act grants powers to the Betting Control and Licensing Board ("BCLB"), the regulatory authority in charge of betting and gaming matters in Kenya, to impose such conditions as it may deem necessary in order to ensure that lotteries are promoted. Some of the conditions may relate to the publication and advertisement of the lottery, prices of tickets, distribution of prizes and the use of funds for purposes for which the promotion was authorized. Further, the BCLB may also monitor to ensure that an authorized lottery is conducted as efficiently as possible in the interests of the purpose for the promotion and of the public in general, ensure that such conditions are being complied.

In addition, the BLG Act recognizes that a lottery may be promoted and conducted on behalf of a society established and conducted wholly or mainly for one or more of the following purposes:

(a) charitable purposes;

(b) participation in, or support of, athletic sports or games or cultural activities;

(c) purposes which, not being described in (a) or (b), are neither purposes of private gain nor purposes of a commercial undertaking, and are for raising money to be applied for purposes of the society.

Prize competitions, on the other hand, are fairly straightforward and not as strictly regulated; and there is no distinction in the regulation of prize competitions conducted by for-profit entities when compared to those conducted by not-for-profit entities.

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

Such promotions are not expressly prohibited under the BLG Act. In the absence of any provision or guidance from the BCLB, promotions can be determined in whole or in part 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?

To the extent that the promotion will have been licensed to take place in Kenya, and in accordance with the Kenyan laws, the winner determination process should occur in Kenya. The rules set out under the BLG Act and its Regulations and any guidelines issued by the BCLB will be applicable to promotions that take place online as though they were taking place offline.

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 provisions under the BLG Act on this, and, as such, combining all entries from all countries to determine the winners for a single prize pool is not expressly prohibited.

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

No,-there are no express restrictions on the type, nature or value of the prizes awarded in a chance-based game or skill-based contest as long as the prizes are legal in Kenya. Moreover, the BLG Act broadly defines winnings to include winnings of any kind, and a reference to the amount or to the payment of winnings is to be construed accordingly. Our understanding of this definition is that there is leeway to provide prizes of any amount or kind.

As regards prize competitions, the BCLB, *inter alia*, prohibits the person organizing a promotion from offering cash prizes, but this prohibition is only on the product which the applicant produces/markets. Where it is not possible to offer the product produced by the applicant due to its peculiar nature, cash prizes may be offered as a substitute, but they must be proportional in value to the product which would have been offered.

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

It is an offence to allow a young person to play chance-based games, to enter licensed gaming premises, whether for purposes of gaming or otherwise, or to employ a young person in the organization or management of gaming. Such an offence attracts a fine not exceeding KES 3,000 (approx US $30) or

imprisonment not exceeding 3 months or both. For the avoidance of doubt, a "young person" is defined as a person who is under the age of 18 years.

The permitted minimum age for the sale of tickets or chances in a lottery is 16 years. Contravention of this requirement is an offence which attracts a fine not exceeding KES 3,000 (approx US $30) or imprisonment for a term not exceeding 3 months or both. A person charged with such an offence may, as a defense, prove that the contravention occurred without his/her consent and that he/she exercised due diligence to prevent it or that they could not have reasonably known or suspect that the person was under the age of 16.

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?

Winnings from gaming are taxed at the rate of 15% and the tax should be remitted by the 20th day of the month following the month of collection by the gaming organizer.

Lottery tax is charged at the rate of 15% of the lottery turnover. The lottery tax must be remitted to the collector by a person authorized to promote the lottery on the 20th day of the month following the month of the collection. The costs and fees imposed on prize awards are dependent on whether the prizes are obtained locally or have to be shipped into the country. Where the prizes are imported, the usual duties will be applicable.

Further, the BLG Act provides for a prize competition tax which is chargeable on the cost of entry to a competition which is premium rated at the rate of 15% of the total gross turnover. The obligation to account for this tax falls on the promoter/sponsor who has been licensed to undertake 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 (ie, 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 sponsors to own the entries submitted and/or obtain broad grant of rights. There is no express provision under the BLG Act that prohibits a sponsor from owning the entries.

For a transfer of copyright to be valid and have legal effect, it must be done in writing, be lodged with the Kenya Copyright Board, a certificate of recordal of assignment issued and an entry made on the relevant assignment register.

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 express restrictions with respect to the signing of a liability or publicity release by a winner in order to receive a prize. This is, however, subject to the use of personal information and images of a winner in accordance with the Data Protection Act and any other applicable laws that limit the exclusion of liability from time to time.

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 (eg, if all advertising is in English, can the Official Rules and website only be in English)?

There are no specific requirements with respect to the language in which the official rules and advertising materials should be provided. However, to the extent that the promotions target a specific community (speaking a language other than English), it would be advisable to translate the rules and advertisements into a language that can be understood by the target population of the promotion.

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

The use of personal information collected from entrants should be undertaken in accordance with the provisions of the Data Protection Act, No 24 of 2019 ("DPA"). There must be a lawful basis for processing the personal information. In this case, consent from the entrant or performance of a contract with the entrant would suffice as lawful bases for processing personal information.

The DPA prohibits the commercial use of data unless this is expressly authorized by the data subject, or the data controller is authorized by law to collect and commercialize such 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?

Yes. The law will apply to online chance-based games or skill-based contests, even where no promotion takes place in Kenya. However, we are of the view that the risk of enforcement against the promoters of such a competition is+ relatively low.

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

The BCLB has recently banned radio stations in Kenya from running lotteries and prize competitions due to rampant fraud. The BCLB states that radio stations can only run lotteries and prize competition draws with

a permit, and that promoters should run their promotion adverts as normal radio advertisements. More information on this directive is available here: https://www.capitalfm.co.ke/news/2021/07/bclb-kicks-off-crackdown-on-fraudulent-lotteries-in-radio/.

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.

LATVIA

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

Yes.

Are skill-based contests (ie, 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 permit issued by the Lotteries and Gambling Supervisory Inspection (the "Inspection") is necessary to conduct a chance-based game or a skill-based contest. The documents must be filed with the Inspection at least 2 months prior to the day on which the game or the contest takes place.

There is also a fast-track procedure where the documents can be filled not later than 15 days prior to the day when the game or the contest takes place. In this case, there is an additional fee of €47 to be paid.

The filing fee is 25% of the combined value of all the prizes to be awarded.

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. There is no need to offer a non-purchase method of entry in for competition.

Are there other forms of "consideration" which are prohibited in connection with entry into a chance-based game (eg, 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 rules of entry cannot require purchase of alcohol, tobacco (including electronic cigarettes), medicines and energy drinks.

The examples given in the question are all allowable forms of consideration in Latvia.

Are raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

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 requirement that the selection process must occur in Latvia. However, the selection process must be public. If the value of a prize exceeds €10,000, a representative of the Inspection must be present at the selection process. There are no specific rules for online promotions.

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 permitted to combine all entries from all countries.

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

It is prohibited to offer the following as a prize: alcohol, participation in gambling, tobacco (including electronic cigarettes), medicines and energy drinks.

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

No. If a game or a contest is organized only for employees, the obligation not to discriminate must be respected; ie, every employee must have an equal chance to participate.

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 Article 15 of the Law on Personal Income Tax, where a natural person has won more than €3,000, this is taxable with personal income tax. The part of the prize which exceeds €3,000, but does not exceed the maximum amount of mandatory contributions determined in accordance with the Law on State Social Insurance (€62,800 as of 16 June 2021), a tax rate of 23% is applied. For the amount of prize exceeding this threshold, a tax rate of 31.4% is applied.

The organizer of a game or a contest must withhold the tax from the prize paid to a natural person.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (ie, 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. Transfer of the rights must be provided by the terms and conditions ("T&C") of a game or a contest, and participants must agree to these T&C. Entry into a game or contest may be treated as acceptance of the T&C, if it is clearly provided in the T&C. Likewise, acceptance of the T&C can be confirmed electronically or in writing.

A broad grant of rights is allowed (including transfer of rights 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.

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 (eg, if all advertising is in English, can the Official Rules and website only be in English)?

Yes, the Official Rules and advertising materials (including website) must be provided in Latvian.

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

Yes, general restrictions provided by the GDPR applies. Thus, entrants must provide acceptance for use of their personal data. This acceptance might be given electronically (eg, by clicking the box next to the wording regarding acceptance) or in writing.

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?

Most likely, no. Applicability of Latvian law could, however, be triggered, if information regarding participation in a game or a consent is available in Latvian.

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

No. Court practice in this area is very limited, and individual decisions of the Inspection are not publicly available.

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.

LITHUANIA

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

Yes.

Are skill-based contests (ie, 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, so long as the game does not fall within the gambling law regulation. A game is considered to be "gambling" if a person pays an entrance fee to participate in the game and risks losing the entrance fee to win the prize.

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. 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 (eg, 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 rules of entry cannot require the purchase of alcohol, tobacco (including electronic cigarettes), medicines and energy drinks (for persons under age 18), or other limited circulation items.

The examples given in the question are all permitted forms of consideration in Lithuania.

Are raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

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 requirement that the selection process must occur in Lithuania.

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 permitted to combine all entries from all countries.

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

It is prohibited to offer the following as a prize: alcohol, participation in gambling, tobacco (including electronic cigarettes), medicines and energy drinks (for persons under 18) or other limited circulation items.

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

No special rules restricting participation apply unless the game or contest constitutes "gambling". Taxation of the prizes may differ depending on the participants. For example, an employer running an employee contest may be required to withhold social tax on the value of the prizes (due to the prizes being considered benefits in kind and thus taxed similarly to wages).

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 Article 5 of the Law on Personal Income Tax, where a natural person has won more than €200, that part of the prize which exceeds €200 is taxable with personal income tax at a tax rate of 15%. The person

receiving the prize is liable for paying the tax. Exemptions apply to lottery winners under the gambling regulation, whereby the organizers pay taxes from the revenue of the lottery.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (ie, 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. Transfer of the rights must be provided by the terms and conditions ("T&C") of a game or a contest, and participants must agree to these T&C. Entry into a game or contest may be treated as acceptance of the T&C, if this is clearly provided in the T&C. Likewise, acceptance of the T&C can be confirmed electronically or in writing.

A broad grant of rights is allowed (including transfer of rights 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.

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 (eg, if all advertising is in English, can the Official Rules and website only be in English)?

Yes, the Official Rules and advertising materials (including website) must be provided in Lithuanian.

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

Yes, general restrictions provided by the GDPR applies. Thus, entrants must provide acceptance for use of their personal data. This acceptance might be given electronically (eg, by clicking the box next to the wording regarding acceptance) or in writing.

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?

Most likely, no. Applicability of Lithuanian law could, however, be triggered, if information regarding participation in a game or a consent is available in Lithuanian or directed specifically to Lithuanian consumers.

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

No. Court practice in this area is very limited, and individual decisions of the Inspection are not publicly available.

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.

LUXEMBOURG

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

Chance-based games are generally prohibited under Luxembourg law (Law of 20 April 1977 on the Operation of Games of Chance and Betting on Sports Events, as amended).
As an exception to this principle, promotional games, free sweepstakes and raffles exclusively organized for commercial campaigns are permissible.

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

Skill-based contests (ie, "game[s] that depends purely on the skill of the participants and not on chance") 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?

Since 2017, it is no longer mandatory to file or register the rules of a game; but it remains standard practice and highly recommended to register chance-based sweepstakes with a Luxembourg bailiff to limit the risk 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?

Both chance-based sweepstakes organized for marketing purposes as well as skill-based contests can be subject to an entry fee, a purchase or a payment. Organizers must, however, comply with Luxembourg legal requirements; in particular, promotions cannot be unfair (eg, if the amount of the payment/purchase/ entry fee is disproportionate to the value of the prize).

Are there other forms of "consideration" which are prohibited in connection with entry into a chance-based game (eg, 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, each condition set up by organizers for entry into promotions or contests can generate additional legal conditions to be implemented (eg, data protection requirements).

Are raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

As an exception to the prohibition on chance-based games, lotteries and raffles intended, in whole or in part, for a purpose of general interest of a philanthropic, religious, scientific, artistic, educational, social, sporting or tourist nature may also be authorized (Law of 20 April 1977 on the Operation of Games of Chance and Betting on Sports Events, as amended).

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?

The determination process can be organized in another country. However, where necessary, Luxembourg public order provisions will still be applicable to Luxembourg residents. There is no difference whether the promotion takes place online or not.

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 for a single prize pool, provided that Luxembourg law requirements, in particular those applicable to 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 Official Rules is advisable so as to meet the specific compulsory requirements of each country. For instance, a jurisdiction clause may not be enforceable in Luxembourg against consumers. Also, Luxembourg law imposes, as a rule, the requirement 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 (eg, travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

Luxembourg law does not impose any prize limitations, but the chance-based game or skill-based contest must comply with general Luxembourg law requirements on, for example, unfair commercial practices.

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

Luxembourg law does not impose any special rules for games based on the type of audience, but games must comply with general Luxembourg law requirements on, for example, unfair commercial practices and discrimination.

When such games target children, specific authorization from the children's representative must be requested prior its entrance to the game.

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. If the winner is not a Luxembourg resident, or if the sponsor is not established in Luxembourg, the prize may be subject to foreign VAT, depending upon the applicable law.

Moreover, a winner who is a Luxembourg resident will not be subject to income tax on a prize. If the winner is not a Luxembourg resident, the prize may be subject to foreign income tax in Luxembourg as well, 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 (ie, 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 in any and all media, worldwide, free of charge, and for the duration of protection of copyrights.

Under Luxembourg law, moral rights of a copyright owner can, in principle, be fully assigned and transferred free of charge, provided that the use of the copyrighted work does not damage entrants' reputation and honor.

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, a copyright assignment must be formalized in writing to be valid. The burden of proof of the assignment lies on the assignor.

Copyrights may be transferred electronically provided that the participant has expressed consent to the assignment before participating in the game. To that end, it is advisable to include, in the game's Official Rules, a provision regarding intellectual property, and to make participation in 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 (eg, if all advertising is in English, can the Official Rules and website only be in English)?

Luxembourg law does not explicitly determine the language in which provisions concerning games rules have to be provided. However, participants need to be able to understand them. It is therefore advisable, where the Official Rules are in English, to translate them into at least one of Luxembourg's official languages (ie, French, German or Luxembourgish), for those participants 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?

Any personal information or data collected from entrants will be subject to the GDPR and Luxembourg laws on data protection.

As a result, organizers must implement GDPR principles in their games in order to comply with it (ie lawfulness, fairness and transparency; purpose limitation; data minimization; accuracy; storage limitation; integrity and confidentiality) and therefore also provide entrants 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?

The governing law in B2C relationships is, in principle, the law of the country where the consumer has habitual residence, provided that the professional directs its activity to that country. When there is no promotion organized in Luxembourg, but Luxembourg residents can, nevertheless, enter the game, they would still have the benefit of:

- Luxembourg mandatory provisions;
- provisions of national legislations that are more favorable than the provisions of the chosen governing law, as well as
- the protection of the GDPR re their personal data.

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 terms of marketing, associated product messaging must comply with general Luxembourg regulations on advertising messages, and must not be misleading or confusing for consumers.

More specifically, if the organizer of a promotional game creates the impression that the consumer has won a prize, the prize is actually owed to the consumer.

MALAYSIA

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

No.

Are skill-based contests (ie, 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 promotional purposes/lucky draws/sweepstakes in Malaysia is dealt with by the Betting Control Unit ("BCU") within the Ministry of Finance.

Costs include:

- Official fees: US $200.00;
- Professional legal fees to obtain approval: US $2000.00.

The process usually takes 1–2 days, but may take longer if the officer is uncomfortable with any aspect of the application or requests further information.

The Minister of Finance may authorize the organizer to promote and organize gaming as specified in the license, for a period not exceeding 3 months. However, the Minister may, in his discretion, 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 (eg, 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 Malaysia, only contests that are a mix of chance and skill, or skill-based only, are allowed. Thus, for a contest that is based purely on chance, a skill-testing question must be given to the potential winner prior to awarding the prize.

Are raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

No, there is no differentiation made between for-profit and non-profit corporations for this purpose. So long as no profit is accrued from the promotion of the raffle or sweepstake, approval may be applied for from the BCU.

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, where 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 is kept for Malaysia to avoid any possibility of misleading the Malaysian entrants.

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

The suggested retail value of each prize is recommended to be given in the Malaysian Currency (Ringgit Malaysia ("RM")) to avoid any chance of misleading Malaysian entrants.

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

There are no special rules based on the audience that may enter such games or contests. If cash or money's worth (such as scholarships) are a form of reward offered to a particular group (minority group, women, etc) in a lottery-like event, it would still qualify as a public lottery, and a permit would be required.

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 imposed by customs upon importation of prizes will be paid by the winning entrant.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (ie, 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 the 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 apply to any kind of data message and electronic document used in the context of commercial and non-commercial activities, including domestic and international dealings, and 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 (eg, 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 will be subject to the scrutiny of the court as to whether any attempted exclusion of liability and causation of such injury or loss is unfair or unreasonable.

Malaysia does not allow for contracts to exclude liability for 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. The liability of the sponsor will be measured based on the objective test (ie, 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 (eg, that the age of majority in Malaysia is 18).

MALTA

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

Yes, the regulatory framework covers games of chance (determined by a random number generator or by results of an event), subject to obtaining a license from the Malta Gaming Authority.

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

Yes, the regulatory framework also covers controlled skill games. The Malta Gaming Authority is guided by a list of criteria in determining whether a game is a skill game or otherwise, with the onus of proving whether a game is one based on skill or otherwise being placed on the proponent of such game. Such classification by the Authority must be issued via a ruling or binding instrument to ensure consistency and transparency.

The Malta Gaming Authority may decide to classify a game as licensable or exempt, as well as determine whether a game is a skill game or a controlled skill game, with the latter warranting an ad-hoc license, through rulings or other binding instruments. The Regulations also classify 'other games' under Part VIII of the Gaming Authorization Regulations, laying down a softer regulatory approach in view of the intervention deemed necessary.

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 Malta Gaming Authority has made available the necessary procedures through its Licensee Relationship Management System ("LRMS"). Applicants are welcome to apply by logging into the LRMS and following the simple processes. The LRMS provides a dedicated dashboard that will give users the chance to follow the status of their requests in real-time, ensuring efficiency and transparency.

Following the submission of the application, the Authority, through the Financial Directorate, will verify settlement of payment. Once this is verified, the application is forwarded to the Regulatory Directorate to commence application review, for approval and issuance of the requested Gaming License. The Malta Gaming Authority may require further information and/or amendments, and/or submission of required documents to complete the application review according to the gaming legislations.

Any person in possession of a gaming service or critical gaming supply license issued by the Authority must pay to the Authority a license fee that depends on the type of approval, in line with the Gaming License Fee Regulations.

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 organizer is required to obtain a one-time low risk games permit from the Malta Gaming Authority in order to offer this type of game.

Are there other forms of "consideration" which are prohibited in connection with entry into a chance-based game (eg, 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 raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

Non-profit games, commercial communications and limited commercial communication games are all classified as low risk games. A permit for such games is valid only for a singular event, it expires once the event is concluded and is non-renewable, and also non-transferable.

A non-profit game permit costs €25, and can be applied for via the Malta Gaming Authority Portal. The maximum stake of a non-profit game cannot exceed €5 per player. Furthermore, for a game to qualify as non-profit, not less than 90% of the net proceeds need to be paid out to the non-profit organization, and an updated Statute of the non-profit organization needs to be submitted.

Persons or entities interested in organizing a tombola or lottery need to apply for a limited commercial communication game permit, which costs €25. For the game to qualify as a limited commercial communication game the value of the stake cannot exceed €2 per player. Any single event must not award a prize that exceeds €250. Limited commercial communication games must not cumulatively exceed €5,000 in prizes during any calendar month and not more than €50,000 during any calendar year.

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?

This matter is subject to the discretion of the Malta Gaming Authority when issuing the license/permit.

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 (eg, travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

The type, nature or value of the prizes allowed depends on the type of game being offered. For example, non-profit games, commercial communications and limited commercial communication games have restrictions on the prizes which may be offered (see above).

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

None that we are aware of.

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.

Also applicable is the gaming tax due under the Gaming Tax Regulations. This is based on the gaming revenue, as defined in the Regulations, generated by the operators from end customers located in Malta. The gaming tax is payable monthly, together with the submission of regulatory returns containing the relevant data to calculate the tax. Further information is clearly stated under the Gaming Tax Regulations.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (ie, 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 (eg, 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 the contest 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 Gaming Authorizations Regulations will apply.

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

There is 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 (ie, 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**: This is a form of raffle whose aim is only to incentivize or to 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 of raffle must contain the legend "free ticket not conditional on purchase."
- **Raffle with the sale of tickets**: This is 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**: This is a form of raffle in which tickets are offered with hidden numbers of symbols and which, once the ticket is acquired, allow the possessor to know immediately the result of the raffle purely by drawing, scratching or unveiling the ticket or part of the ticket. The winner of this type of raffle, also known as "Scratch Offs" or "Instant Raffles," claims the prize through a proceeding previously stipulated and printed on the ticket or voucher.
- **Raffle without the sale of tickets**: This is a form of raffle in which a person becomes a participant for free due to having acquired a good or contracted a service, or by receiving a ticket or proof of participation without payment of consideration.
- **Raffle of numbers or symbols through machines**: This is an activity in which the participant, makes a bet, by random choice, through the insertion of a bill, coin, token or any electronic means of payment or similar object through some kind of appliance or device, 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 (ie, 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. Once the application and all required documents have been 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, security must be provided 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 have been duly delivered to the winners. Moreover, notice of the contest must be given to the Federal Consumer Protection Office, giving at least 3 days' notice 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 (eg, 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 the 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 raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

Yes. Mexican authorities, educational institutions and charities that carry out raffles and sweepstakes do not pay the Secretary of Governance the "government fee" discussed above.

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 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, given that permission for such raffles is granted only for their performance in Mexican territory and open only 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 (eg, 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.

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

The Federal Law on Games and Raffles, the Federal Consumer Protection Law and its Regulations do not stipulate any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter.

Notwithstanding the above, please take into consideration that minors (persons under 18 years old) cannot enter into chance-based games, skill-based contests or any other legal relationship without their parent's or legal guardian's approval.

In addition, the Regulations of the Federal Law on Games and Raffles establish that the Secretary of Governance will not authorize sweepstakes that promote the consumption of tobacco, alcoholic beverages, medicines or products/items that are harmful to health in accordance with the General Health Law.

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 (ie, 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:

1. **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 whether or not their work will be disseminated and in what form, or keep it unpublished;
- require the recognition of their authorship with respect to work created by them or that the work should be considered anonymous or under a pseudonym;
- require that the work is treated respectfully and oppose any deformation, mutilation or other modification of their work, and any action or attack upon their work which tarnishes it or prejudices the reputation of the author;
- modify their work;
- retire their work from commerce; and
- oppose attribution of their name to a work that is not of their creation.

Conversely, it is understood that authors who contribute works for use in public advertising or propaganda have authorized the omission of authorial credit during the use or exploitation of the work, without this implying the renouncement of moral rights.

2. **Economic rights** consist of the right to exclusively exploit their works, or to authorize others to exploit them, in whatever form, under the limits established by the law. The owner of the economic rights is the author, heir or party which has acquired ownership. Economic rights will be active during the life of the author plus 100 years (or 100 years after the work is published, in the case of posthumous works).

   Under Mexican law, the transmission of economic rights must be done in writing and cannot be for perpetuity. However, the sponsor may choose another jurisdiction's law as the applicable law for intellectual property issues, 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 are no restrictions on this.

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 (eg, if all advertising is in English, can the Official Rules and website only be in English)?

If the contest or raffle is conducted in Mexico under 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 no special restrictions on the use of personal information. All that is required is to include a privacy statement, which states the following information (as a minimum):

- 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, this 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 means by which the responsible party will communicate to the owners any changes to 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 of the promotion;
- any restrictions for the consumer with respect to the maximum quantity of goods or services that the consumer may purchase in the context of the promotion;
- the permission number granted by the Secretary of Governance in the case of raffles;

- the number of tickets issued;
- 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 delivered;
- the period for collecting the prizes;
- the place and time for collecting the prizes;
- the telephone number for information or clarification.

THE NETHERLANDS

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

Yes.

Are skill-based contests (ie, 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 the 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 (eg, 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 raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

Promotional raffles and promotional sweepstakes organized by charity organizations fall under the scope of the Code of Conduct for Promotional Games of Chance. Absent of a promotional purpose, raffles and sweepstakes are solely governed by the Dutch Betting and Gaming Act and require a permit.

The Dutch Betting and Gaming Act distinguishes between multi-year non-incidental charity lotteries and one-time lotteries. One-time lotteries can either be organized for a local initiative of public interest or for a collection for charity. The Dutch Gaming Authority ("Kansspelautoriteit") grants permits for charitable one-

time lotteries in which the total prize pool exceeds €4,500. Permits for charitable one-time lotteries with a total prize value lower than €4,500 must be applied for with the municipality where the draw takes place.

Multi-year non-incidental charity lotteries also require a permit. The proceeds must serve a public interest and the remittance shall be no less than 40% of the sale of the lottery tickets. At least 80% of this remittance must go to charities with a public benefit institution ("Anbi") status.

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.

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 taking place only in the Netherlands, but also in other countries and that the winner will be determined out of all entries of the countries combined. Participants should be made aware of the fact that there may not be any winner from the Netherlands and should be able to assess their chances of winning.

Are there any restrictions on the type, nature or value of the prizes (eg, 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 €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.

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

The Code of Conduct for Promotional Games of Chance contains specific rules regarding minors:

- the advertiser must exercise great care and restraint when offering a promotional game of chance to minors or calling on minors to participate in a promotional game of chance;
- the prizes or premiums offered in promotional games of chance that are (partly) aimed at minors must be suitable for minors and must not cause them any moral, mental or physical harm;
- the comprehension and the expectation pattern of minors with respect to the offered prizes or premiums shall be taken into account;
- the provider of a promotional game of chance must not collect, nor have collected, personal data from minors without the verifiable consent of a parent of the minor, (unless this is necessary to ask the minor for contact details of his parent in order to obtain consent for the distribution of prizes or premiums);
- the provider must inform a minor of the condition that parental consent is required for entering the promotional game of chance.

The Dutch General Equal Treatment Act prohibits discrimination when offering or granting access to goods or services and when concluding, executing or terminating relevant agreements. Indirect discrimination can be justified in some cases. For instance, the prohibition of distinction on the grounds of gender laid down in the General Equal Treatment Act does not apply in cases where gender is a determining factor, or in connection to pregnancy and maternity.

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 €450 and over won in chance-based games and skill-based contests. Prizes with a value up to €449 are exempt from taxes. The tax rate is 30,1% of the total value of the prize. In principle, 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 taxation on prizes where the prize winner has already paid 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 (ie, 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?

Having the winner sign a liability release is permissible as long as it is not unreasonably onerous and clearly stated in the general (gaming) conditions. Having the winner sign a publicity release is permitted, but, depending on the value of the prize, such a release could be held unenforceable on the basis that the winner's consent to use personal information for publicity purposes is not given "freely", which would invalidate the consent given.

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 (eg, 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 must not be misleading. If the promotion is advertised/promoted in Dutch, it is recommended (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?

The General Data Protection Regulation ("GDPR") must be observed. This means, among other things, that the processing of personal information for the purposes of a chance-based or skill-based game requires a legal ground. The legal ground for processing personal information of entrants would be consent (for processing the personal information for specific purposes), or that the processing is necessary for the

performance of a contract to which the data subject is party (namely: the participation contract). The personal information may not be stored longer than is necessary for the fulfilment of the purposes for which it was collected.

The Code of Conduct for Promotional Games of Chance contains additional rules regarding the collection of personal information of minors (individuals under the age of 18). The sponsor/supplier of a promotional game of chance may not collect any personal information regarding minors, nor permit such information to be collected, without verifiable permission from a parent of the minor, unless collecting such personal information is necessary to request the minor to provide contact details of his/her parent for the purpose of obtaining parental consent 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?

A promotional game of chance is only permitted to be organized 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 an illegal game of chance according to the Dutch Betting and Gambling Act. The Code of Conduct differentiates between two types of promotional games of chance:

- 'small promotional games of chance' with a maximum total prize value of €4,500 and
- 'big promotional games of chance', with a maximum prize value of €4,500–100,000.

Big promotional games of chance may only be organized once per year per product, service or organization, and official rules are required. Small promotional games of chance do not require official rules; it is still, however, recommended to have official rules in place.

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.

The announcement of the winner must take place within 3 months after the end of the promotional game of chance, and prizes that winners are entitled to need actually to be awarded.

The advertising for a promotional game of chance should always contain information on the sponsor/supplier, 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 (ie, 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 is considered "gambling", the Gambling Act provides for different classes of allowable gambling and different requirements relating to those 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 if the gambling is run by individuals. If the gambling is run by a society (associations established and conducted for non-commercial purposes) all proceeds must be used for an "authorized purpose" (generally being a charitable or non-commercial purpose that benefits the community). No license is required for this class of gambling.
- **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 license is required for this class of gambling; however, it may only be conducted by societies (associations established and conducted for non-commercial purposes).
- **Class 3**: this relates to gambling where the prizes exceed $5,000. If conducted in sessions of more than one game, it can only be conducted by a corporate society, otherwise it must be conducted by a society. Net proceeds must be for an authorized purpose. A license must be obtained for Class 3 gambling.
- **Class 4**: this class generally relates to gambling that utilizes gaming machines. It must be run by a corporate society. Net proceeds must be for an authorized purpose. A license 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" (see below).

Are skill-based contests (ie, 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?

If not considered to be "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, a license is required. License fees vary depending on type of "gambling" and the total value of the prize. Licenses 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 compliance with the requirements of the Gambling Act in relation to sales promotion schemes (see 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 the true costs associated with submitting an entry via post or telecommunication is not considered as "consideration" for entry into a sales promotion scheme, provided that cost is charged at the "standard rate", calculated and charged by a third party service provider (eg, a telecommunications provider) 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 (eg, 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 on a case-by-case basis whether the act required to enter a promotion is considered "consideration" for the purposes of the Gambling Act.

Are raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

If a raffle or sweepstake amounts to "gambling" and the value of the prize is more than $500, the net proceeds from the gambling must be applied to an authorized purpose (generally, a charitable or non-commercial purpose that benefits the community).

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 (eg, 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 class 2, the value of prizes must be greater than $500 but must not exceed $5,000.

There are also restrictions on the 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, vaping products or herbal smoking 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; or
- vouchers or entitlements to any of the other property listed above.

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

Generally, if the game, contest or giveaway amounts to "gambling", there are no specific rules for different audiences that enter. However, gambling advertisements must not target children or young people.

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, games of chance include games "the outcome of which depends wholly or partly on chance". One possible exception to this is if the winner's primary form of income is gambling (eg, a professional poker player). 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, withholding tax will need to be deducted.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (ie, 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 the length of time copyright can be protected under the Copyright Act 1994. Depending on the type of applicable work, protection generally ranges from 25–50 years. Assignment of copyright must be in writing and be signed by or on behalf of the assignor. Similarly, 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 (eg, 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 as that in which the promotion is advertised.

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

Personal information must only be collected for a lawful purpose connected with the function or an activity of the entity collecting it, and the collection of the information must be necessary for that purpose. Personal information must also 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 consumers did not realize that they would be charged for each message they received and would continue to be so 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 something 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 (ie, random draw promotions, instant win games) generally permissible?

Yes, in Nicaragua, chance-based games (ie, random draw promotions, instant win games) are generally permissible, provided that they 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 the Special Law for the Control and Regulation of Casinos and Gambling Halls (Law No 776) and its Regulations, Decree No 46-2011.

Commercial promotions in Nicaragua 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:

(a) to promote the purchase of another product or service at a price lower than the regular price in the commerce or in the same commercial establishment or for free;

(b) to offer goods with additional content, for free, or at a price lower than the regular price;

(c) to offer two or more goods or services for the price of one;

(d) to offer goods or services with the incentive of participating in draws, raffles, contests, etc.

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 (ie, 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, "chance-based games" are limited to 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.

Commercial promotions (see question 1) have to comply with the requirements established in the Law of Protection to Consumers and Users and its Regulations. The approval process involves the following requirements and costs:

(a) Preparation of the rules for the promotion with the data provided by the client: Although there are no official fees, there will be professional fees (for reviewing the information and subsequent preparation/correction of the rules) amounting to approximately 2–3 hours of legal work.

(b) Submission and approval of the rules before the Office of Protection of the Consumer: Again, although there are no official fees involved, there will be professional fees (for preparing the

application and giving follow-up to the same before the governmental entity) amounting to approximately 2–3 hours of legal work.

(c) Certification of the whole process of the promotion by the Notary Public: Again, 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 (eg, 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 on conditions of participation, provided that they are not contrary to law or moral values.

Are raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

No. There are no differences in regulation for raffles or charitable sweepstakes.

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. 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 this type of promotion, only that they are not contrary to law or moral values. Therefore, the random draw/winner determination process need not to occur in Nicaragua.

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 the only requirement would be that the contest is not contrary to the 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 (eg, travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

No.

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

No. The only requirement would be that they are not contrary to the law or moral values.

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 cash prizes of more than C$50,000 are subject to income tax, which is retained by the sponsor and paid to the Nicaraguan Tax Authorities (DGI) in the same fiscal year of the promotion. The sponsor must be duly registered and authorized by the DGI. An example of when this would apply is when a local distributor conducts a promotion on behalf of a multi-national corporation. The local distributor would have the responsibility to retain and pay the tax to 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 must pay a municipal tax of 5% on the nominal value of all tickets issued or the total value of the prizes. This tax only applies in the capital city of Managua and only when the prize is delivered in cash.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (ie, 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 (eg, 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 and its Regulations.

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 the economic and financial data of a person is categorized as "sensitive personal data", and its access, reproduction, or transmission is prohibited without the consent of the data owner.

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 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 cases where the promotion consists of a raffle, contest, exchange (eg, new for old), or any other form that necessarily requires rules (bases of the promotion), these rules must be published, by means of any communication media accessible to the consumer or user, clearly indicating the terms and conditions of the promotion.

NIGERIA

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

Yes.

Are skill-based contests (ie, 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?

Chance-based games and skill-based contests are regulated by the National Lottery Regulatory Commission ("NLRC").

Prior to commencing any chance-based game or skill -based contest, the law requires that an application in the prescribed form should be made to the President of the NLRC. Upon due consideration and approval of the application as submitted, the President shall grant a license for a period of between 10 and 15 years.

Section 35 of the National Lotteries Act ("NLA") further requires that a percentage of the net proceeds of the lottery must be paid into the National Lottery Trust Fund.

The NLRC will assess the application to organize a chance-based or skill-based prize promotion between a given period of 2 weeks and 12 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?

Yes. such promotions are permitted. If the rules of the promotion stipulate that purchase is required for entry, there is no rule requiring the provision of non-purchase methods of entry.

Are there other forms of "consideration" which are prohibited in connection with entry into a chance-based game (eg, 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)?

These forms of entry are not prohibited under the law.

Are raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

Raffle draws and charitable sweepstakes are regulated by the same law—the NLA, administered by the NLRC.

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 winner determination process for a chance-based game or a skill-based contest may 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?

Yes, entries from different countries may be considered together in determining the winner of a chance-based game or a skill-based contest.

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

The NLA does not place any restrictions on the value or nature of prizes in this regard. The NLRC specifically categorizes lotteries into four classes according to the value of the prize fund, namely:

(i) small (below NGN 5 million),

(ii) medium (between NGN 5 million and NGN 50 million),

(iii) large (between NGN 51 million and NGN 100 million), and

(iv) giga (above NGN 101 million).

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

Section 34(1)(e) of the NLA stipulates the age of eligibility to participate in such games as 18.

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 National Lottery Regulations 2007 provide that a holder of a gaming license must have its accounts and financial statements audited within 6 months after the end of each financial year by external auditors in accordance with the provisions of the Companies and Allied Matters Act.

There is no mention of tax obligations placed on license holders in any legislation. However, section 35 of the NLA provides an obligation on license holders to deposit 7% of the total prize fund into the accounts of the National Lottery Trust Fund.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (ie, 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?

Where the sponsor intends to own the IPRs to the entries submitted, it is prudent to incorporate this into the terms/rules of the contest, which must be read and acknowledged by each participant prior to making an entry. The law does not prohibit such an arrangement.

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

There is no requirement under the law that this should be done. However, this may be incorporated into the rules of the contest, to be read and acknowledged by intending participants.

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 (eg, if all advertising is in English, can the Official Rules and website only be in English)?

Although there is no express legal provision in this regard, we advise that the official language of Nigeria is English. Therefore, the official rules and advertising materials should be drafted in English language.

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

According to the Nigeria Data Protection Regulation 2019 ("NDPR"), the use of personal data obtained from individuals is regulated. These regulations provide that personal data must be:

(a) collected and processed in accordance with specific, legitimate and lawful purpose consented to by the data subject; provided that:
    (i) a further processing may be done only for archiving, scientific research, historical research or statistical purposes for public interest;
    (ii) any person or entity carrying out or purporting to carry out data processing under the provision of this paragraph shall not transfer any personal data to any person;

(b) adequate, accurate and without prejudice to the dignity of human person;

(c) stored only for the period within which it is reasonably needed, and

(d) secured against all foreseeable hazards and breaches such as theft, cyberattack, viral attack, dissemination, manipulations of any kind, damage by rain, fire or exposure to other natural elements.

The NDPR further provides that "anyone who is entrusted with Personal Data of a Data Subject or who is in possession of the Personal Data of a Data Subject owes a duty of care to the said Data Subject".

Consent cannot be obtained from any person in any circumstance that might engender direct or indirect propagation of atrocities, hate, child rights violations, criminal acts and anti-social conduct. Every person who is in control of personal data or information is liable for the actions or inactions of third parties who handle the personal data of data subjects.

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. However, this may obviate the need to obtain a license from the NLRC, as the Commission is not equipped to monitor all online games and contests ongoing at any time.

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.

NORWAY

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

Yes.

Are skill-based contests (ie, 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, this 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?

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.

However, 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 a "Lottery", and, furthermore, that a 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 (eg, 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 (set out below).

Competitions 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 to be an "unfair commercial practice" must be assessed on a case-by-case basis. The Norwegian Market Council has especially emphasized the problem with this kind of marketing when the

trader encourages 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 is merely open to the consumer, and is not accompanied by any offers or possible rewards to encourage it.

Are raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

No, not when it comes to sweepstakes. However, for lotteries, being a charitable organization is a condition for obtaining permission from the Gambling Authority. As to what constitutes a lottery under the Norwegian Lottery Act, see 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?

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 to have a single prize pool for all countries.

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

There are certain goods that cannot be awarded; eg, live animals, tobacco, alcohol, etc.

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

There are soft-law regulations by the food industry relating to advertising of so-called "unhealthy" food and drinks directed towards children. These regulations prohibit games and contests for children under the age of 16.

Furthermore, the Marketing Control Act Section 6 prohibits unfair commercial practices. Whether a contest constitutes an unfair commercial practice is a specific assessment that must be done on a case-by-case basis, taking into account the particular group's vulnerability for the commercial 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?

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. For example, if a car is the prize, there is an 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 (ie, 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 there is a duty on the sponsor to document that the participants have expressly consented to transferring their rights. Please note that it follows from the Norwegian Copyright Act that authors, as a general 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 (eg, if all advertising is in English, can the Official Rules and website only be in English)?

The rules do not 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 general 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?

There is an administrative decision from the Consumer Authorities, later upheld by the appeal board, the Market Council, which involved a sweepstake where the prize was not handed out. The organizer of the sweepstake was an influencer, large by Norwegian standards. She was fined NOK 100,000 (just under €10,000) for not handing out prizes after the sweepstake as promised.

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-by-case basis.

As mentioned above one must also be aware of the Lottery Act, when stakes are involved.

PANAMA

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

Yes, chance-based games are generally permissible in Panama and are regulated by Decree Law No 2 of February 1998 and Resolution No 59 of July 1999.

Are skill-based contests (ie, 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 Control Board ("Junta de Control de Juegos"). Skill-based contests do not require registration or filing with any governmental authority.

Chance-based games require approval from the Gaming Control Board prior to the commencement of any marketing or the 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 promotion are permitted. Additionally, it is not a requirement to offer a non-purchase method of entry. It is up to the contest organizers or sponsors to establish and make known the requirements to participate in the promotion.

Are there other forms of "consideration" which are prohibited in connection with entry into a chance-based game (eg, 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 of consideration which are prohibited. It is common practice to ask for a form of consideration in order to participate in chance-based games.

Are raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

No, Decree Law No 2 of February 1998 and Resolution No 59 of July 1999 also regulate raffles and charitable sweepstakes. Additionally, Resolution No 20 of July 2020 regulates temporary bingo games held through video conferences.

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 Control 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?

The random draw/winner determination process may take place outside of Panama. However, a chance-based game or promotion that is registered before the Gaming Control Board requires the presence of a Panamanian public notary and a representative from the Gaming Control Board to certify the drawing of the winner(s). Hence, if the random draw determination process takes place outside of Panama, remote access to the random drawing software must be enabled for the Panamanian public notary and a representative from the Gaming Control Board.

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. It is not a requirement to have a separate prize pool per country or specifically for Panamanian residents.

Are there any restrictions on the type, nature or value of the prizes (eg, 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.

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

Yes, if the chance-based game, skill-based contest or other giveaway is directed to a child-based, underage audience, the entry method, game mechanism and prizes must not include any type of product or activity prohibited to minors.

Additionally, if the chance-based game, skill-based contest or other giveaway is directed at employees of a certain company, no other general audience/customers may participate.

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 depending on 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 (ie, 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 sponsor is not able to own or obtain an automatic broad grant of rights. Ownership may be transferred in perpetuity, but, in such case, general intellectual property laws apply. Copyright must be transferred in writing to have effect 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, but it is considered common practice to require the winner to sign a liability and/or publicity release in order to receive a prize.

However, it is important to note that such condition should be properly disclosed in advance to the Gaming Control Board as a requirement 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 (eg, 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?

The use of personal information collected from Panamanian entrants must follow Panamanian privacy and data protection guidelines as established in Law 81 of March 2019 and Executive Decree 285 of May 2021. Hence, the sponsor must inform the entrants of the object and purpose of the personal information that will be collected and whether the information will be disclosed to third parties. The sponsor must also obtain express approval and consent on the use of the information from the owner of 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?

Online promotions are not expressly regulated in Panama. Notwithstanding this, as a general rule, online games made available to Panamanian citizens or residents living in Panama are 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 (ie, random draw promotions, instant win games) generally permissible?

Yes, they are permitted.

Are skill-based contests (ie, 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, Executive Decree No 6.206/99 and Executive Decree No 3083/15. The National Commission of Chance-Based Games ("CONAJZAR") 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. 5% of the total prize value must be paid 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 (eg, 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 raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

No, they are not regulated differently.

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 must be deposited or installed in places where the public can view them for examination.

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

No, there are not.

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

There are some regulations regarding the participation of children in chance-based games, but none regarding scholarships, ladies' nights promotions, etc.

Scholarships are regulated by Law No 4842/13 "Which regulates the scholarships granted and /or administered by the state" applicable exclusively to low-income citizens.

There are no special rules for the cases of chance–based games in terms of the public that may participate, only several resolutions that highlight the prohibition on minors participating in chance–based games.

There are no restrictions with respect to skill-based contests.

Finally, with regard to employee contests, each institution/corporation, etc, is in charge of regulating the processes for such 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, there is a tax liability associated with prizes. The sponsor is responsible for the payment of taxes, acting as a withholding agent for a percentage of the prize, as well as for any costs, duties, customs fees, public deeds expenses or of any costs associated with the prize. The winner that receives the prize has no tax 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 (ie, 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 (eg, 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 those consequent 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 1016/97 nor Resolution No 6206/99 or its extension refer 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 (ie, random draw promotions, instant win games) generally permissible?

Yes, chance-based games, such as random draws, promotions and instant win games, are generally permissible.

Are skill-based contests (ie, 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 No 1246, passed on November 10th, 2016, the former requirement of prior authorization from the National Bureau of Internal Affairs ("ONAGI") to run promotions (chance or skill based) was eliminated. Thus, from that date, a sponsor can run promotions (chance-based game or skill-based contest), sweepstakes, draws, sale-exchanges, exchanges 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 (eg, 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 raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

No. Raffles or charitable sweepstakes are not regulated differently than prize promotions offered by for-profit corporations.

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 (eg, 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. A cash prize is permitted.
It is strongly recommended to award prizes within the term of 90 calendar days counted as from the day following the date the winners were notified. In case of perishable goods, this should be reduced to 30 calendar days. If the prize consists of tickets and accommodation, it is strongly recommended that the period of validity shall be one year; and in case of coupons, the period of validity of such prize should be of six months.

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

There are no special rules for restricted groups of entrants such as employee contests, ladies' night promotions or scholarships offered only to a minority group; however, minors must be represented by their

parents or guardians in accordance with the Peruvian Civil Code, which establishes that minors have no capacity to engage in this kind of obligation.

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 under random draw promotions, instant win games or any other kind of commercial promotions are not levied with special taxes (taxes on prizes). In that respect, neither the sponsor nor the winner is liable for taxes as consequence of the granting of prizes. However, when prizes consist in goods, their value can be subject to payment of custom duties (if the goods 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%). The sponsor must assume all taxes, costs or other payment.

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.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (ie, 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 No 822, affords protection for 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 a period of the author's lifetime plus 70 years.

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 (eg, 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). Rather, 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 for the fulfillment of the Consumer Protection and Advertising regulations, and it may impose fines on sponsors in cases of infringement.

If the advertising materials or Official Rules of the promotion applicable for Peruvian residents are not in the native language (and thus not "clear and exact"), in theory, INDECOPI may initiate a proceeding against the sponsor, even where the sponsor is not legally incorporated in the country. However, the chances of this occurring are reduced. If the contest or game is open to residents of several countries, 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.

However, 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 are 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. INDECOPI may initiate a proceeding against the sponsor, even though it is not legally incorporated in the country, though the probability of this occurring is low.

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?

Our recommendation is that chance-based games and skill-based contests must not be inconsistent with generally accepted moral standards and good principles, should not put at risk the physical integrity of the participants and should respect their Constitutional rights.

The Official Rules and advertising material are binding for the sponsor and participants, so we recommend requesting legal advice for their review.

POLAND

Are chance-based games (ie, 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 (ie, 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 in the 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

These are heavily regulated in Poland. Under the Act on Gambling, "games of chance" include number games, bingo, card games, dice games and several 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 discussing "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. Again, the 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 obtain 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 the case of promotional lotteries and audiotex lotteries, amounts to 10% of the value of the prizes, with a minimum of approx €500 (the sum varies each year since it is based on average salaries in Poland). Additionally, the organizer bears the costs of a bank guarantee, in the amount equal to the total value of prizes, which must be attached 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 negligible prize value or lotteries organized privately or only for the internal purposes of the organizer. For instance, according to the interpretation of the authorities, even a lottery organized by an employer during an internal social event open only to employees is subject to all the formal requirements indicated above.

2. Skill-based contests

These are relatively easy to organize. They do not require registration or filing with the authorities. The organizer should prepare the Official Rules of the contest, meeting the requirements set out for business-to-consumer contracts under the Polish Civil Code and specific consumer protection legislation (eg, 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 a participant to purchase a 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 (eg, 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, allowing entry into a chance-based game by sending a text message will determine such game to be 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: games of chance cannot be organized over 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 of collecting entries to a promotional lottery through electronic communication channels (social media, web form, e-mail etc), as long as all the other activities within the game are not carried out online (in particular, the random draw of winners). Nevertheless, the issue of online entry may be assessed differently by local customs authorities during the authorization process in particular case.

Are raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

A charitable collection (sweepstake) combined with the organization of a raffle or a competition does not require the fulfilment of the additional formal and organizational requirements as set out in the Act of 14 March 2014 on the principles of conducting public collections, as, according to that Act, it is not a public collection. Therefore, the Act on Gambling is applicable.

According to provisions of the Polish Act on Gambling, the organizer of a charity raffle or sweepstake must obtain a permit issued by the Polish customs authorities and obtain official approval of the game's Official Rules. If the total amount of prizes offered in the raffle or sweepstake does not exceed the basic amount for a given calendar year (which is equal to the amount of the average monthly salary in the enterprise sector) notification of the raffle or sweepstake needs to be made at least 30 days before the collection. An additional condition imposed in the case of a charitable raffle or sweepstake is to indicate the charitable purpose of the collection. The income from the charitable raffle or sweepstake must be applied in full to the socially beneficial purposes, as specified in the permit and the rules of the game. The organizer must submit to the authority which granted the permit, within 30 days from the date of termination of the game, detailed information on the donation made to a social purpose.

Organizing a charity raffle without permission or notification is punishable with a fine or even imprisonment of up to 3 years. Moreover, the organizer may be liable for a criminal or fiscal offense under the Polish Fiscal Penal Code.

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 at random, but by way of 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 the 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. 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 above, the Polish part of the lottery must be separated and authorized as a stand-alone 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 (eg, 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 specific legal provisions, for instance regulating marketing of certain types of products (alcohol, pharmaceuticals etc). In addition, the value of a particular prize in chance-based games cannot be lower than the price of participation.

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

There are no specific regulations for games, contests, or giveaways based on the participating audience.

However, it is worth mentioning that in an employee contest, the prize in cash or kind should be added to the employee's regular income by the employer. The prize value should be reported in the tax return alongside revenue from the employment relationship, and is subject to a 10% flat income tax.

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, and are 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 themselves (standard rates apply: a flat 19%, or a progressive tax of 18–32%); the practice in this regard (whether to apply a 10% tax or standard rates) is not uniform yet.

There are some exemptions from tax:

- 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 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 advertisements 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 (ie, 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 the possibility to acquire copyrights to the winning entry automatically. In cases when the promoter also wishes to acquire the rights to other submitted entries, this 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 would have to execute a written agreement with every entrant. Since signing a written agreement is usually not possible, the promoter may instead 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 the possibility of granting a perpetual license: a 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 (as such practice would very likely be deemed to infringe collective consumer interests).

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 (eg, 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 open to Polish residents should be provided to consumers in Polish. Since all 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 a skill-based contest organized by a foreign entity, which is not advertised or promoted in Polish media, the possibility of effective enforcement by Polish authorities over such a contest will be very limited, and sanctions for drafting Official Rules in a foreign language are unlikely; nevertheless, it is strongly recommended to provide a 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 to those in other EU countries.

The organizer may process such personal data as 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 the Polish personal data authority or appoint a data protection officer. In cases where 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 the 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?

The Polish Gambling Law should be applied to any chance-based games covering the Polish territory, including games taking place over the internet which are 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 and organized by an entity which has no direct presence in Poland, the 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 audiotex lotteries are subject to a stricter legal regime (for instance: (i) entrants must be aged over 18, so audiotex lotteries cannot be addressed to minors while promotional lotteries have no similar restriction; and (ii) the profit of the promoter is taxed under a tax on games which does not apply to 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 provisions (ie, 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 by the Office of Competition and Consumer Protection as a practice infringing collective consumer interests and result in high fines of up to 10% of the organizer's yearly revenue. In practice, the fines are lower; but the risk connected with the abusive contractual provisions is still considerable.

PORTUGAL

Are chance-based games (ie, 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") or the mayor of the respective city council (see below), under the terms and conditions allowed by law.

There are specific regulations regarding chance-based games, set out in the Gambling Law (Decree-Law no 422/89, December 2nd, 1989 (as amended)).

Are skill-based contests (ie, 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. The promoter of chance-based games has to request prior authorization from the competent local authority. This authorization is granted by the mayor of the municipality, in which the chance-based game is to take place. In cases where such operation is not limited to the territorial area of a municipality, the mayor of the municipality in which the entity has its residence or headquarters shall be responsible for such authorization. Additionally, in cases where the relevant municipalities have not yet recognized this task, the authorization may be granted by MAI. In practical terms, an application must be filed by the promoter addressed to the mayor of the respective city council or MAI (as applicable), with the following documents:

- terms and conditions of the draw;
- identification card (ie, 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 set within which an approval must be given; 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 a fee in the amount set by the municipality concerned, or €500,00, in the case of MAI.

2. Skill-based contests

No. In the case of skill-based contests, no authorization 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?

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 usual courier or telecommunication expenses, or expenses higher than the cost of the product or service purchased for entry.

Are there other forms of "consideration" which are prohibited in connection with entry into a chance-based game (eg, 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 raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

In cases where the prize promotion does not involve an element of luck/chance or skill and luck/chance combined, the Gambling Law does not apply, and therefore such a promotion is subject only to general contractual law, advertising law, and, potentially, the Regime applicable to Commercial Practices with Price Reduction (set out in Decree-Law No 70/2007, of 26 March.

On the other hand, where such operations do not involve a luck-based element, the Gambling Law will apply. In that case, the applicable regime will differ, depending on whether the entity operating the raffle, prize promotion or sweepstake is a profit-making or non-profit-making organization, and not on whether the operation itself takes the form of a raffle, prize promotion or sweepstake.

Where such operations are conducted by a for-profit entity, even if for charitable purposes, the regime of for-profit entities shall apply. Such regime prohibits the development of any chance-based games and other forms of games, other than competitions of knowledge, pastimes, etc, organized by newspapers, magazines, radio or television stations, and advertising contests to promote goods or services.

Additionally, these operations are only be permitted in this context, if they do not cause any expenditure for the player other than:

(a) the normal cost of public postal and telecommunications services, without any added value,

(b) the cost of the newspaper or magazine, with proven periodical publication for more than one year, whose expansion is intended to be promoted, or

(c) the cost of acquisition of the products or services which are intended to be claimed.

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

1. Chance-based games

Yes. However, 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 filing of the request for authorization for assessment, in cases where MAI is the entity responsible for authorizing such promotion. If, on the other hand, authorization is the responsibility of the mayor of a given municipality, it should be noted that each municipality may set its own conditions. That said, up to now, those municipalities which have regulated internal procedures to implement their new powers have not deviated from the procedure set by the MAI.

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 confined within Portuguese territory and be under the jurisdiction of MAI or the relevant municipality. Therefore, winner determination processes must take place in Portugal under the supervision of an officer from the MAI or the relevant municipality at a pre-determined place and time.

Where 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 limitations on 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

There must be a separate prize pool for residents in Portugal to the extent that MAI or the relevant municipality has jurisdiction to authorize those types of games in Portugal.

2. Skill-based contests

There are no regulations applicable to the winner determination process. Thus, it is permissible to combine all entries from all countries to determine the winners for a single prize pool. However, all details relating to such determination processes must be disclosed in the Official Rules.

Are there any restrictions on the type, nature or value of the prizes (eg, 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 goods or services with economic value can be awarded as a prize. There are also limitations on the types of prizes, which may not be substituted 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 these matters are described in the Official Rules.

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

There are no rules specifically applicable to certain audiences in the context of contest games, whether based on luck or purely on the skill of the player. Nevertheless, it should be noted that there are certain legal provisions that may be applicable in this context. For example, the rules arising from the Advertising Code, specifically applicable to advertising aimed at children, under which the advertiser, when addressing minors directly, must always take into account their special vulnerability, and must abstain from:

(a) directly encouraging minors, by exploiting their inexperience or credulity, to acquire a certain good or service;

(b) directly inciting minors to persuade their parents or third parties to buy the products or services in question;

(c) containing elements likely to endanger minors' physical or moral integrity, as well as their health or safety, in particular through scenes of pornography or incitement to violence; or

(d) exploiting the special trust minors place in their parents, guardians or teachers.

In other words, advertising aimed at minors is allowed, provided that it does not exploit their psychological vulnerability, credulity and inexperience.

Notwithstanding, in cases where chance-based games or skill-based contests have a targeted audience, the conditions for admissibility of participants should be clearly set out in the operation's 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?

1. Chance-based games

Yes. Prizes of chance-based games are subject to stamp duty at a 45% rate. The tax is due at the time the prize is granted to the beneficiary and must be paid by the entity granting the prize by the 20th day of the month following the date on which the prize is granted. No other costs or fees are imposed on prize awards.

2. Skill-based contests

Prizes of skill-based contests may be subject to withholding tax, depending on the type of performance required from the participant and the use of the participant's entry by the promoter.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (ie, 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 state who is to own copyright in the entries. It is possible to allocate ownership of copyright in the entries within the Official Rules (work made for hire).

Please note, however, that the transfer/assignment of copyright to third parties may be subject to certain requirements:

(a) 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 may establish the duration of the assignment, but, where they do not, the default duration is 25 years (general rule) or 10 years (specific cases).

(b) Total or definitive assignment: This 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 is contained 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 (eg, 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 in order to be analyzed and authorized by MAI or the relevant municipality.

2. Skill-based contests:

There are no regulations specifically dedicated to 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 originating from the lack of understanding, but also in order to ensure 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 the specific provisions of the Portuguese Advertising Code, by which all advertising must be in Portuguese language, unless 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 58/2019 of August 8th, 2019), which enacted the EU General Data Protection Regulation ("GDPR") applies.

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 is open to Portuguese participants but advertised and executed exclusively by means of a foreign website (any non-Portuguese country-code top-level domain, ie not ".pt" etc), then they will be outside the scope of jurisdiction of Portuguese authorities and, therefore, no administrative formalities or territorial limitations 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?

One of the issues concerns the minimum contractual age to enter in a chance-based game/skill-based contest. Although Portuguese Civil law admits that minors between the age of 16 and 18 may 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 no […] authorized by MAI/the mayor of the municipality of […] on […]. Prize may not be substituted by cash".

PUERTO RICO

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

Yes. In Puerto Rico, sweepstakes are regulated by the Sweepstakes Regulations, Regulation No 9158 of February 6, 2020 (the "Regulation") issued by the Department of Consumer Affairs ("DACO"). Rule 74 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 (ie, essay contests, photo contests, user-generated content contests) generally permissible?

Yes. Rule 74 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 (eg, 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 (particularly since it is the winner of the contest who will have to report the prize as a taxable income).

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 Regulation states that a statement indicating that no purchase is necessary to enter or participate in promotion must be included as part of the Official Rules. In cases where the promoters are the ones holding the sweepstake, and they themselves do not directly sell the product, an option to submit a participation ballot must be included in the rules.

Are there other forms of "consideration" which are prohibited in connection with entry into a chance-based game (eg, 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 raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

No.

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

They are not prohibited. Such promotions/sweepstakes are not subject to the Regulation, as the winner is not selected by chance, although the Regulation may apply by default, being used as a minimum basis for the contests' 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. The Regulations do not prohibit this. However, note that if residents of Puerto Rico are excluded from participation, but the products are marketed in Puerto Rico, then the sponsor of the contest must make clear that residents cannot participate.

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

No, there are no restrictions as to what kind of prizes, or their value, can be offered in a contest.

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

No, but subject to US laws on anti-discrimination.

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 (ie, 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 (eg, if all advertising is in English, can the Official Rules and website only be in English)?

Under Rule 76 of the Regulation, the rules must be published, announced and disclosed in the same language used in the sweepstakes announcements. For example, if there are promotional materials in both Spanish and English, the rules must be published, posted and disclosed in both languages.

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

All information and/or data submitted must be cleared for use by means of a release and there must be a clear data privacy policy in place and available to the public.

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.

ROMANIA

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

Chance-based games are generally permitted in Romania and fall under the category of "advertising lottery", as stipulated by Government Ordinance no 99/2000 on trade of products and market services ("Ordinance 99/2000"). It is worth mentioning that, according to the provisions of Ordinance 99/2000, advertising lotteries are allowed if participants are not required to pay any direct or indirect expense, additional to the purchase of the product/service; this element representing one of the main differences between advertising lotteries and gambling. However, expenses incurred by participants with respect to postal services and/or normal telephone costs are allowed.

The contest regulations or any other document stipulating the terms and conditions of the promotion must be notarized by a notary public before the start date of the promotion.

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

Skill-based contests, where prizes are won exclusively due to the ability, knowledge, and insight of the participants, are generally permitted in Romania. Among the most important conditions provided by the applicable regulations, are that:

(i) the organizer must ensure that winners are designated according to the value of their performance, and

(ii) a contest regulation is recommended to be in force.

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 Romania, there are no registration requirements in order to organize prize promotions or skill-based contests. In terms of tax registration of the organizer, the Romanian applicable legislation is unclear, depending on the nature of the prize. However, the safest approach would be for the organizer granting the prizes to apply for tax registration in Romania.

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 general rule is that consumers must purchase the product/service in order to enter the promotion; no additional payments being charged in the case of an advertising lottery. However, certain exceptions are acceptable. In particular, expenses incurred by participants with respect to postal services and/or normal telephone costs are allowed.

Are there other forms of "consideration" which are prohibited in connection with entry into a chance-based game (eg, 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)?

Usually, it is up to the organizer to set the terms and conditions of the promotion as it wishes, specifying the nature, number, and commercial value of the respective prizes. Unless infringing the general principles of consumer protection regulations (ie, the consumers' right to be fully, accurately and correctly informed on the essential characteristics of the products and services and the obligation to ensure transparency in connection with the terms and conditions) and/or good faith/morals, any forms of consideration are permitted.

Are raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

In Romania, there are two types of raffles:

(i) one that requires approval from the Romanian Gambling Office, and

(ii) another that must only comply with the general consumer protection rules and the general rules applicable to advertising lotteries.

A raffle falls within the first category if the following conditions are cumulatively fulfilled:

- the retailer offers the participant the chance to win a potential prize;
- a participation fee is required; and
- the winner is randomly chosen.

As already detailed above, the general practice is not to require a participation fee from participants in chance-based games, in order to fall within the definition of "advertising lottery".

Charitable sweepstakes are not specifically regulated in Romania. However, observing the general practice, when organizing such raffles, non-profit companies are drafting and informing on the applicable terms and conditions, as the general principles on consumer protection must apply to this scenario too.

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

Usually, it is up to the organizer to set the terms and conditions of the promotion as it wishes, specifying the nature, number and commercial value of the respective prizes. If the general principles on consumer protection legislation (ie, the consumers' right to be fully, accurately and correctly informed on the essential characteristics of the products and services and the obligation to ensure transparency in connection with the terms and conditions) and/or good faith/morals are respected, determining the winner by public voting 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 place where the random draw/winner determination process shall occur is not specifically regulated by the applicable Romanian legal provisions. If the organizer complies with the conditions on transparency, thereby fully, accurately, and correctly specifying the nature, number and commercial value of the prizes, the draw/winner could also take place online. It is worth mentioning that any suggestion to the consumer, through the advertisement, that:

(i) the consumer has won the grand prize, although the draw will take place later, or

(ii) the consumer has won a substantial sum, but, in reality, it is a prize of a minimum value or a consolation prize,

would qualify as misleading advertising and thus subject to sanction, according to the applicable 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?

This matter is not specifically regulated in Romania. However, the general practice on prize promotions is for the organizer to grant the prizes from a separate prize pool for each territory.

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

The Romanian applicable legislation does not contain explicit restrictions related to the prizes awarded in chance-based game/skill-based contests.

However, the Romanian legislation also defines the concept of "premium sales", meaning the commercial practice where, after selling a product/rendering a service, the retailer offers consumers, free of charge, immediately or at a certain time, premiums in the form of products/services. In this respect, the premiums offered when selling a product/rendering a service must be of the same category of products/services as those acquired.

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

Ordinance 99/2000 does not provide special rules related to the audience that may enter. However, the general applicable rules must be observed on a case-by-case basis.

For example, in connection with sweepstakes for children, for children under the age of 14, only the legal guardian of the minor may participate to such games on the minor's behalf. Children aged 14–18 may participate in sweepstakes on their own, if such participation is not subject to a prejudice.

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 the Romanian fiscal code, for prizes awarded to consumers, a withholding tax of 10% must be paid by the organizer of the contest. However, for prizes up to RON 600 (approx €120) no tax payment is required by the applicable legal provisions.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (ie, 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?

As a general rule, the organizer sets the terms and conditions of the promotion; and this also applies with respect to the granted ownership. The organizer must clearly provide the ownership conditions. Correspondingly, copyright transfer is subject to certain specific rules under the applicable Romanian legislation. If the copyright transfer is granted free of charge, then such transfer deed must be notarized by a Notary Public.

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

The applicable Romanian legislation provides an obligation on the organizer to publicly announce the winners of prizes. In this respect, it is mandatory to provide, in the terms and conditions of the contest, that the organizer has an obligation to make public the names of the winners and the prizes awarded to them.

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 (eg, if all advertising is in English, can the Official Rules and website only be in English)?

Pursuant to the applicable consumer protection rules, the terms and conditions must be provided in Romanian, if they are addressed to Romanian consumers.

Even where the contest and advertising materials are provided online, if they also target the Romanian public, then a Romanian version of the terms and conditions of the contest should also be uploaded on the respective website.

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

The principles and rules imposed by the General Data Privacy Regulation ("GDPR") must be observed in Romania. In this respect, the minimization principle must be complied with, and the organizer of the contest must only collect the personal data required for the participation to the contest.

Needless to say, the organizer must have in place adequate technical and organizational measures for ensuring the security of personal data collected from participants.

The organizer should only disclose the names of the winners of the contest (such disclosure representing a mandatory legal obligation), whilst the names of other participants should remain confidential.

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 applicable Romanian legislation does not expressly provide a specific rule in this respect. However, if the contest is not targeted for the Romanian territory and the promotion does not take place in Romania, then the Romanian rules should not apply.

Generally, in order to avoid any misinterpretation, a contest's organizer should clearly establish, in the terms and conditions, the applicable law and court of 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?

Under the applicable Romanian legislation, if a contest is chance-based, then the terms and conditions must be notarized by a notary public before the start of the contest.
Failure to comply with this obligation may result in fines of RON 1,000–2,000 (approx €200–400).

RUSSIA

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

Basically, chance-based games are not prohibited under Russian law. Nevertheless, in certain cases they can qualify as gambling or lottery.

In accordance with the established practice, the following criteria are used to distinguish gambling:

- the game is based on the risk of losing money;
- the purpose of participation in the game is to obtain material benefits;
- the winner is likely to be determined randomly, ie the result does not depend on the actions of the participants in the game of chance.

Lottery is a game that is conducted in accordance with the agreement under which the lottery operator draws the lottery prize fund, and the participant gets the right to win if recognized as winning in accordance with the lottery conditions. A distinctive feature of lotteries is the contract, which is drawn up by issuing a lottery ticket, lottery receipt, or an electronic lottery ticket. The lottery ticket must have the lottery combination applied at the stage of the production of the relevant document or by the participant.

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

Skill-based contests are not specifically regulated by Russian legislation. However, from the Russian law perspective, they are not prohibited.

General rules stipulated by the civil legislation and legislation on advertising are applicable and must be taken into consideration.

If contests are held for promotional purposes, promoters may face legal risks with regard to the use of the created objects, which will be subject to protection under IP laws.

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 promotional, it will not fall under gambling or lottery regulations, and thus, no registration or filing will be required.

If a chance-based game is considered to be gambling, then such a game is strictly regulated and requires a license, to be obtained by application to the competent authority. The authority must make its decision no later than five working days from the date of receipt of all necessary information, and the license must then be handed over or sent to the applicant within a further 3 days. The state fee is 30,000 RUB (approx US $400 or €332).

When a chance-based game is identified as a lottery (conducted by issuing lottery tickets), it can be organized only by certain federal executive authorities. The federal authorities choose a lottery operator through open

tender. To participate and win the tender, the lottery operator must meet certain requirements, including having exclusive rights to the lottery software used for the collection of data in respect of lottery tickets and processing of winners during the lottery draw.

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 allow for the prior purchase of a product to be a condition precedent for the holding of promotional events.

If a 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. However, if non-purchase entry is offered alongside prior-purchase entry, there is a greater chance of the promoter being deemed compliant with Russian laws.

Are there other forms of "consideration" which are prohibited in connection with entry into a chance-based game (eg, 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 forms of consideration.

When a chance-based contest is held within the Russian territory, the promoter may require any form of consideration for entry, so long as it does not conflict with provisions of effective law, ethics, or established morals of the Russian nationals.

Are raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

Russian law does not establish special rules for non-profit organizations. Therefore, they are subject to the same rules as for-profit ones.

However, a charitable advertising promotion can be interpreted not as an ordinary advertisement but as a social one (ie, advertising aimed at achieving charitable and other socially useful goals, as well as ensuring the interests of the state). In this case, different requirements apply (for example, it is not allowed to mention specific brands, models of goods, trademarks, etc).

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?

Russian legislation does not impose any restrictions concerning the place where the decision is made. We are not aware of any limitation on the procedure/place of the winner determination.

If a chance-based game or a skill-based contest is open to residents of several countries, Russian law permits the random draw/winner determination process to be conducted in another country. Where the selection process is to take place in Russia, there is no exception for promotions taking place solely online.

However, the procedure, place and timing for determination of the contest winner must be transparent to potential entrants and expressly communicated in the Official Rules of the contest.

Where there is to be an online selection of the winner, this should be communicated in the Official Rules of the contest, together with the place or source where the results of the contest will be published, the panel responsible for its issue along with other relevant information.

When the Official Rules of the contest do not target Russian nationals (eg, there is no Russian translation provided, Russian nationals are not specified as participants, etc), Russian laws do not apply 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?

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 the type and number of prizes to the entrants, along with the other data which is deemed to be essential. If the prizes are to be distributed among entrants from a number of countries, 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, in order to be compliant with Russian laws.

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

Russian legislation does not provide for any restrictions as to the type, nature or value of the prizes. Since the forms of the prizes are not stipulated by law, any prize is permissible, other than products withdrawn from circulation in the Russian Federation or circulation of which is limited (eg, weapons and drugs).

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

In general, Russian law does not contain restrictions on the audience for ordinary chance-based games, or skill-based contests.

However, despite the fact that there are no direct prohibitions on the participation of children in games (with the exception of gambling and lottery), the possibility of participation of a minor may be limited by the general rules of legal capacity:

- For minors under the 14, transactions can be made on their behalf only by their parents, adoptive parents or guardians;
- Minors between 14 and 18 make transactions with the written consent of their legal representatives—parents, adoptive parents or guardian. However, they may make certain "small household transactions" on their own. By "small household transaction" is meant a transaction aimed at satisfying the ordinary, everyday needs of a minor or their family members, is insignificant in amount and is usually executed at the very moment of its completion. Games do not, therefore, fall within this category.

Moreover, Russian laws actively protect children as a highly sensitive and vital category of society. As a result, advertising of gambling or betting must not be directed to minors.

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 Russian nationals and their value exceeds 4,000 RUB (approx US $55 or €45). 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 information on winners, prizes received and their liquidated value, if applicable, by filing the

form prescribed by applicable laws. However, the promoter may indicate in the Official Rules that all responsibility for payment of applicable taxes lies with the winner.

If the winner is entitled to a non-monetary form of a prize, the tax payable is calculated 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.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (ie, 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 a skill-based contest. However, the promoter is required to enter into an agreement (assignment or license) with the author of the created work. Without this, further use of the work 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 use by the promoter, and the period of the agreement. There is no legal limit on the term of the license agreement. Where the period of the license is not specified in the agreement, it is deemed to be for 5 years.

In the event that the promoter wishes to own the created object, they may enter into an assignment agreement with the creator. The assigned object should be clearly specified to avoid the risk of being considered as non-transferred.

Thus, we believe that the Official Rules of the contest should provide that entering into an agreement (license or assignment) with the promoter is a condition precedent to receiving the prize. Based on best practice, it is usually the case that the license or assignment conditions are incorporated directly into the Official Rules themselves.

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 under the applicable Russian laws for the Official Rules of the contest to require a signed liability and publicity release form prior to receipt of the prize.

If signing such a form is a condition precedent to receiving the prize, this information should be communicated to potential entrants before 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 (eg, if all advertising is in English, can the Official Rules and website only be in English)?

Russian law does not require that Official Rules be translated into Russian, though it is highly recommended in order to avoid the possible risk of Russian participants disputing the choice of winner because they could not properly familiarize themselves with the rules due to the lack of a Russian translation.

Russian legislation requires advertising which targets Russian citizens to be in Russian. If advertising is distributed on a website that targets Russian customers, it will also be considered as "targeting" Russian customers.

Russian law does not establish an exhaustive list of criteria to determine whether an online source is targeting Russia/Russian customers. From a practical point of view, however, the following factors will be regarded by Russian authorities in the first instance:

- online source is operated on domain name relates to Russia or any Russian region (for example, .ru, .рф, .su, .москва, .moscow), or
- online source includes content in Russian language or there is an option for the (automatic) translation of its content into Russian.

There are certain exclusions to the requirement for words to be in Russian:

- Exceptions that do not require translation:
  - If a foreign word is a registered brand name, trademark, service mark or a company name of a legal entity;
- Exceptions that do not require translating but require mandatory transliterating:
  - If the word cannot be translated into Russian;
  - If the translation would not conform to the meaning, intention or content.

Advertising of the contest must contain information on the period over which it is to be held, the promoter, terms and conditions, number of prizes or winners, terms and place of prize giving.

All essential terms and conditions for a contest targeting Russians must be communicated in Russian. Lack of a Russian translation entails the risk of non-compliance with the relevant laws.

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

When the promotion entails the collection of personal data of participants, the promoter must ensure that the contest is compliant with Russian legislation on the protection of personal data.

Consent for personal data processing should be obtained; however, the form in which such consent should be provided is not clearly defined unless the data is subject to cross-border transfer (in which case consent

must be in writing, and the form of consent must expressly stipulate the entrant's consent to transfer of their personal data abroad, give details of operator and the means for withdrawal of consent). However, consent must be obtained in a form that will unequivocally evidence the approval of the entrant to process their 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. The form should include the purpose, methods of processing, and information on the operator of personal data, along with its contact information, so that the entrant is able to withdraw their consent to their data being kept in the operator's databases at any time.

In promotional events targeted at Russian citizens, the promoter must ensure compliance with personal data localization requirements; non-compliance may lead to an administrative fine of up to 6M RUB (approx US $80,065 or €66,350) for the first violation of the localization requirement, and up to 18M RUB (approx US $240,200 or €199,050) or the blocking of a website for a repeated offence.

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 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.

SERBIA

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

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

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

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

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 filing is required to offer a skill-based contest in Serbia. On the other hand, offering a promotional chance-based game requires a consent issued by the Serbian Games of Chance Administration. A sponsor needs to file for a consent not later than 30 days before the launch of the chance-based game. Along with the request to obtain the consent, the sponsor must submit certain corporate documents, such as the excerpt from the register and the corporate decision on the sponsoring of a game, game rules and evidence documenting the value of prizes. The official fee required for the consent amounts to 25% of the market value of the total prize fund. Post-promotion reporting to the Games of Chance Administration 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?

Chance-based or skill-based promotions in which someone is required to purchase the product in order to enter are permitted. If a purchase is required, a non-purchase method of entry does not have to be offered.

Are there other forms of "consideration" which are prohibited in connection with entry into a chance-based game (eg, 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 raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

Raffles are regulated differently, and, in accordance with the Serbian Law on Games of Chance, they are considered classic games of chance. According to Serbian law, the State Lottery of Serbia has the exclusive right to organize classic games of chance.

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. However, the manner and procedure according to which the winner(s) are determined and how the determination of the winner(s) is supervised have to be regulated in the Game 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?

There are no explicit provisions preventing the random draw/winner determination process from occurring in another country. Promotions taking place solely online are regulated in the same way as any other promotions.

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 explicit provisions preventing the combination of all entries from all countries to determine the winners for a single prize pool. However, the Serbian Games of Chance Administration has so far in its case law insisted on separate prize pool for residents.

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

Prizes must not be paid, entirely or partially, in cash or other means of payment.

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

The organization of chance-based games must be socially responsible, and protection of minors requirements have to be observed. The participation of minors in promotional chance-based games is not prohibited; however, sponsors often do limit entry to those over the age of 18, just to ensure compliance with social responsibility and protection of minors requirements.

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. In accordance with the Serbian Law on Personal Income, responsibility for the taxes is borne by the winner. However, individual prizes up to the value of 103,225.00 RSD (approx US $1,036) are tax exempted.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (ie, 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 and/or obtain a broad grant of rights. Such ownership cannot exist in perpetuity, but rather for the duration of copyright that is set to last, pursuant to the Serbian Law on Copyright and Related Rights, for the life of the author plus 70 years following their death. In addition, the moral rights of the author are not transferable and last even after the expiration of the economic rights. Copyright transfer, generally, must be executed 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 that a winner signs a liability and/or publicity release in order to receive a prize. This should be 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 (eg, if all advertising is in English, can the Official Rules and website only be in English)?

As stated above, a promotional chance-based game requires consent issued by the Serbian Games of Chance Administration. In order to obtain such consent, the sponsor needs to submit the Official Rules in Serbian. In addition, the Official Rules, in Serbian, have to be published in at least one national daily newspaper, no later than eight days before the launch of the game.

As for skill-based game, even if this is not provided explicitly, providing the Official Rules in Serbian is highly advisable.

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

Yes, personal data has to be used in accordance with the Serbian Law on Personal Data Protection, which is modelled on the GDPR. Additionally, and pursuant to the Article 110 of Law on Games of Chances, the sponsor is obliged to keep records of persons who have made a win, in the manner prescribed by the Minister of Finance, for five years after the last day of the year to which those records refer.

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?

Generally, no. However, pursuant to the advertising regulations, promotional online content may be considered to target Serbia, and thus be subject to the laws of Serbia, if:

- the content is in the Serbian language,
- it refers to the address(es) of the sponsor's branch(es) in Serbia where the sponsor's goods or services can be obtained,
- it refers to Serbian currency, or
- delivery of the goods/services to Serbia is available.

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

Case law is sparse. The same regulator competent for promotions (the Games of Chance Administration), is also competent to regulate gambling and betting. Thus, most of their decisions are not promotion-related, but, rather, deal with gambling and betting.

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?

- A sponsor may not offer more than four promotional chance-based games per calendar year.
- Two chance-based games offered by the same sponsor may not run simultaneously.
- No individual chance-based game may last for more than 45 days.

SINGAPORE

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

Singapore legislation generally prohibits gambling, and chance-based games may come within the ambit of this legislation. However, random draw promotions and instant win games held by business organizations to promote the sale of their products are exempted from this prohibition. Nevertheless, exempted public lotteries (purchase promotions by a business to promote its products or services) still require the requisite permit.

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

Yes. Games or contests of pure skill are not 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?

Yes, for exempted prize draws (such as those by businesses to promote the sale of their goods or services), registration is mandatory. The contest must be registered at least 4 weeks prior to its launch in Singapore. Our cost estimate for obtaining registration is US $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, promotions requiring purchase are permitted, provided that there is no increase in the price of the underlying product/service, attributable to the conduct of the promotion. A non-purchase method of entry is not required to be offered.

Are there other forms of "consideration" which are prohibited in connection with entry into a chance-based game (eg, 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 is no such prohibition.

Are raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

Like promotions by business organizations, a public lottery promoted by a charity or institution of public character is also exempted from the provisions of the Common Gaming Houses Act ("CGHA"). Raffles or charitable sweepstakes, like promotions offered by for-profit corporations, require registration.
They also have to satisfy additional compliance requirements such as:

- the organization cannot promote more than one lottery in a year; and
- the entire proceeds of the lottery (less no more than 30% for the expenses of the conduct of the lottery) must be applied for the purpose of the charity or institution of public character.

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. There is no requirement that random draws or online promotions must take place in Singapore.

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. There is no regulation that prohibits such a combination of entries.

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

There is no such restriction. However, if the total value of prizes exceeds S $10,000, the results of the lottery must be published in a newspaper within 7 days following the determination of all the winners.

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

There are no special rules based on the audience that may enter such games or contests. An office lottery would be regulated by the Private Lotteries Act, which covers lotteries held by an organization only for its members and not for the public in general. Where scholarships, in the form of cash rewards, are offered to a particular group (minority group, women, etc) in a lottery-like event, this would still qualify as a public lottery. Both exempted public lotteries and private lotteries require a 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?

No. There are no tax obligations on the gift either for entrants or for the promoter of the promotion, pursuant to the CGHA or the Remote Gambling Act ("RGA").

There is a duty of 9.5% payable on the total amount wagered by private lottery players in respect of fruit machines operated by private clubs.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (ie, 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 assigned to the sponsor. It is prudent to provide for this in the terms of the contest. It should be noted that a new Copyright Bill was read in Parliament for the first time on 6 July 2021, which provides that moral rights are not assignable. In the likely event that the Bill is passed and becomes law, the contest terms would not be able to provide for the transfer of the right of attribution of the participants to the contest sponsors.

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 require the winner to sign a liability and/or publicity release. Terms pertaining to the liability and/or publicity can also be provided for expressly in the terms 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 (eg, if all advertising is in English, can the Official Rules and website only be in English)?

English is the *lingua franca* of Singapore. It is therefore 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. The organizer of the game or contest must inform participants on the reasons for the collection, use and disclosure of their personal data. Consent has to be expressly obtained from the participants. However, consent can be deemed to be present if the use of the requested personal data is reasonably necessary.

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, for chance-based games. Skill-based contests are not regulated, whether online or offline. Online games of chance or mixed chance and skill are regulated by the RGA.

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

There are no significant cases or regulatory decisions regarding promotions, but the Singapore Police is likely to take quick action against suspected violators of the CGHA and RGA. In a recent case, on 21 April 2021, the Singapore Police arrested a remote gambling syndicate that used betting websites and phone applications to facilitate remote gambling.

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 opportunity. There are statutory requirements which need to be abided by for registration of promotions, and a lead time of at least 4 weeks must be given to counsel in Singapore to ensure compliance.

SLOVAKIA

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

Yes, chance-based games are generally permissible in Slovakia. According to Slovak legislation, there is a difference between so called "gambling games" which are strictly regulated by Act on Gambling Games (and are subject to a specific license), and consumer games, which are only regulated by Slovak Civil Code and relevant consumer protection laws.

Under the Act on Gambling Games, a "gambling game" is a game, in which a player/participant, after paying a stake, can win a prize if he/she meets the conditions predetermined by the game plan. Results of the gambling game depend exclusively or predominantly on chance or unknown result of a certain circumstance or event.

By contrast, the consumer (promotion) game is a game in which the participants are not asked to pay a stake and the scope of which is promotion of goods and services. Participants can be required to purchase certain goods or services in order to enter the game. Such purchases are not considered to be a stake, unless the purchase price is obviously excessive, in which case the difference between the usual price and such excessive price could be regarded as a stake and such game could be regarded as a gambling game. Consumer (promotion) games represent a common marketing tool and are perceived positively by consumers in Slovakia.

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

Yes, skill-based contests are generally permissible in Slovakia. If the scope of such game is promotion of goods and services, then the rules applicable to consumer chance-based games are applicable to the same extent to such 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?

There is no registration or filing requirements for chance-based or skill-based promotion 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 where customers are required to purchase a product in order to enter the game are permitted. A separate non-purchase method of entry does not have to be offered. On the contrary, conditions for participation in the contest should be equal for all participants.

Are there other forms of "consideration" which are prohibited in connection with entry into a chance-based game (eg, 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 forms of "consideration" prohibited in connection with entry into chance-based games, apart from payment of a stake (which could re-qualify a consumer game into a gambling game). Of course, the participants must not be asked to do anything illegal, including, for instance, violate a third party's personal rights or copyright.

Are raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

Charitable sweepstakes are not regulated differently than prize promotions offered by for-profit corporations. On the other hand, charitable lotteries are specifically regulated by the Act on Gambling and can be carried out only subject to the terms and conditions specified by the Act on Gambling.

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?

Slovak law does not require the winner determination process to occur in Slovakia. Therefore, the draw may occur in another country. In any case, the winner determination process should be fair and transparent.

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 need for a separate prize pool for Slovak residents in games open to residents of several countries. One prize pool for participants from all countries is acceptable under Slovak laws.

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

No, there are no specific restrictions on the type, nature or value of the prizes in consumer games. Of course, the prize cannot consist of goods whose sale is prohibited or specifically regulated in Slovakia.

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

Slovak law does not provide any special rules or conditions for consumer games, based on the audience that may enter. Nevertheless, Slovak law is very sensitive in protecting certain groups of consumers, in particular children and minors. Promotions aimed at minors must not abuse the trust of minors (eg encourage behavior which may endanger their health, mental development or moral development) and must not pressurize them into purchasing the product.

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 income tax. According to Slovak tax laws, in case of non-monetary prizes, the winner is responsible for tax declaration and for payment of the tax. However, prizes with a value not exceeding €350 are free of tax. For this purpose, the organizer of the contest is obliged to inform the winner about the value of the prize. In the case of cash prizes, the person responsible for payment of tax depends on the "source" of the prize. If the contest is organized by a Slovak entity, then the organizer is responsible for tax withholding. On the other hand, if the contest is organized by a foreign entity, then the winner becomes responsible for declaration and payment of 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 (ie, 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?

Pursuant to the Slovak Copyright Act, the author of a work has the right to authorize a third party to use works created by them, based on a license agreement. Such a license agreement should specify the manner of use of the work, the scope of the license, the time for which the author grants the license, or the method of its determination (the longest period allowed for the duration of "economic rights" is 70 years after the author's death) and the license fee or the method of its determination, unless it is agreed that the license is

provided free of charge. The license agreement only needs to be in writing where the author grants an exclusive license. The so-called "moral rights" of the author (including the right of the author to decide whether or not the work shall be made available to the public) are not transferable. However, the author may grant consent (which may be irrevocable) to interference with their moral rights.

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 legal restrictions on publicity (press) releases. Any conditions relating to publicity should be clearly specified in the Official Rules. As far as the liability is concerned, the general doctrine of Slovak law forbids any future 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 (eg, if all advertising is in English, can the Official Rules and website only be in English)?

If the promotion is specifically targeted to a Slovak audience, the Official Rules and advertising materials should be in the Slovak language. By contrast, if the sponsor opens a promotion contest to participants without targeting a specific location, the Official Rules and the advertising materials may be published only in English.

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

Personal data protection is governed primarily by the GDPR. Generally speaking, the sponsor is obliged to ensure that personal information of participants is collected and processed in compliance with the GDPR. The sponsor must, in particular, ensure that there is appropriate legal basis of processing, the personal information is safe and protected from unauthorized access and that the participants are duly informed about the scope and manner of data processing and about their rights relating to the data processing.

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 promotion is specifically targeted to a Slovak audience, the Official Rules must respect mandatory rules of Slovak law. By contrast, if the promotion contest is open to participants without any location targeting, the relationship between the sponsor and the Slovak consumer may be governed by the law chosen by/applicable to the sponsor.

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 precedential decisions to be aware of. There are decisions of relevant authorities in this regard; however, decision-making practice is not unified and therefore the outcome of possible claims in the future cannot be predicted.

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 related to consumer games not mentioned above.

SOUTH AFRICA

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

In practice, chance-based games are permissible and are regulated by consumer protection legislation. However, some requirements of the legislation are ambiguous or unclear. It is hoped that the legislature will correct this situation.

Are skill-based contests (ie, 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, but, 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 as to 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 (eg, 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 may 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 (approx US $0.1).

Are raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

Generally, the rules are the same, but it must be noted that entry fees may not be charged, except in limited circumstances and subject to particular requirements. A raffle or sweepstakes cannot be conducted for fundraising purposes unless those requirements are met.

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 so, currently, it should be permissible to combine entries from all countries.

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

Yes, use and possession of prizes must be legal.

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

The consumer protection legislation does not have particular rules relating to the audience that may enter. However, promoters must ascertain whether they are bound by the code of conduct of any industry

organization, eg, the Code of the Advertising Regulatory Board, which contains provisions relating to promotions aimed at children.

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 will be applicable if the 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 (ie, 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 the release 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 (eg, 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 may not understand English, the Official Rules should 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 ("POPIA") sets conditions for how personal information can be processed. For example, personal information can only be used for a specified, explicit and lawful purpose. Processing must be adequate, relevant, and not excessive. A legal basis is required for such processing.

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 may 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 example:

- the conducting of chance-based games must be overseen by someone who is a prescribed independent professional;
- sponsors must comply with the statutory requirements that relate to advertising materials and promotional competition offers;
- sponsors must retain the information and document prescribed by law; and
- sponsors need to ensure that their competitions comply with the relevant industry codes, to the extent applicable.

SPAIN

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

Yes, chance-based games are generally permissible, unless participants must 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 (unless the call takes too long, or several standard SMS messages are required). Prior purchases of products without extra charges, or a condition that participants be a client of the sponsor, are not considered to be additional payment.

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

Yes, but in order to be considered a skill-based contest, the winner must be picked **only** on the basis of skill, not chance. For example, if winners are selected on the basis of their providing the right answer to a questionnaire, this would qualify as a skill game. In contrast, if a draw is then carried out to determine, amongst them, who is to 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 the Notary Public to take care of the draw (although this 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 receive a prize) or randomly (eg, through a draw, even where 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", ie, sweepstakes aimed exclusively at advertising or promoting a product or service, for participation in which there is no payment, other than the price paid for the product or service, without surcharge or tariff, and 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 (eg, 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 raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

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?

In skill-based contests open to residents of several countries, the random draw/winner determination process can be conducted in another country. But, in the case of chance-based games, the winner determination process must occur in Spain. It is therefore advisable to create a separate prize pool for Spanish participants. There is no exception, even if the promotion takes 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?

A 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 will request the sponsor to pay 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 skill where there is no chance element.

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

No. Details of the prizes offered must be clearly set out in the Official Rules, which must also set out any additional costs for the participant (eg, travel prizes, where the winner should pay the costs for the travel to the airport).

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

No. However, participation by a person below the age of 18 requires the authorization of their parents/tutors.

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 commencement of the sweepstakes. An exception to this rule are prizes with a value below €300. A company with a Spanish tax number must be designated as the responsible organizer for the sweepstake (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 (ie, 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 either moral rights or economic rights.

By article 14 of the IPA, moral rights cannot be transferred. In exercise of their moral rights authors 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 specifying a specific duration for the license (eg, 10 years). Otherwise, where a 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.

Any transfer of copyright must occur in writing according to article 45 of the 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 (eg, 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 GDPR and the Spanish Data Protection regulations must be observed. In order to collect personal data in Spain, consent of the participants is at all times recommended. Participants must be informed, in a clear manner, of the minimum information required according to the applicable regulations (ie, kind of data processed, rights, legal basis for the process, purpose of the data process, identity and address of the controller, national or international transfer of data, etc).

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?

Spanish laws are applicable for Spanish participants, for both chance-based and skill-based contests, even if they take place 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?

- Terms and conditions must be set out in Spanish and must be available to 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-based games must contain, at least, the following information:
    - territory where the sweepstakes will take place (inside Spain);
    - eligibility;
    - start and end dates of the sweepstakes;
    - mechanism for selection of the winner (notary, lottery, etc) and date of the draw;
    - rules about how to enter;
    - type, value and detailed description of the prizes offered;
    - use of the personal data collected; and
    - information about the sponsor.

SWEDEN

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

Yes, chance-based games and the like are generally permissible for promotional purposes, but only if there is no requirement of payment of a bet for participation in such game.

On the other hand, chance-based games that do require a bet require a permit and permits are not feasible for marketing purposes (which means that such promotions are *de facto* illegal to run).

Are skill-based contests (ie, 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?

There are no registration or filing permits necessary for a skill-based contest or for a chance-based game that does not require payment of a bet for entry. Permits for other chance-based game are, as explained above, generally not feasible.

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?

Whether or not a purchase requirement is allowed for a chance-based game will depend on whether such purchase qualifies as payment of a bet or not. If the primary purpose and character of the payment is to acquire the product rather than to have access to the game, then such payment should not be qualified as payment of a bet. In such case a purchase requirement could be allowed.

A purchase requirement is permitted for a skill-based contest provided that the cost for participation in the 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 (eg, 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)?

Caution is to be observed given that it has not been settled by case law what forms of consideration can qualify as payment of a bet for participation in a chance-based game. However, it appears unlikely that a call-to-action where a participant cannot suffer any real financial loss will be considered as "payment of a bet".

It is generally 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 the sponsor uses a third-party platform (such as Facebook or other social media platforms), it should also consider whether the required action is permitted under the terms of that platform.

Are raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

Yes, non-profit associations that pursue, as their main objective, the promotion for purposes in the public interest within the country may be exempted from the permit requirement in certain situations.

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 (eg, 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 (eg, prescription drugs, weapons, etc), should not be used as prizes.

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

A chance-based game must not be directed primarily towards participants under the age of 18.

In the event that a promotion targets professionals or individuals in their capacity of employees, Swedish anti-bribery legislation must be considered. The rules are particularly strict in relation to government officials or public sector employees. The offering or taking of unfair rewards may lead to criminal liability.

When a promotion targets minors, it is important that the promotion is presented in a clear and easily comprehensible manner. It is then also advisable to secure relevant consents from legal guardians.

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 are exempt from income tax and social security contributions if the outcome is based solely on chance. Such prizes are also not subject to games tax/lottery tax if the arrangement does not require a license. As described above, this is the case, for example, regarding a chance-based promotion if there are no bets required.

Prizes which are based on skill or effort are normally subject to income tax. The issuer of the prize is liable to pay social security contributions on the value. If the issuer is not resident in Sweden and does not have a permanent establishment in Sweden, they can enter into an agreement with the participants whereby any taxes or social security contributions will be declared and paid by the winners. It is normally sufficient that this is stated in the general terms and conditions of the promotion. If such an agreement is not made, the issuer is liable to register as an employer with the Swedish Tax Agency.

An exception is made for prizes (even if based on skill or effort), which do not consist of cash and have a value not exceeding 1,400 SEK. Such prizes are exempt from income tax as well as from social security contributions.

Normally, it would be stated in the terms and conditions that winners are liable for all taxes and contributions relating to the prizes; in such a case, the organizer may be excluded from payroll taxes 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 (ie, 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 to a limited extent and 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 (eg, if all advertising is in English, can the Official Rules and website only be in English)?

If a promotion is targeted at Sweden, it is recommended that the general terms and conditions 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 that the terms and conditions are given 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 (such as the GDPR). For instance, use of personal data for marketing purposes may require a prior and adequate consent from entrants.

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 effect within Sweden. Even where a contest is promoted solely online, if it is considered to target Swedish entrants this may sometimes be enough to trigger the 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 Market Court which confirm the necessity of providing all material information in a clear manner (see, eg, 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?

If participants' names or images or contents will be used, then relevant rights for such use and purpose must be cleared.

SWITZERLAND

Are chance-based games (ie, 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 against unfair competition, protecting trademarks, works of authorship and privacy. In addition, the Money Games Act (which came into force on January 1, 2019) governs games promising a monetary prize or other monetary benefit in return for a monetary stake or upon conclusion of a legal transaction ("money games"). 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 (ie, 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 if neither a monetary stake nor a conclusion of a contract are requisites for entry. Even where, by contrast, the game provides for entry by means of a monetary stake or the conclusion of a contract, it may, nevertheless, not require any authorization or registration if it meets the criteria for the exception for promotional games under the Money Games Act (see next question).

By federal law, any (other) money game not qualifying for an exception requires an authorization/license. Conditions, costs and formalities depend on the game and the sponsor.

Some Cantonal and municipal laws may require pre-approval (in case of money games and other promotions) if the game or contest will take place on the streets, in public squares, or otherwise on public ground.

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 lottery or game of skill requiring a purchase for entry is only allowed by the Money Games Act if:

(a) the game is conducted for a short period of time,

(b) the game is for the purpose of sales promotion,

(c) there is no risk of excessive gambling,

(d) participation takes place exclusively through the purchase of goods or services offered (ie, no additional monetary stake is required), and

(e) the goods or services are offered at prices that are in line with, or below market prices. In such cases, a non-purchase method of entry is not mandatory (although still customary).

A non-purchase method of entry is, however, required for promotional lotteries and games of skill if conducted by media companies, in addition to the general conditions for promotional games (see above). The opportunity to enter the game free of charge must be under the same conditions of access and participation as through a monetary stake (eg, dialing a premium-rate number) or a legal transaction (eg, purchasing a subscription). Specific requirements apply to the non-purchase route, eg, 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 (ie, offers the same chances of winning). A free and equivalent method of participation requires technology that is easily available and accessible, which is, for example, not the case for outdated technology or technology that has not been adopted (eg, WAP).

Other than those falling within one of these exceptions (ie, promotional games in general or those offered by a media company), games requiring a purchase fall within the scope of the Money Games Act and are thus prohibited unless specifically authorized as money games.

Are there other forms of "consideration" which are prohibited in connection with entry into a chance-based game (eg, 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 Money Games Act only applies to games with entries in the form of a monetary stake or a conclusion of a contract. 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 — see 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 a monetary stake/conclusion of a contract in the sense of the Money Games Act (or its predecessor laws respectively).

Besides the monetary nature of the entry, limitations apply as to what may be asked of winners in order to redeem the prize (see below).

Are raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

Yes, for some categories of money games, a charitable purpose is a requirement to obtain an authorization/license.

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 clearly state that the winners are determined in whole or in part by public voting. Further, the voting must be carried out as announced (ie, 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?

If the game does not fall within the scope of the Money Games Act, the random draw/winner determination process may occur in any country. However, the Official Rules must clearly state that the winners are determined by random draw and (ideally) 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 out in the Official Rules and as described in promotional material.

For games requiring an authorization/license under the Money Games Act, additional requirements apply, for example, the organizer must be a legal entity under Swiss law. Online games fall within the scope of the Money Games Act and trigger various specific rules (eg, blocking access to unauthorized online games). However, the Money Games Act does not expressly require the selection process to take place physically in Switzerland.

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, if the other criteria of the Money Games Act are met. This process must be made transparent in the Official Rules and be as described in promotional material.

Are there any restrictions on the type, nature or value of the prizes (eg, 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. In addition, the value of the prize may be one of the factors used to determine whether the game poses a risk of excessive gaming (addiction and/or gambling stakes that are disproportionate to the participant's income and assets).

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 (eg, a service charge or other payment to be provided by the winner to the sponsor as a consideration or return service for the prize), the purchase of a good or service 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).

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

No, not under the Money Games Act. If entry requires a valid declaration (eg, release, waiver), it is recommendable that a legal guardian signs for the minor in order to avoid the risk that the declaration is found to be non-binding. Rules regarding the audience allowed to enter need to be made transparent in the Official Rules.

Additional restrictions may apply for advertising particular products or services in general (eg, protection of minors in case of tobacco or alcohol). Furthermore, personal data (eg, to decide on the eligibility to participate) need to be collected, processed and stored according to the Federal Data Protection Act (see below).

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). Prizes of value of more than CHF 1,000 (approx €920), may be subject to a withholding 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 (ie, 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 transfers are valid for the entire term of the copyright. The transfer may occur electronically, eg, 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. Waiver of these rights can be withdrawn.

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 the release is granted by participants 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, ie, 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 (eg, if all advertising is in English, can the Official Rules and website only be in English)?

There are no such language requirements for promotional games. English or any of Switzerland's official languages (German, French, Italian) is sufficient. It is customary to offer information and materials in local languages. For certain games requiring an authorization under the Money Games Act, rules on language and accessibility of Official Rules apply.

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 (revised law likely to enter into force in 2022). 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. A sponsor who wishes to transfer Personal Data in the US 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 in 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. The Money Games Act specifically addresses online games.

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

As the Money Games Act only came into force in 2019, leading cases to this date have been decided under the old regime and might not fully apply under the new law:

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).

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). Under the current law, additional requirements apply for games offered by media companies.

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.

TRINIDAD AND TOBAGO

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

The Gambling and Betting Act applies to gambling, lotteries and betting activities. "Gamble" is defined as meaning to "play at or to engage in any game of chance for winnings in money or money's worth. "Game of chance" is defined as including a game of chance and skill combined, and a pretend game of chance or of chance and skill combined, but excludes any athletic game or sport. "Lottery" is defined as including any game, method or device whereby money or money's worth is distributed or allotted in any manner depending upon or to be determined by chance or lot.

The Gambling and Betting Act provides that all lotteries are unlawful except for:

- lotteries promoted as an incident of entertainment (eg, bazaars and athletic events) and which are subject to the fulfilment of specific conditions,
- lotteries in furtherance of charitable or sporting purposes, and
- sweepstakes organized and controlled by a turf club in connection with a race meeting conducted by such turf club.

The Gambling and Betting Act also allows "contests" approved by the National Lotteries Control Board ("the NLCB") in furtherance of sales promotion activities. A "contest" as defined means any contest, or competition organized on a sales promotion activity whereby prizes are distributed or allotted in any manner depending upon, or to be determined by, chance or lot, "Sales promotion activity" means any activity which stimulates, or is intended to stimulate, the purchase of goods or services from a business.

Therefore, chance-based games which fall within the definition of lottery under the Gambling and Betting Act, and which are not included in the stated exceptions, are generally not permissible.

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

Purely skill-based games are generally permissible. However, if there is an element of chance in a skill-based contest, such activity may fall within the Gambling and Betting Act and be subject to the restrictions relating to gambling and lotteries contained in that Act.

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 the case of lotteries promoted as an incident of entertainment, there is no registration or filing requirement. In the case of lotteries in furtherance of charitable, sporting or other such purpose, the permission of the Commissioner of Police is required for the promotion and conduct of same.

In order to promote any chance-based or chance and skill-based contest in furtherance of sales promotion activity, permission must first be sought from the NLCB. The NLCB must inform the applicant of its decision within 2 weeks of receipt of the application.

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 NLCB is authorized to grant permission for the promotion of a contest.

Permission is granted only in cases in which the contest is related to the purchase of goods or services. There is no statutory requirement for a non-purchase method of entry.

Are there other forms of "consideration" which are prohibited in connection with entry into a chance-based game (eg, 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 and Betting Act does not specify the prohibition of any other forms of "consideration".

In the case of lotteries for charitable, sporting or other purposes, a requirement is that the price of every ticket or chance must be the same and must be stated on the ticket.

In the case of promotional contests, the NLCB may stipulate conditions under which the contest shall be promoted. The NLCB has approved promotional contests in which posting a picture of the contestant with the product on social media was the "consideration" for entry.

Are raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

Yes. A distinction is made in the Gambling and Betting Act between:

(i) small lotteries which are conducted for charitable purposes and promoted for raising money to be applied for the purposes of the charitable society, and

(ii) contests which are conducted as part of sales promotion activity.

The former is permitted subject to approval of the Commissioner of Police and observance of certain conditions set out in the Act. On the other hand, the latter requires the permission of the NLCB, and the NLCB will stipulate the conditions under which the contest shall be promoted.

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

There are no statutory restrictions. However, in the case of promotional contests, the NLCB may require that the drawing of prizes take place in the presence of a member of the NLCB.

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 explicit requirement that the contest must determine the winner in Trinidad and Tobago, unless this is prescribed in the regulations of the contest.

Generally, Trinidad and Tobago Acts of Parliament are not to be construed as having extra territorial effect unless there is an express provision to that effect. Accordingly, the Gambling and Betting Act is limited to activity which occurs in Trinidad and Tobago. If the contest taking place solely online is held by a local business or charitable society and the prizes for such contest will be awarded in Trinidad and Tobago, then such contest must fully comply with the Gambling and Betting Act. In the case of contests which are conducted as part of sales promotion activity, the NLCB, in granting permission, may require that certain information about the contest be published in a daily newspaper circulating in Trinidad and Tobago, and that the drawing of prizes take place in the presence of a member of the NLCB.

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. There is no statutory requirement that there must be a separate prize pool for residents of Trinidad and Tobago.

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

Pursuant to the Gambling and Betting Act, lotteries which are incidental to entertainment are not allowed to have money as a prize. Additionally, lotteries conducted for charitable or sporting purposes are not allowed to have a cash prize which exceeds TT$1500, unless Ministerial approval is sought. Barring these exceptions, there are no other restrictions on the type or nature of prizes that may be awarded.

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

There are no explicit rules governing the conduct of chance-based or other giveaways games based on the audience that may enter. However, in the case of children, under common law principles a contract with a child is generally voidable at the instance of the child, although it is binding on the other party. Accordingly, it may be necessary for a parent or guardian to consent to a child's participation in any chance-based game.

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 liability associated with prizes to lotteries as an incidence of entertainment, small lotteries for charitable, sporting and other such purposes or promotional contests.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (ie, 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 the copyright rests with the author of the copyrighted work. However, it is possible for such ownership to be assigned. Any assignment of copyrights will be effective only where it is in writing and signed by or on behalf of the assignor.

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 publicity release in Trinidad and Tobago 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 (eg, if all advertising is in English, can the Official Rules and website only be in English)?

In the case of contests which are conducted as part of sales promotion activity, the NLCB, in granting permission, may require that certain information about the contest be published in a daily newspaper circulating in Trinidad and Tobago. The official language of Trinidad and Tobago is English.

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

The Data Protection Act provides for the protection of an individual's personal information. However, this Act has only been partially brought into effect. Section 6 (in force) relates to General Privacy Principles, which are applicable to all persons (or companies) who handle, store or process personal information belonging to another person. The General Privacy Principles include:

- the collection of personal information shall be legally undertaken and be limited to what is necessary in accordance with the purpose identified by the organization; and
- personal information shall only be retained for as long as is necessary for the purpose collected and shall not be disclosed for purposes other than the purpose of collection without the prior consent of the individual.

However, the provisions requiring adherence to the General Privacy Principles by the private sector are not yet in force.

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?

Generally, Trinidad and Tobago Acts of Parliament are not to be construed as having extra territorial effect unless there is an express provision to that effect. Accordingly, if the chance-based game is solely online and no promotion takes place in Trinidad and Tobago, it is likely that it would not be subject to the Gambling and Betting Act. However, if the company or society sponsoring the game or contest is local and the target audience is in Trinidad and Tobago, it is likely that the provisions of the Gambling and Betting Act 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?

All promotional contests conducted in Trinidad and Tobago are subject to such stipulations and conditions that the NLCB deems necessary.

TURKEY

Are chance-based games (ie, 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.

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"). If the prize winners are determined by a draw depending on chance, the promotion will be deemed as a prize draw under the Regulation.

Article 41 of Decree Law No 320 provides that chance-based games with cash prizes 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 can only be carried out with the permission of the National Lottery Administration.

The following types of contests and draws do not require the permission of the National Lottery Administration before they are organized:

- lotteries and prize draws organized by public institutions, associations, foundations, sport clubs, school councils, retirement funds for entertainment, celebration, referral purposes exclusively amongst the participants to the meeting, started and concluded within the duration of the meeting;
- prize draws amongst a company's dealers for promotion of certain goods and services;
- mechanisms in which each participant who meets previously specified criteria is awarded a prize;
- contests in which no entrance fee is charged and that do not promote or sell a particular good or service;
- contests and similarly organized events in which no draw occurs and the winners are selected according to previously specified rules, or those in which the winners are selected by means of a draw held before all participants;
- mechanisms not involving a prize but related to selection of beneficiaries for certain services;
- lotteries organized by public institutions for contribution to health, education affairs;
- contests or similar arrangements in which:
    - there is no draw and in which the winners are chosen according to pre-specified rules or
    - 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 154,06 (approx €15). This threshold is updated every calendar year.

Are skill-based contests (ie, 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."

The Official Rules of skill-based contests must comply with the Turkish Consumer Protection Law No 6502. 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?

1. Chance-based games with a cash prize

These can only be conducted by the National Lottery Administration itself.

2. Chance-based games with non-cash prizes

In cases where official permission is required for a chance-based game, the organizer 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 10% of the market value of total prize pool plus VAT (18%), or TRY 10.000 (approx €1,000) plus VAT, whichever is higher.

The organizer must also place a deposit with 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 organizer 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.

3. 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 require 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-organizer. The purchase of a third party's product cannot be a pre-condition to entry.

Are there other forms of "consideration" which are prohibited in connection with entry into a chance-based game (eg, 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 or 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 racist, discriminatory, or sexual content and must not encourage harmful or bad habits, including alcohol, tobacco or drug consumption. Likewise, the organizer must not betray the public's trust in lotteries in any way.

Are raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

Raffles are not specifically regulated under Turkish law. The rules for prize promotions offered by for-profit corporations apply. Of particular note is that, if the monetary value of any prize is more than TRY 154,06 (approx €15), the raffle will require official permission of the National Lottery Administration. Other rules for prize draws should also apply. It makes no difference whether if the raffle is offered by a real person or for-profit corporations.

Charitable sweepstakes are also subject to the same rules for prize draws. Hence it is necessary to obtain official permission from the National Lottery Administration if the monetary value of any prize is more than TRY 154,06 (approx €15). In addition, charitable sweepstakes are subject to rules of Law No 2860 on Collection of Aid and its related regulations, as being a donation campaign. This Law regulates real persons, associations, institutions, foundations, sports clubs, and publishers of newspapers and magazines in collecting aid to assist with the realization of their aims, to assist those persons in need of aid, and for the advancement of the public benefit. It is mandatory to obtain the official authorization of the competent authority in order to conduct a collection of donations. Authorization for collecting donations in a particular province should be obtained from the Governor's Office of such province. Collecting donations can be done by means of a charitable sweepstake as long as legal requirements are met. In charitable sweepstakes, the total value of the prizes cannot be less than 10% of the amount the organizer expects to collect.

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 legal requirement for the selection process to take place in Turkey. The random draw/winner determination process can be conducted overseas, whether or not the promotion takes places 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, where the promotion targets Turkish consumers, 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 organizer to choose the promotion's governing law and jurisdiction. However, a Turkish participant will still be deemed to be a consumer under the Turkish Consumer Law. Given the territoriality of the Turkish Consumer Law, consumer rights are mandatory rules within the jurisdiction in Turkey. If there is any conflict, or in the event that any Turkish participant raises a claim in respect of consumer law issues relating to their participation in the promotion, Turkish Law can still apply, as these rules are public order norms, but this does not prevent the choice of Law and 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?

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 (eg, 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 authorized to conduct such draws).

Skill-based contests may offer cash or non-cash rewards.

In respect of promotions for which official permission is required, the following are prohibited:

- awarding (or promising to award) the same person more than one prize of the same kind;
- (for promotions not involving a draw but instead awarding prize(s) to people whose entry ticket (eg scratch cards) contains a predetermined number or symbol) the unit prize exceeding TRY 154,06 (approx €15); and
- the number of prizes promised by a promotion exceeding the number 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.

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

There are no specific rules for skill-based contests based on the audience that may enter. For chance-based prize draws, there are some exemptions from the mandatory rules of Regulation, namely, there is no requirement for permission for:

- lotteries and prize draws organized by public institutions, associations, foundations, sport clubs, school councils and retirement funds for entertainment, celebration or referral purposes held exclusively amongst participants to a meeting where the lottery or draw is started and concluded within the duration of the meeting;
- prize draws amongst a company's dealers for promotion of certain goods and services.

Employee contests, some specific sweepstakes for children, ladies' night promotions, scholarships offered only to a minority group etc could fall within the scope of the first of these exemptions as long as the prize draw mechanism is run exclusively amongst the participants to the meeting and is started, concluded within the duration of the meeting/event.

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, it is expressly stated that the taxes and other legal obligations (other than taxes which are included in the value of the goods and/or services awarded, namely VAT) must be borne by the participant and not the organizer.

However, where inheritance and transfer tax is payable, the organizer must deduct the relevant amount at source from the winnings and declare such deduction at the relevant tax office. The tax corresponds to 20% of the prize amount over and above the exempt threshold (for the year 2021, TRY 7.703 (approx €700)).

If a non-cash prize is imported 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 (ie, 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 their 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 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.

Where the participants enter into a skill-based contest by creating an original work, the sponsor may obtain a liability release in which participants declare that their entries are original, do not infringe third parties' intellectual property rights and that the sponsor will have recourse against them 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 (eg, if all advertising is in English, can the Official Rules and website only be in English)?

For Turkish participants, all advertising materials, the website and Official Rules must be provided in Turkish. Turkish participants will be deemed "consumers" within the meaning of Turkish Consumer Law and will benefit from its protection.

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

The Turkish Data Protection Law is modelled on the EC Data Protection Directive and includes some elements of the GDPR as well. Its main principle is that personal data can only be processed if 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. It is advisable to set out, in the contest's terms and conditions, what type of data will be processed, for what purposes, whether the data will be transferred to third parties or abroad or not, and the rights of the data subject under the Turkish Data Protection Law.

Additionally, persons processing personal data in Turkey or processing personal data of Turkish citizens (whether or not they are based in Turkey), are required to register in the Data Controllers' Registry, VERBIS. Foreign companies providing services/goods in Turkey, setting up a web site specifically for persons in Turkey, or monitoring Turkish persons' data, etc are subject to such requirement.

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 skill-based contest will not be subject to Turkish law if it is conducted solely online, but only if no prize is offered and it does not involve any product promotion. If any products/services are promoted and/or a prize is offered, a Turkish court may deem 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?

In a recent decision, the Advertisement Board held that amendment of the official rules of a contest during the promotion term, in a manner detrimental to the acquired rights of the participant, is an unfair commercial practice within the meaning of Turkish Consumer Law. Although there is no explicit rule restricting any amendments to campaign rules during the term of a campaign, the main principle of Turkish Consumer Law is the accuracy of the consumer-oriented activities. Contrary actions could be considered misleading.

In this important decision, the Advertisement Board affirmed its power to scrutinize the campaign and promotion rules of companies directing consumers with award(s), as being part of its remit to fight unfair commercial practices.

The second important aspect of the Board's decision is in relation to the validity of amendments to campaign/promotion rules. As organizers frequently preserve their right to change and amend the rules

during a contest or promotion period, the validity of these terms is questionable in terms of consumer protection. The general advice is that conditions should not be amended to the detriment of the participants and, if they are, consumers have a claim against the organizer. The decision shows that the Advertisement Board adopts this approach, too.

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.

Contests and sweepstakes organized by social media influencers on social media have become very common in Turkey. Other than the above rules there are no specific laws, regulations, and self-regulatory rules governing sweepstakes and contests conducted through social media. On the other hand, since scrutiny over social media contests and sweepstakes is not as strict, it is possible to observe many prize draws, which should be subject to the National Lottery Administration's permission, being drawn via social media platforms without such authorization and without complying with the relevant advertisement restrictions. The National Lottery Administration has recently started monitoring compliance of promotions run on social media and has issued warnings to those who conduct unauthorized prize draws via their social media pages and webpages.

UKRAINE

Are chance-based games (ie, 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 within the definitions of (a) "game of chance" or (b) "lottery".

(a) Game of chance

By and large, the Law of Ukraine "On the State Regulation of Activities Related to Organizing and Conducting Gambling" ("Gambling Law") regulates the organizing, carrying out, granting a possibility of access, and participating in "game of chance". By definition, a "game of chance" requires the making of a bet as a condition for winning a prize depending on either chance, the participant's knowledge or mastery.

(b) Lottery

The Law of Ukraine "On State Lotteries in Ukraine" ("State Lotteries Law") defines "lottery" as "a mass game—irrespective of its name—the terms of which set out a competition for a prize (winning) pool between participants where the win is chance-based, and where the gaming extends beyond the physical bounds of one building, irrespective of how the participation fee is received". Currently, the state has a monopoly on the organizing of lotteries. The expansion of lotteries organized outside Ukraine, including advertising and participation in such lotteries, is 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 (ie, 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 (ie does not treat them as "games of chance"):

- art, sport and other similar contests, irrespective of whether their rules offer prizes in monetary form or in kind;
- pool, bowling and other games which do not result in awarding a prize (winning) to a participant;
- play with claw crane machines (two-dimensional slot-machine) which results in the awarding of a prize (winning) in a material form (toys, candies, etc.);
- lotteries; and
- sport poker.

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?

Ukrainian laws do not currently require any type of registration or filing. However, the preliminary approval of the Anti-monopoly Committee of Ukraine may optionally be sought in order to guard against advertising being deemed unfair.

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?

Such promotions are generally permitted, as long as they do not fall within the definitions of "game of chance" or "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 the practice of foreign jurisdictions in respect of such issues, which are new for Ukraine.

A 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 (eg, 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 is no clear legal guidance or developed practice on the issue. However, only payment of money—including through e-payment system—is treated as consideration (a bet).

Are raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

Applicable laws and regulations do not expressly regulate this issue. Consequently, the general legal requirements apply to raffles, charitable sweepstakes, and prize promotions offered by profit corporations.

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

Yes, such promotions 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?

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 another 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 must there be 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 (eg, travel outside country of residence, cash) awarded in a chance-based game/skill-based contest?

No.

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

Applicable laws and regulations do not expressly regulate this issue. The best practice in Ukraine is to limit participation to individuals aged 18+, with full legal capacity. Individuals below 18 and/or with limited legal capacity may require additional consents and approvals from parents/legal guardians. In this case, having verifiable parental consent when dealing with minors is required.

Discrimination is prohibited in Ukraine, and state authorities are empowered under the Law of Ukraine "On Prevention and Combating Discrimination in Ukraine" to prevent and combat discrimination. Moreover, the Law of Ukraine "On Ensuring Equal Rights of Men and Women" provides a legal definition of gender discrimination and establishes powers of various state authorities preventing and combating gender discrimination. Given such laws, scholarships offered only to minors and similar promotions may, by extension, be treated as discriminative.

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 residents (ie, citizens of Ukraine) are subject to Ukrainian personal income tax of 18% irrespective of the country from which such income originates. Non-residents are subject to Ukrainian personal income tax of 18% in respect of income generated in Ukraine. As a precondition to obtaining a prize, a non-resident may first need to apply for local tax registration. The Ukrainian Tax Code may stipulate that certain prizes of minor value are not subject to personal income tax (Note that regulation on what is "minor value" may change annually or even more frequently).

By law, the sponsor is responsible for payment of all Ukrainian taxes due (acting as agent for the purposes of payment of personal income tax and other taxes, eg, military duty, payable by the winner). Further, any customs fees should be paid by the importer of the prize, although express delivery courier companies may establish their own rules for payments for their services. Some goods are also subject to temporary import 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 (ie, 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 both to own the entries in perpetuity and to obtain a broad grant of rights. However, such ownership and acquisition of broad rights are exemptions from the general rule whereby:

(i) Conditions of a contests according to which an entry is not returned to the participant are null and void. Therefore, as a general rule the sponsor should return the entry after completion of the contest.

(ii) The sponsor can further retain the entry upon consent of the participant (consent may also be presumed from acceptance of a gift as the purchase price of 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 has not claimed the return of their entry. However, a participant has the right to demand the return of their entry at any time. In such case, the sponsor can acquire the ownership in the entry.

(iv) To be valid, an assignment of copyright should be executed in writing. Moreover, all assigned rights should be itemized (eg, 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 is likely to be unenforceable in Ukraine. The signing of a publicity release as a pre-condition for taking a prize is generally permissible under Ukrainian laws, but the Official Rules of the contest 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 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 (eg, if all advertising is in English, can the Official Rules and website only be in English)?

The Law "On Ensuring the Functioning of the Ukrainian Language as State Language" makes the use of the Ukrainian language mandatory in advertising (with minor exceptions, for instance, for trademarks). If a sweepstake or a skill-based contest is run in Ukraine by a Ukrainian organizer, then the Official Rules must be in Ukrainian. There is no provision explicitly requiring translation into Ukrainian in the case of a non-Ukrainian organizer or multi-country sweepstake/skill-based contest. However, translation of the Official Rules into Ukrainian is preferable so that a participant can provide informed consent to the rules. Moreover, according to Ukrainian laws, advertising should not mislead 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. See further a discussion of key cases below.

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

Collection of personal information from entrants requires their consent (it must contain, among other information, the specific purpose of personal data processing and the 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 give notification of 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.

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?

Such chance-based game or skill-based contest will be subject to the Ukrainian laws, whenever there is a possibility for entrants from Ukraine (residents of Ukraine) to take part (compete) in such contest.

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

There have been several landmark cases/decisions where sponsors have been 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 and term of the promotion.
- 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, a consumer must open (and so damage) the package (inside packing). A similar decision concerned drinks where information about conditions of the promotion was placed on the 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 an indication that the consumer will receive a prize within 10 days upon sending a request. However, there was no possibility to ascertain the 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?

(1) 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% 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.

(2) 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, *inter alia*:

- create an impression that alcohol or tobacco consumption contributes to solving personal problems;
- encourage alcohol or tobacco consumption in any way, or discourage refraining from alcohol or tobacco consumption;
- create an impression that most people consume alcoholic beverages or tobacco; or
- 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 ARAB EMIRATES

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

No, chance-based games are generally not permissible.

It is important to assess whether the game or activity might fall within the scope of gambling, since there are a number of general prohibitions against gambling. Federal Law No 3 of 1987 ("Penal Code") defines gambling as "a game whereby each of the parties thereto agrees—in case he is the loser—to pay the winner a certain sum of money or any other thing agreed upon", and makes gambling an offense punishable by imprisonment and/or a fine. It also prohibits the opening or managing of a venue for gambling, or organizing a game of chance in a public place or in a venue for gambling. However, the Penal Code does not prohibit the development of online games for entertainment or competition.

Despite the blanket prohibition on gambling, it is permissible to run promotions in the UAE, subject to obtaining prior permission from the relevant Emirate-level regulatory authority (ie, Department of Economic Development "DED").

In the UAE, any promotion/draw/competition that is designed to attract consumers is generally considered to be a "sales promotion". A sales promotion is a promotional campaign that offers an incentive or benefits in the form of instant prizes or participation in a draw to the public. It includes prize campaigns, raffles, and instant prizes. Sales promotions are regulated on an Emirate-by-Emirate level in each of the seven Emirates that make up the UAE, and permits are issued for such sales promotions by the regulators in each of the Emirates. However, there is no strict definition of "sales promotion" under UAE law and there is therefore a level of ambiguity in this regard.

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

Under Article 1013 of Federal Law No 5 of 1985 ("Civil Transactions Law"), competitions with prizes are permissible for running, shooting, sports, or preparation for trials of strength. For these purposes, a "competition" is a transaction whereby a person is obliged to pay a sum of money or gives some other thing by way of agreed compensation to a person who succeeds in achieving the objective specified in the contract.

However, the following conditions must be satisfied "for the contract of competition to be valid:

(a) the prize must be known and the person who is obliged to give it must be specified in person; and

(b) the description of the subject matter of the contract must be sufficient for the avoidance of uncertainty, as in a race, where the distance between the start and the finish must be specified, and, in the case of a shooting match, the number of shots and the winning must be defined".

Although the Civil Transactions Law provides specific examples of permissible competitions where a prize is awarded, it does not make clear what is considered a "prohibited competition". It is ultimately up to the regulator's discretion.

As noted above, if the game/competition/contest is considered to be a "sales promotion", a permit from the respective DED in each Emirate concerned would be required in order to properly run in the UAE.

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 each Emirate, the respective DED requires entities planning sales promotions to first obtain a permit. If a promotion were to specifically target any of the other Emirates, then it would be appropriate to consider seeking permits in such Emirates.

The process for obtaining a sales promotion permit from a DED is straightforward, and can usually be completed within a week or so. Information on the proposed promotion such as:

(i) its general nature;

(ii) the type, quantity and value of any prizes; and

(iii) the period over which the promotion will be run,

needs to be submitted to the DED, along with a copy of the organizer's commercial trade license, an application form for the permit, and the official fee.

Official fees are relatively modest and can vary depending on aspects such as the duration of the promotion, the value of any prizes and the extent of any advertising conducted within the UAE.

Running a sales promotion without a permit can attract a penalty. Penalties range from around AED 2,000 (approx US $540) to AED 25,000 (approx US $6,800) for a first offence, with higher penalties for subsequent instances. The penalty will also vary depending on whether the sales promotion is one for which a permit, if sought, would have been issued. Generally, if the subject matter of the competition is not something that the DED would have approved, then higher penalties are likely to apply.

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 depends on whether the purchase of a product in order to enter would be considered a "stake" and thus fall within the definition of "gambling", as stated under the Penal Code. Therefore, it is generally recommended that a non-purchase method of entry is offered.

Are there other forms of "consideration" which are prohibited in connection with entry into a chance-based game (eg, 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 this is not specifically addressed under the UAE laws, any form of "consideration" may be prohibited if the contract between the parties involved constitutes gambling or a "prohibited competition", as stated under the Civil Transactions Law (and/or violates any other applicable UAE laws).

Are raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

No. As noted above, raffles and sweepstakes (including charitable sweepstakes) fall under the umbrella term, "sales promotions" and are regulated by the DED in each Emirate.

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

Although the issue is not specifically addressed under UAE law, in principle, as long as the winner is determined based on skill, and not left to chance, the fact that the winner is chosen by a public voting system should 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 takes place in the UAE—the process can be conducted overseas. This is common for promotions conducted purely online.

However, if the selection is to take place in the UAE, and involves a physical and/or retail element (eg, a tangible reward rather than an online voucher), it will be subject to UAE law and must comply with the requirements mentioned above (such as the requirement for official permission). For competitions involving prize draws, it is necessary to have an official from the relevant DED in attendance at the prize draw to act as an official witness.

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 issue is not specifically addressed under UAE law. Therefore, a single prize pool may be permissible, provided that the game or contest meets the requirements of UAE law.

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

Prizes such as tobacco, alcoholic beverages or pharmaceuticals are not permitted. In addition, cash prizes are generally not permitted. However, where cash is a key aspect of the organizer's core business (eg, a bank), a cash prize may be permitted with prior approval obtained from the competent authorities.

A prize value cannot exceed AED 50,000 (approx US $13,600).

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

Although the issue is not specifically addressed under UAE law, the age of legal capacity (ie, capacity to enter into a contract) in the UAE is set at 21 years; however, the Civil Transactions Code states that "financial dealings of a minor of the age of discretion shall be valid if they are purely for his own benefit". The age of discretion is 7 years old.

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?

VAT may be applicable to the distribution of a prize. In the UAE, VAT at a standard rate of 5% is imposed on the supply of all goods and services, as well as the import of goods and services, unless the supply is specifically zero-rated or exempt. As prizes are free by nature, the distribution of prizes would not be regarded as a taxable supply for VAT purposes. However, under the UAE VAT law, prizes may, in certain circumstances, be considered as a "deemed supply" and could be subject to VAT. Generally, the supplier would be responsible for accounting for VAT on the supply. If goods (ie, prizes) are imported into the UAE, the importer of record is responsible for the VAT on the importation of goods.

In addition, customs duty applies to imported goods, generally at the rate of 5% of the cost, insurance and freight ("CIF") invoice value, although certain goods may be subject to customs duty at a higher rate, whereas other goods are exempt. Generally, the importer of the product is responsible for paying the customs fees.

In the UAE, excise tax applies to:

(i) electronic smoking devices and tools (including liquids used in such devices) and tobacco products at 100%;

(ii) energy drinks at 100%, and

(iii) carbonated drinks and sweetened drinks at 50%.

The tax is based on the higher of the retail sales price or a standard price published by the Federal Tax Authority. The responsibility for accounting for excise tax falls on importers of the excise goods on import into the UAE, producers of excise goods when they are released for consumption in the country and stockpilers of excise goods when the goods are acquired by a stockpiler and excise tax has not previously been paid on those 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 (ie, 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 in any and all media, now or hereafter devised, worldwide in perpetuity. However, in the UAE, moral rights cannot be assigned and remain with the copyright owner.

Copyright can be transferred by executing an agreement in writing (either online or in print) in which the subject matter, purpose, duration and territory 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?

This is not specifically addressed under UAE law. Any liability or publicity release would be subject to, and potentially limited, by UAE law. If the prize winner is recorded and that record is publicly displayed, the prize winner should sign a release giving their permission to record footage and/or display the footage.

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 (eg, if all advertising is in English, can the Official Rules and website only be in English)?

The New Consumer Law (Federal Law No 15 of 2020 on Consumer Protection) requires all providers, advertisers or commercial agents (which includes e-commerce providers) registered in the UAE (ie, entities that have corporate establishment in the UAE), to provide all data and contracts related to consumers (ie, terms and conditions, privacy policy, services agreement, etc) in Arabic.

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

While the UAE does not have comprehensive GDPR-style data protection legislation specifically designed to regulate the collection, processing, transfer and/or use of data (other than in certain free zones), there are provisions of general application in relation to the processing and transfer of personal data. For example, Articles 379 and 380(bis) of the UAE Penal Code prohibit the wrongful or unlawful disclosure of a secret, information, or data in the course of business/professional activities.

Breaching any provisions of the Penal Code can be considered a criminal offence. Therefore, to avoid any such risk, consent must be obtained from entrants where their personal data needs to be used or disclosed.

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 determining whether a permit is required for a sales promotion, a key consideration for the relevant DED is the extent to which the sales promotion appears to be clearly targeting consumers located in the UAE. For example, if:

- the sales promotion specifically states that it is open to residents of the UAE,
- it seems to apply directly to residents of the UAE,
- prize values are specified in local UAE currency, and
- the sales promotion was being advertised in the local UAE media,

then these could—cumulatively—lead the DED to conclude that the sales promotion should be subject to local regulations.

In contrast, if there is no obvious "link" between the sales promotion and the UAE, and the only connection is that the sales promotion was open to consumers worldwide, online, and consumers based in the UAE happened to take part, then this is unlikely to lead the DED to conclude that the sales promotion should be subject to local regulations. The DED does not actively search for non-compliant sales promotions. Online sales promotions would typically come to the attention of the DED as a result of consumer complaints.

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.

UNITED KINGDOM

Are chance-based games (ie, 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 below).

Are skill-based contests (ie, 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. 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.

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 required is sufficient to deter a sufficient proportion of potential entrants from entering or to prevent a significant proportion of those who do enter from winning a prize. The following mechanics are unlikely to be compliant:

- a very simple question with an obvious answer;
- a multiple-choice question in which all but one answer is obviously wrong; or
- a question to which the answer is readily available in the accompanying body copy.

The fact that the answer can be obtained through desktop research is not necessarily fatal.

To take an example, in a "competition" being promoted on Facebook in May 2021 for a chance to win a flight in a World War II Spitfire fighter plane, for which payment to enter is compulsory, there is a multiple choice question: "Which company manufactured the Spitfire?" The 3 possible answers are Junkers, Messerschmitt or Supermarine. It seems likely that a very high proportion of people entrants will know or guess the correct answer correctly, particularly when the choice is between one British and two German manufacturers. In truth, the promotion is therefore a lottery, not a competition, and should have an Alternative Free Entry route. If an Alternative Free Entry route is relied upon, it must be a genuine, realistic and valid alternative, so it must be adequately promoted to all potential participants.

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 mechanic has been constructed to avoid falling into the definitions of "lottery", "gaming" or betting" within the Act, there are no registration or filing obligations. Otherwise, certain operating licenses need to be obtained from the Gambling Commission to avoid committing a criminal offence. Generally, marketers seek to avoid illegality or the need for a license. Bear in mind, however, that promotions often involve processing personal data, and therefore registration with the Information Commissioner's Office is likely to be required, if it has not already been fulfilled.

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 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.

A non-purchase method of entry is not required in England, Scotland or Wales. 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, paid texts, premium rate entrance routes, special delivery entrance routes or payments which are required to claim a prize will all constitute "payment".

Important—Northern Ireland: The law in Northern Ireland relating to sweepstakes and contests is different from the law in the rest of the United Kingdom (ie Great Britain), and, of course, entirely separate from the law in the Republic of Ireland. Discussions about reforming the law in Northern Ireland to align it with law in Great Britain have dragged on for many years but are not yet in place. Some promoters therefore offer a "No Purchase Necessary" route in order to ensure compliance in Northern Ireland; others simply restrict entrance to residents of Great Britain, excluding Northern Ireland; and others adopt a more robust strategy of assuming that if a UK-wide promotion is compliant with the Act, the risks of prosecution for a technical breach in Northern Ireland is low. Separate advice should be sought on this point.

Are there other forms of "consideration" which are prohibited in connection with entry into a chance-based game (eg, 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.

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 (eg, Twitter, Facebook, etc,) to see whether the action required in order to enter is permitted by the platform.

Are raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

There are further regulations which govern sweepstakes, raffles, competitions and prize draws run by non-profit corporations, or by a third party claiming that participation will benefit a registered charity. Rule 8 of the UK Code of Non-broadcast Advertising and Direct & Promotional Marketing ("CAP Code") sets out that marketers running these promotions are required to provide specific information to consumers. This information includes, but is not limited to, the name of the charity, details of its nature and objectives, how the charity will gain and how contributions are calculated and passed on to the beneficiary. In addition, any competition of this sort should not exploit children's susceptibility to charitable appeals. Promoters should be transparent as to whether a donation is voluntary or mandatory in order to win a prize and whether this affects a person's chance of winning. The Charities Act 1992 and the Charitable Fundraising Regulations require that any third party claiming that contributions will benefit a charity must enter into a written agreement with the charity, setting out the basic terms of the arrangement and the benefit that the charity will receive as a result of the third party's promotional venture.

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 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 that 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 (eg, 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 to the promoter in order to take up the prize. The terms and conditions should also deal with issues such as the requirement for the winner to have a full valid drivers' license and insurance in order to win a car, or to have a valid passport and any appropriate visa to win a holiday. The promoter does not have to pay these additional costs, but should make clear whether they are included.

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

Yes, the UK's CAP Code includes special rules regarding chance or skill-based games and other promotions targeted directly at children (aged under 16). The conditions of entry and closing dates must be made clear and whether any adult permission is required. Promotions targeted at children must not be likely to cause conflict between a child and their guardian. There is an absolute prohibition on promotions targeted directly at children which require a purchase to participate. These promotions should not encourage or include items which are intended for adults (eg alcohol).

In general, no promotion or competition should cause serious or widespread offence to consumers and special care should be taken to avoid causing offence based on the protected characteristics set out in the Equality Act 2010. The Equality Act protects consumers from discrimination based on race, religion or belief,

gender, sexual orientation, disability, age, marital status or pregnancy. Promotions limited to a specific audience should consider whether this may be deemed indirect or direct discrimination under the Equality Act. The UK's self-regulatory organization, the Advertising Standards Authority ("ASA"), which enforces the CAP Code, considers itself to have a duty as a "person exercising a public function" to prevent discrimination of this sort and will adjudicate accordingly.

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, 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 its 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 ("VAT") treatment of prizes is complex. In general terms, cash prizes should not create a VAT 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 of 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 (ie, 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 are 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 either a transfer of the equitable ownership or a license of the copyright. A suitably broad license may suffice for the promoter's purposes.

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 to require entrants to sign a liability release, provided that the terms of the liability or publicity release are brought to the attention of the winner prior to entry (eg, included in the Official Rules). However, it is not common (and usually it is not necessary) in the UK. Furthermore, there are limits on the types of liability that can be limited or excluded, and a US-style liability release will need to be amended for use in the UK (for example, liability for fraud, or for death or personal injury caused by negligence, cannot be limited or excluded). Publicity releases can be required, but, once again, in order to be enforceable, the terms of any such release need to be disclosed to all entrants in the Official Rules prior to entry.

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 (eg, 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 2018. As a general rule, the personal data must be obtained and processed fairly and consumers should be told the purposes for which their information will be used. Entrants' personal data may only be used if they have given their "informed consent". We recommend that personal data is not collected and used 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 ASA 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 ASA 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. The ASA's decisions are published on its website every week and remain online for 5 years.

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. Two particular problem areas are:

1. competitions where success is depended on voting, which can give rise to unintended results; and
2. promotions where a large prize pool is advertised, but only a small fraction of these prizes are actually awarded, often in the form of "winning moments" or "algorithmic promotions", which are coming under increasing adverse scrutiny from the ASA, as well as "compers", ie, people who make a hobby out of entering promotions, but who also exchange a great deal of information on social media.

Accordingly, we advise promoters to obtain legal advice at promotion concept stage.

UNITED STATES OF AMERICA

Are chance-based games (ie, 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 (ie, 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 sweepstake 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 (eg, 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)?

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 raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

Yes. A legal raffle typically arises under US law where:

(1) a participant provides something of value (consideration) to enter (including, eg, a donation);

(2) a winner is selected through a random drawing; and

(3) a prize is awarded.

Like other promotional games, such as contests and sweepstakes, raffles are regulated primarily through a patchwork of federal, state and local laws. However, unlike contests and sweepstakes—which may be run by for-profit entities—raffles may generally only be conducted by qualified non-profit entities that meet specific requirements. For instance, many states require that the non-profits must be classified as federal 501(c)(3)s (or the state equivalent) (ie, organizations classified as exempt from federal income tax) and that they be licensed and/or domiciled or resident in the state in which they are operating. Additionally, state raffle laws may impose registration and/or bonding requirements, restrict the size or nature of the prize, and place significant limits on the execution of the raffle itself: who may administer it (eg, only the nonprofit's employees); how and where it can be held; where tickets can be sold, etc. For example, the US Postal Service limits the ability to send raffle tickets through the mails, and California prohibits online sale of raffle tickets. The nature of these laws is thus such that it is functionally impossible to run a national, online "pay-to-play" raffle.

Charitable sweepstakes are a newer type of charitable promotion that permits entrants to donate as a method of entering a sweepstakes, while also providing a free alternative method of entry. There are a number of popular online platforms, such as Prizeo.com, Charitybuzz.com, and Omaze.com, that have adopted this model. In 2019–2020, the California Attorney General's Office targeted these platforms, and Prizeo.com and Charitybuzz.com received cease and desist orders; while Omaze.com was investigated and ultimately settled with the regulator by agreeing to make more clear and conspicuous disclosures of the free alternative method of entry. Some of the issues the California Attorney General looked at were: (a) whether the platforms were properly maintaining all required nonprofit fundraiser registrations, and (b) whether the disclosures, and particularly the free alternative method of entry, were clearly and conspicuously disclosed on the website.

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 US does not address this issue specifically. Promotional offers, regardless of whether they are chance-based games, 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 (eg, 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 (eg, you should not give away a car as a prize to a child under driving age).

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

Yes. For sweepstakes and contests that target children, as a general matter, federal law (the Children's Online Privacy Protection Act ("COPPA")) prohibits the collection of personally identifiable information from/about a person under 13-years-old without verifiable parental consent. Under the California Consumer Privacy Act and the GDPR, the relevant age is 16 and not 13. Under such circumstances, sponsors must obtain consent before selling the personal information of anyone under the age of 16 years old, and parents may request deletion of information at any time. In addition, the Children's Advertising Review Unit ("CARU") of the Better Business Bureaus has outlined sweepstakes-specific issues that sponsors must consider in developing their promotions or risk referral to the Federal Trade Commission ("FTC"), including:

- recognizing that children have unrealistic expectation about the chances of winning a sweepstakes or contest;
- disclosing the likelihood of winning in language that is readily understandable to children;
- disclosing the free alternative method of entry clearly;
- prizes must be appropriate to a child audience;
- online promotions should not request more information than is reasonably necessary, and information collection practices must comply with COPPA.

Employer-run promotions raise discrete issues often not found in public promotions. For example, employers should be careful when encouraging hourly employees to participate in activities as part of a promotion. In order to ensure such activities are not compensable, employers should be careful to ensure that they take place off-premises, outside of working hours.

The same principle is true with intellectual property that is created as part of an entry into a user-generated content contest. If an employee who does not normally create intellectual property for the sponsor creates the entry outside of normal working hours without using the sponsor's computers, then it clearly does not belong to sponsor except as expressly provided for in the rules and related documentation signed by the entrant.

Similarly, prizes awarded to employees are generally reportable as part of their income or salary. Employee giveaways are not generally subject to the sweepstakes registration and bonding requirements imposed by New York, Florida and Rhode Island.

In addition, state public accommodations and civil rights laws prohibiting discrimination may reach discrimination in sweepstakes and promotions made on the grounds of race, gender, ancestry and religion, marital status, sexual orientation, gender identity, and/or age-based discrimination. Interpretation of these statutes varies—some courts find discrimination in promotions violates the relevant state law on its face, while others balance harm with the rights protected. As an example, in 1985, the California Supreme Court, applying California's Unruh Act—which bars discrimination on the basis of "sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, or sexual orientation"—held that a car wash "Ladies' Day" discount was prohibited. More recently, the CA Superior Court found that a 2005 "Mother's Day" tote bag giveaway at an Angels' game was simply a gift and not a de facto discount, and therefore did not violate the Unruh Act.

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. In the US, 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 US $600 or more, a US entity awarding the prize must declare to the US 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 US taxpayer has received a prize of substantial value that should appear in their tax return for the year in which the prize was awarded. For sponsors who reside outside of the US and have absolutely no contacts within the US, there usually is no withholding tax obligation imposed. US sponsors who award prizes to non-resident winners will, in some instances, need to pay a withholding tax to the IRS based on a percentage of the prize value awarded outside of the US.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (ie, 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 make a prize award conditional upon 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 (eg, if all advertising is in English, can the Official Rules and website only be in English)?

In the US, most people speak English. If a promotional game or contest originates from outside of the US and is not translated into English, it is likely that few residents in the US will understand the rules and instructions, even if they are eligible to participate. However, there is no law that requires all offers to be in English. Generally, under US law, if advertising is in one language (eg, Spanish) the material terms or official rules must also be available in that language.

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 the collection and use of such information under COPPA (see above).

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 US residents are permitted to enter, then, most likely, the promotion is subject to US 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:

(1) ***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 the contest. In a closing letter, the FTC indicated that if a contest entrant posts content in social media in order to enter the contest, they must, in order to comply with the FTC's guidance on the use of endorsements and testimonials in advertising, disclose that the post is a contest entry.

(2) **South Carolina Attorney General Opinion**: In 2010, the South Carolina Attorney General indicated that an 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.

(3) **Premium text message entries**: In September 2011, after four years of litigation, Fox, NBC and several major production companies settled 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.

(4) ***Subway v Quiznos***: In February 2010, the US 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?

(1) 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).

(2) 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.

(3) Other

- Any promotion that includes a text message component should be reviewed for compliance not only with the applicable promotions law but also 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 US. 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 (ie, random draw promotions, instant win games) generally permissible?

Yes. There are three types of chance-based games regulated in Uruguay:

(1) Chance-based games in which the disbursement of a sum of money is required and cash is given as a prize;

(2) Chance-based games in which the disbursement of a sum of money is required for participation, but the prizes are not cash; and

(3) Chance-based games related to the consumption or promotion of certain products or services (random draw promotions).

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

Yes, skill-based contests are generally permissible. However, there are certain skill-based contests that are prohibited. For example, those that promote alcohol consumption (explicitly prohibited by Law No 19.855).

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:

(1) Those in which cash is given as a prize can only be carried out with the prior authorization of the National Directorate of Lotteries.

(2) Those in which the disbursement of a sum of money is required for participation but cash is not given as a prize must be communicated to the National Directorate of Lotteries at least 30 days before the drawing.

In addition, authorization of the National Directorate of Lotteries is required where:

(i) the tickets' value exceeds 2,000 index-linked units (approx US $60,000), or

(ii) the game is conducted by telephone, mail or similar means, irrespectively of the tickets' value.

The cost of this authorization is approx US $1,500.

When the tickets' value exceeds 2,000 index-linked units, the proceeds from the tickets must be used for the construction, repair or equipment of hospital premises, or official teaching facilities, or for the financing of study trips for students of officially authorized institutes of higher education. However, charitable institutions may be authorized to use the proceeds for other purposes when the institution has a recognized record as a charitable institution and the raffle has a high social aim.

Moreover, an additional authorization from the Municipal Government of Montevideo must be obtained in cases where the prize value (taxes included) exceeds 100 index-linked units (approx US $3,000) and the game takes place in Montevideo. This is regardless of whether it also takes place in other municipalities. Such authorization requires:

- prior authorization of the National Directorate of Lotteries;
- the payment of certain fees (approx US $50);
- a safety deposit equal to 20% of the prizes value including taxes (which is returned once the promotion is properly ended); and
- payment of a tax of 5% of the tickets' value for the first US $1,000 in ticket sales and 2% on excess.

(3) 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. This authorization must be requested at least 30 days before the beginning of the promotion. There is no cost for this authorization (except for the notary costs involved).

Authorization from the Municipal Government of Montevideo is also required when the prize value (taxes included) exceeds 100 index-linked units (approx US $3,000) and the game takes place in Montevideo. Application for such authorization must be done at least 20 days before the draw or the determination of the winner. Prior authorization from the General Trade Directorate is also required. Certain costs at the Municipality also apply.

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, a non-purchase method of entry must also be offered.

Promotions requiring the hiring of a service do not require the organizer to offer a non-purchase method to enter the promotion, unless the promotion is one requiring the authorization of the Municipal Government of Montevideo, in which case a non-purchase method 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 (eg, 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 in connection with entry into a chance-based game.

Are raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

Charitable institutions with a recognized track record may be authorized to carry out games of chance where the proceeds are to be used for purposes other than those expressly provided for in the regulations (construction, repair of hospitals, among others) for other entities, provided that the raffle has a high social impact.

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?

In so far as Uruguayan local residents can participate in a chance-based game or skill-based contest, the local regulation would apply. The winner determination process can occur in another country, but the local authorities may require that the organizer shows that the winner determination process complied with local regulations.

There are no exceptions for promotions developed 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 possible to combine all entries from all countries to determine the winners from a single pool. However, this must be explicitly declared within the game's terms and conditions.

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

The only restriction on prizes that can be awarded in chance-based games/skill-based contests is that related to cash prizes, which require authorization from the National Directorate of Lotteries (see above).

Notwithstanding this, local regulators, when authorizing chance-based promotions have accepted the granting of pre-paid cards for a determined amount of money as part of a prize.

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

There are no special rules. However, according to Uruguayan law, actions may not discriminate on the basis of race, skin color, religion, national or ethnic origin, disability, aesthetic appearance, gender, sexual orientation and identity.

Moreover, the participation of minors under 18 requires the consent of their parents, with some exceptions. It should also be noted that it is forbidden to provide minors with any type of content that incites illegal, violent, discriminatory or pornographic behavior, or promotes the consumption of socially undesirable products (alcohol, drugs, tobacco, gambling), or in any other way affects the rights of minors, or the principles recognized in the Constitution or in the laws.

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 only taxes linked to chance-based games are those charged by the Municipal Government of Montevideo when granting authorization (see above).

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (ie, 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 obtain a grant of rights on such entries, and such ownership can exist in perpetuity (or until the rights expire). Nevertheless, the only rights that can be granted to or owned by the sponsor/organizer are those of a patrimonial nature, and not those of a personal or moral one.

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 this is stated in the game's/contest's terms and 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 (eg, if all advertising is in English, can the Official Rules and website only be in English)?

The Official Rules, as well as all 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 Law 18,331 on Personal Data Protection and Habeas Data Action, in order to comply with the purpose limitation rule, the personal information provided by entrants/participants in a game/contest can only be used for the participation in the game/contest, and should be destroyed once it is no longer necessary for the purpose it was collected. In cases where the organizer wishes to use the information for promotional/marketing purposes, the prior consent of entrants must be obtained. Participants should not be prevented from participating in the game/contest if they do not want to grant consent for the use of their data for purposes other than mere participation in 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 effect within Uruguayan territory it will be subject to Uruguayan regulations. However, in practice, there is very low control on online games/contests, except for gambling sites, which require governmental authorization.

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, the 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?

Gambling activity is particularly regulated in Uruguay. It is a state-monopoly activity, and the government has only exceptionally authorized private parties to develop those activities. Online gambling restrictions are severely monitored by government and several sites have been blocked.

VENEZUELA

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

Yes, chance-based games are allowed; however, they must receive prior authorization from the Venezuelan National Superintendence for the Defense of the Socio-Economic Rights ("SUNDDE"). Promotions may not go on for longer than 3 consecutive months from the entry into force of the authorization, but no penalty is provided in case of non-compliance.

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

Yes, skill-based contests are allowed. Prior authorization by the SUNDDE is required. Promotions may not go on for longer than 3 consecutive months from the entry into force of the authorization, but no penalty is provided in case of non-compliance.

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, as stated above, both chance-based games and skill-based contests require prior authorization from the SUNDDE. The authorization must be requested no later than 15 days prior to the contest/game's start date. Official fees for filing an authorization request usually do not exceed US $120.

The SUNDDE will not authorize:

(i) promotions contrary to public order and morality;

(ii) promotions establishing prices outside the legal limits set forth in the regulations on fair costs and prices; or

(iii) applications filed by those who have been sanctioned under the regulations on fair costs and prices and have failed to pay the fines imposed.

These grounds for refusal strangely fail to include subliminal, false or misleading advertising, which are prohibited within the regulatory framework.

Activities not subject to this regulation are now listed, clarifying doubts that had been dragging on for years. These include:

- launching of a product;
- tastings;
- delivery of free samples; and
- acts of mere advertising of products and/or services.

Additional requirements apply in certain cases:

- 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, etc, must attach a prior 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 the two free port areas in the country, the processing of the permit must be made separately from those subject to the standard tax regime.

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 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 (eg, 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)?

These forms of consideration are allowed; however, it may also depend on the photo or video material concerned.

Are raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

The law does not distinguish between raffles or charitable sweepstakes; and there is therefore no regulatory difference.

However, the Law of Partial Reform of the National Lottery Law refers to lottery draws sponsored by the Official Institutions of Public Charity and Social Assistance and their regulation.

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 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?

The random draw/winner determination may occur in another country. In cases where it occurs in Venezuela, it should be certified by a notary. When the winner determination process occurs by means of software, the authorization should include a description of such software. There is no specific regulation where the promotion takes place solely online; however, in every case 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 neither sets forth nor prohibits this option; in consequence, it is permitted. However, travelling restrictions (eg, visa requirements) must be taken into account, as well as other prohibitions.

Are there any restrictions on the type, nature or value of the prizes (eg, 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 authorization application must include invoices for the prizes, and, in cases where a travel prize is offered, an estimated budget and itinerary should be filed.

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

The Organic Law for the Protection of Children and Teenagers establishes that it is prohibited for children and teenagers to enter premises or establishments where gambling or games of chance take place. Non-compliance will result in the immediate suspension of such activity, a fine, or the closure of the establishment for a period of five days.

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 assessed on a case-by case-basis, in order to determine whether a contest falls within the gambit of the Lottery Tax Act or the Law on Taxes on Gambling Activities.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (ie, 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 terms on which rights are to be transferred, in accordance with 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 the winner to 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 (eg, if all advertising is in English, can the Official Rules and website only be in English)?

Since chance-based games and skill-based contests are subject to authorization, the Official Rules should be filed in Spanish. The Official Rules should also be made available in Spanish.

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

The Official Rules must expressly establish the participants' consent to the 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?

It is worth noting that, in the event of infringement by the entity responsible for the promotion, sweepstake or contest, in addition to the imposition of penalties, the consumer or user may:

- enforce benefits or awards;
- terminate the contract, if the consumer/user paid an entry fee to participate in the activity; and/or
- request a refund of the entire amount paid, if there is good reason to establish dissatisfaction with the service provided or the product purchased.

ZIMBABWE

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

Yes; chance-based games are generally permissible

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

Yes; skilled-based games 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?

Yes; there are forms to be completed. The cost and deadlines vary with the type of license.

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 someone is required to make a purchase of a product are permitted. No, it is not required 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 (eg, 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" (as noted in the question) may be permitted. However, depending upon the facts and circumstances of the case, such other "consideration" may be prohibited.

Are raffles or charitable sweepstakes regulated differently than prize promotions offered by for-profit corporations?

Yes. Raffles or charitable sweepstakes are regulated differently than prize promotions offered by for-profit corporations. Raffles for charity organizations or schools do not pay any fees, whilst prize promotions organized by for-profit corporations pay license fees to conduct the promotions.

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

Promotions of which the winner is 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?

It is not clear in the Act if this is acceptable.

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?

Depending on the terms and conditions of the game (submitted when the license to conduct the game was applied for), and if the lottery and gaming board agrees, an organizer may determine the manner in which prizes may be won, including whether to combine all entries from countries to determine the winners for a single pool. It is important to note, however, that a lottery must not be promoted or conducted in Zimbabwe for a winner outside Zimbabwe.

Are there any restrictions on the type, nature or value of the prizes (eg, 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 prizes.

Are there any special rules for chance-based games, skill-based contests or other giveaways based on the audience that may enter (eg, sweepstakes for children, employee contests, ladies' night promotions, scholarships offered only to a minority group)?

Yes; there are special rules for chance-based games, skill-based contests or other giveaways based on the audience. For example, raffles, lotteries or sweepstakes are not permitted for children under 18 years of age (no form of activity regulated under the Lotteries and Gambling Act is permitted for children). With regards to employee contests, ladies' night promotions and scholarships, the Lottery Board would need full information in order to determine on a case-by-case basis if any special rule applies, depending on the nature of activity.

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 are tax liabilities associated with prizes. Usually, the winner is responsible for them.

For skill-based contests, is it generally permissible for the sponsor to own the entries submitted and/or obtain a broad grant of rights (ie, 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 depends on the term and conditions that have been approved for the 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.

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 (eg, if all advertising is in English, can the Official Rules and website only be in English)?

No, it is not required to have Official Rules and advertising materials in the native languages of Zimbabwe. Although Zimbabwe has several "native"/local languages, of which Shona is the primary language, the official language for Zimbabwe is English. Therefore, the language of the advertising materials must be in English.

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

Depending upon the facts and circumstances of the case, personal information can be used if the participants are over 18 years of age and agree to their information being used.

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 law covering chance-based games or skilled based contests that take place solely online. However, there may be foreign currency restrictions for participants in Zimbabwe if payment of foreign currency is required to participate in the game/contest.

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 most important thing to note is that a lottery must not be promoted or conducted in Zimbabwe for a winner outside Zimbabwe.

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