

PORTUGAL

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Is there case law or any statutory regulation governing advertising and promotion incentives? Are there any special consumer protection laws? What role do free gifts, tie-in offers, sweepstakes, rebates and other benefits, play in this context?

The main statutory regulation with respect to advertising and promotion incentives is the Advertising Code (Decree-Law 330/90, of October 23rd as subsequently amended) which regulates advertising in general and Decree-Law 70/2007 of March 26th, 2007, which regulates discounts and special sales.

Consumer's protection is assured by the Law nº 24/96 of 31 July amended by Decree-Law 67/2003 of April 8th and also by Decree-Law 143/2001 of 26 April which regulates consumers' protection regarding agreements entered into at a distance.

Sweepstakes and all games dependant on luck or skill and luck combined, are forbidden according article 21^o of the Advertising Code. However, according the Decree-Law 422/89, of December 2nd, 1989, as amended by Decree-Law 10/95 of January 19th, 1995, it is possible to structure a promotion, namely sweepstakes, raffles, lotteries and advertising contests, as long as they are subject to a previous authorization from the Local Authority (Civil Government).

Concerning rebates and other benefits (promotions, liquidations and prices with rebates), Decree-law nº 70/2007 of March 26th, 2007 provides for the conditions and restrictions under which these kinds of sales may be executed.

Regarding tie-in offers, the Decree-Law 143/2001 of April 26th prohibits the selling of a product or service with the condition that the consumer acquires another product or service to the same supplier, except if such products are complementary.

In your jurisdiction, are there any industry sectors which are subject to special regulations for advertising and promotion incentives (for instance the health products and pharmaceutical industries in some countries)? Please name applicable statutes and self-regulatory codes.

Yes. In fact, in Portugal there are some industry sectors which have special regulations concerning promotions and advertising:

- (i) Tobacco: Law 37/2008 of August 14th which regulates specifically the advertising and promotions concerning tobacco products, by generally prohibiting them;
- (ii) Medicines: Decree-Law 176/2006 of August 30th which regulates particularly the medicines to use in humans, limiting the possibility to advertise them to a great extent;
- (iii) Games dependant on luck: Decree-Law 422/89, of December 2nd, 1989, as amended by Decree-Law 10/95 of January 19th, 1995, which subjects them to an authorization from a Local Authority (Governo Civil)
- (iv) Financial Products: The Advertising Code, Consumer Law, Consumer Credit Law, and Financial Institutions Regulations establish that the advertising regarding financial products and services must be, in a general manner, respectful of the law and of the principles of veracity and protection of consumers;
- (v) Insurances: Decree-Law nº 176/95 of July 26th amended by the Decree-Law nº 357-A/2007 of October 31 establishing that in all advertising it should be clearly indicated that the amounts secured by insurance contracts depend on the progress of the "reference value" motioned in the insurance policy, and that there is the possibility of inexistence of a minimum capital;
- (vi) Alcohol: Although there is no special regulation, the Advertising Code stipulates many restrictions regarding alcohol advertising;
- (vii) Cosmetic Products: Decree-Law 142/2005 of August 24th amended by Decree-Law 86/2006 of May 11th

and by the Decree-Law 179/2007 of May 8th that determine the conditions concerning advertising of cosmetic products, namely non attributing them any healing or therapeutic capabilities.

There are also some codes of conduct which provide general ethic principles regarding advertising conducts, such as the Code of Conduct of Professionals of the Portuguese Marketing Association, Code of Conduct of Credit Institutions Association and the Code of Conduct of the Advertising and Self-Discipline Civil Institute

Does industry self-regulation replace or supplement government and legislative regulation of advertising and promotion incentives? Is self-regulation an effective tool?

Self-regulation does not replace, but only supplements existing regulations. In fact, self-regulation and codes of practice have gained much importance in recent years. Self-regulation and codes of conduct have proven effective and important with respect to bringing some ethics to advertising. There are some self-regulatory bodies as the Advertising and Self-Discipline Civil Institute (ICAP), Portuguese Association of Advertisers (APAN), Portuguese Association of Advertising and Communication Companies (APAP), Portuguese Association of Direct Marketing (AMD), Association of Promotion and Multimedia in Portugal (APMP), Professionals Marketing Portuguese Association (APPM).

To what extent do promotional incentives extended to staff in public institutions pose legal issues in your jurisdiction (i.e., paying for travel and accommodation costs on the occasion of conferences, personal entertainment, hidden education sponsoring, sponsoring of school snacks for promotional purposes)?

Portuguese laws and regulations do not provide for any special regulation regarding this type of incentives. The only applicable rules are the general rules laid down in the Administrative Procedure Code and Criminal Code. The Criminal Code establishes some general rules concerning active and passive corruption and the Administrative Procedure Code determines some reasons that may give rise to suspicion regarding the person who intervenes in an administrative process.

Are there any formal disclosure requirements for promotional incentives (i.e., rule of separation of procurement from personal dealings, rules of employer consent requirements, written form requirements, adequacy of consideration granted for a service)?

As far as we are aware of, there are no written rules in Portuguese law specifically addressing this issue. However, we believe that the general principles indicated as an example in the query would apply in order not to fall under the existence or suspicion of active or passive corruption.