



PRIZE PROMOTIONS AROUND THE WORLD

Argentina



Downloaded: 06 Mar 2021

PRIZE PROMOTIONS AROUND THE WORLD

ABOUT

Welcome to the fourth edition of DLA Piper's popular Guide to Prize Promotions Around the World. Prize promotions remain a popular marketing tool used globally by businesses to attract customers. The internet and various social media platforms make this an attractive, cost efficient means of reaching a large, multi-jurisdictional customer base; but it is not without its legal challenges.

This handbook is designed to equip our clients with a useful tool to assist them with the management of the early development stages of a promotion, and to bring potentially problematic issues to their attention as soon as possible.

NEW FEATURES AND TRENDS

In response to client demand, this fourth edition of the Guide has been expanded to cover 39 jurisdictions which count among the most significant for our clients, with the addition of Denmark, Hungary, Nigeria and Turkey.

As our interactive map shows, the extent of regulation and sanctions in this area is on the rise, with the most noticeable change being brought about by the introduction of GDPR across the EU. GDPR extends obligations around handling promotion entrants' personal data (eg for winner publicity, use of promotions to generate marketing leads and use of UGC entries containing personal data), and introduces the possibility of huge fines for breaches of those obligations.

ABOUT OUR GLOBAL ADVERTISING AND MARKETING TEAM

The DLA Piper global advertising and marketing team is well-versed in handling complex, frequently multi-jurisdictional compliance projects. This includes advising on compliance aspects of international prize promotions, which we are often asked to clear across large numbers of jurisdictions, while working to short deadlines.

More broadly, our global advertising and marketing team is able to support the full range of advertising-related work, from copy clearance to dealing with advertising regulators and litigation, to negotiating advertising and sponsorship deals, to e-privacy issues and ad-tech. Our advertising and marketing lawyers offer deep understanding of the advertising and media industries, and combine this with a sophisticated approach to cross-border working.

DISCLAIMER

This Guide is not a substitute for legal advice. Nor is it intended to be an exhaustive guide to all rules and regulations relating to promotions in the jurisdictions covered, or to cover all aspects of the legal regimes surveyed, such as specific sectoral requirements. Rather, it aims to simplify what are often complex provisions into a more manageable summary and to highlight areas of potential concern to promoters. It is current as at the last modified date stated in each section.

PRIZE PROMOTIONS AROUND THE WORLD

ARGENTINA



Last modified 08 January 2019

GOVERNING LAW

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

Name	Law or Code?
The Civil and Commercial Code of the Argentine Republic ('CC Code')	Code
The Commercial Loyalty Law (Law number 22,802 as amended)	Law
Customers' Protection Law (Law number 24,240 as amended)	Law
Personal Data Protection Law (Law number 25,326 as amended)	Law
Decree 961/2017 and Resolution 915/2017 (of the Secretariat of Commerce modified the regulations of the conditions for those who organize or promote contests, draws and sweepstakes with the aim of simplifying certain formalities)	Law

Note: Prize promotions regulations in Argentina are the responsibility of each province. Argentina is subdivided into twenty-three provinces (provincias) and one autonomous city, the 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. Organisers/sponsors must be aware of the applicable legislation for the provinces included within the territory.

PRIZE PROMOTIONS AROUND THE WORLD

EXTRA-TERRITORIALITY

Do national regulators enforce rules against entities operating abroad?

Yes. Even when a chance-based game or skill-based contest is solely online and no promotion takes place in Argentina, if it is open to Argentinean residents, it will be subject to the laws of our country. As a consequence, national regulators might enforce rules against organizers/companies operating abroad.

SKILLS COMPETITIONS

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

Yes, but ensure that:

- The purchase of a product or service is not a requirement in order to be able to participate in the promotion; the elements required to enable a person to participate should be made available for free to anybody willing to participate;
- No element of chance should be used to determine the winner of the promotion;
- The Rules are available in Spanish; and
- You disclose information regarding prizes, territorial scope and participation requirements.

PRIZE DRAWS

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

Yes, but ensure that the purchase of a product or service is not a requirement in order to be able to participate in the promotion. The elements needed to enable a person to participate must be made available for free to anybody willing to participate.

SELECTION OF WINNERS

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

The terms and conditions of the promotion must be made available to the public and the process through which the winners shall be determined needs to be clearly established, including dates and place where the process will take place. It is suggested that the process be supervised by a Notary Public.

If the awards are to be determined by chance, the mathematic adjudication used to determine the winner needs to be provided; if this is not possible, an approximate estimation of it needs to be provided.

The names of the winners shall be published within ten (10) days, counted from the end of the promotion, by the same media used to promote the contest/promotion.

The terms and conditions should indicate date and place where the prizes will be delivered.

PRIZE PROMOTIONS AROUND THE WORLD

JUDGES

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

There are no legal requirements in relation to judges and judging in skill competitions. However, the judging criteria should be clearly stated within the Rules and it's advisable to include the list of judges.

PRIZES

Are there any restrictions on the prizes awarded?

Prizes awarded must be as described in their marketing communications, or reasonably equivalent to the description.

No forbidden and/or illegal goods should be awarded as prizes.

REGISTRATION REQUIREMENTS AND FEES

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

Note that in February 2018, the government of Argentina dissolved the National Lottery (LNSE). As a result, at least for now, Argentina no longer requires sweepstakes and contests to be registered. Prior to the dissolution, only promotions/contests in which the winners were totally or partially determined by chance – involving prizes greater than 6,666 Pesos (approx. US\$148) – needed to be registered with LNSE and had to meet all the applicable requirements.

With regard to skill-based contests, they do not require registration. However, the Official Rules must conform to local law. When a prize is awarded to a winner selected by chance a 31% special tax is levied. If the prize is cash, the entity awarding it must withhold and pay for the tax. If the prizes are goods the beneficiary must provide the entity awarding the prize the amount of money requested to pay for the special tax. Specific provincial taxes may apply in different jurisdictions.

OTHER LOCAL REQUIREMENTS

Are there any other key local requirements?

Promoters must provide certain and detailed information in relation to the prize promotion, including the essential characteristics of the prizes offered, and any other relevant terms.

Conditions expressed in advertisements, brochures, circular letters or any other media are considered to be included in the contract concluded with the consumer, as binding terms.

In such respect, Organizsers must comply with the requirements as established by Decree 961/2017 and Resolution 915/2017 of the Secretariat of Commerce.

TIMING

Is time required to ensure compliance (other than reviewing the terms and conditions)?

For chance-based promotions, time is required to request the permit from the Provinces that regulate

PRIZE PROMOTIONS AROUND THE WORLD

contests/promotions at a local level. Time and costs involved may vary depending on the Province.

Note that Provinces regulating promotions/sweepstakes at a local level can be excluded in order to avoid compliance with local regulations.

TRANSLATIONS

Are the terms required to be translated by law?

Yes, the terms and conditions must be provided in Spanish.

PENALTIES FOR NON-COMPLIANCE

What are the penalties for non-compliance?

According to the Commercial Loyalty Law, the penalties for non-compliance are the following:

- Fines from AR\$500 (approximately US\$11) to AR\$ 5,000,000 (approx. US\$111.000);
- Suspension for up to 5 years from the providers registries that allow promoters to conclude contracts with the State;
- Loss of concessions, tax or special credit benefits;
- Closure of the facility for up to 30 days.

According to the severity of the breach, and if it is convenient, publication of a notice of the penalty in the same media may occur.

In case of fraud, criminal actions may be initiated.

RESTRICTIVENESS OF REGULATIONS

How restrictive are the legal obligations applicable to prize promotions?

Due to the recent dissolution of the National Lottery there are only a few restrictions on prize promotions in Argentine national regulations. However, as previously mentioned, some provinces like Mendoza, Córdoba, Salta, Neuquén and Tierra del Fuego have their own local regulations. In addition, forbidden acts under the Competence Defense Law must be avoided. Advertisements that contain false indications, lead or could lead to mistake and/or are abusive, discriminatory, or lead the consumer to behave in a dangerous or harmful way, must be avoided as well.

REGULARITY OF SANCTIONS

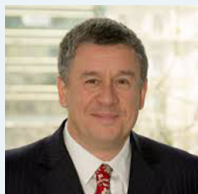
How frequently does the regulator impose serious sanctions for non-compliance?

Fines and prison sentences are rarely imposed.

Generally, in cases of breach, a complaint is submitted to the Consumer's Defense Office, where a monetary sanction can be applied to the non-compliant entity, and it can also be requested that the

misleading advertisement be deleted.

KEY CONTACTS



Ignacio J. Randle
Partner
Estudio Randle
irandle@randlelegal.com
T: +54 11 5252 0700



Alejandro M. Massot
Partner
Estudio Randle
amassot@randlelegal.com
T: +54 11 5252 0700

Disclaimer

DLA Piper is a global law firm operating through various separate and distinct legal entities. Further details of these entities can be found at www.dlapiper.com.

This publication is intended as a general overview and discussion of the subjects dealt with, and does not create a lawyer-client relationship. It is not intended to be, and should not be used as, a substitute for taking legal advice in any specific situation. DLA Piper will accept no responsibility for any actions taken or not taken on the basis of this publication.

This may qualify as 'Lawyer Advertising' requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.

Copyright © 2017 DLA Piper. All rights reserved.