



PRIZE PROMOTIONS AROUND THE WORLD

Austria



Downloaded: 30 Sep 2020

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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.

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AUSTRIA



Last modified 10 January 2019

GOVERNING LAW

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

Name	Law or Code?
Games of Chance Act (Glücksspielgesetz, 'GSpG')	Law
Criminal Act (Strafgesetzbuch, 'StGB'): s. 168 StGB	Law
Consumer Protection Act (Konsumentenschutzgesetz, 'KSchG')	Law
Unfair Competition Act (Gesetz gegen den unlauteren Wettbewerb, 'UWG') – General Provisions	Law
E-Commerce Act (E-Commerce-Gesetz, 'ECG') - relevant where prize promotions are offered online	Law
EU General Data Protection Regulation (GDPR) Data Protection Act (Datenschutzgesetz, 'DSG')	Law

EXTRA-TERRITORIALITY

Do national regulators enforce rules against entities operating abroad?

Yes, the courts will apply and enforce domestic provisions in relation to prize promotions, which are published on foreign media, but directed at the domestic public, especially if published on the internet.

As concerns data protection issues, the GDPR applies also to entities not established in the EU if they

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offer goods or services to data subjects in the EU or monitor their behaviour.

SKILLS COMPETITIONS

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

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

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

In addition:

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

PRIZE DRAWS

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

Unlawful, unless:

- Participants do not pay to enter.

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

- The promotion does not invoke a psychological pressure on participants to buy the promoted products or services; and
- The conditions for participation are stated clearly and unambiguously.

Note: If participants pay to enter, in order to participate, a license, granted under the Austrian Games of Chance Act, is required.

SELECTION OF WINNERS

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

The conditions for both skills competitions and prize draws, including for the awarding of the prizes, have to be transparent to participants.

JUDGES

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

The applicable laws on prize promotions do not include a provision regarding the selection of judges or judging for skill competitions.

Nevertheless the conditions for skill competitions and prize draws have to be transparent and easily accessible for participants (Art. 6 Sec 1 Cif 4 ECG).

PRIZES

Are there any restrictions on the prizes awarded?

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

A promotion is deemed aggressive if a false impression is given to the consumer that the prize has already been won, will be won, or will be won upon undertaking specified activities and:

- There is no prize or benefit; or
- The prize will be awarded only upon paying an amount or assuming costs.

REGISTRATION REQUIREMENTS AND FEES

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

Registration Requirements

Certain prize draws (e.g. lotteries) require an authorization from the Ministry of Finance and are subject to strict regulations.

Fees / Taxes payable

Certain prize draws (e.g. lotteries) require payment of taxes.

Prizes from promotional free of charge games are subject to a tax of 5% of the total value of all prizes (if the value of all prizes exceeds €10,000 (approx. US\$11,203). The prize promotion organizers or contracting parties are liable for the tax.

OTHER LOCAL REQUIREMENTS

Are there any other key local requirements?

For business-to-consumer promotions, supporting terms and conditions must be in German.

For business-to-business promotions the use of German language is recommended but not mandatory.

TIMING

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

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Austrian laws do not require any registration of terms and conditions of prize promotions.

But time should be allowed to deal with data protection issues (e.g. ensuring an appropriate privacy policy is in place and including appropriate tick box functionality for consents).

TRANSLATIONS

Are the terms required to be translated by law?

For promotions aimed at consumers, the terms and conditions must be in German.

In respect of business-to-business promotions, the use of German language is highly recommended but not mandatory.

PENALTIES FOR NON-COMPLIANCE

What are the penalties for non-compliance?

According to Art.168 Sec 1 Criminal Code the organization of a game in which profits and losses exclusively or predominantly depend on chance or which is expressly prohibited may result in monetary fines of up to 360 times the daily rates* of the conducting person's average daily income or imprisonment for up to six months.

(*The court determines a certain amount of the fine dependent on the economic capacity of the infringer. A daily rate for an individual may range from €4 – €5,000 (approx. US\$4,400 – \$5,600). Businesses conducting such games are subject to a monetary fine of up to 40 times the business's average daily profit (calculated by dividing the annual return by 360).)

Art.52 Games of Chance Act provides for administrative penalties when violating provisions of this Act.

The conduct of illicit draws is punished by the authority with a fine of up to €22,000 (approx. US\$24,646).

The E-Commerce Act includes administrative penalties with a fine of up to €3,000 (approx. US\$3,361) in Art. 26, when violating the information requirements (transparent and easy access to the conditions) applicable to prize promotions.

Unlawful conduct of promotional games may be determined as misleading practice under the Austrian Unfair Competition Act, especially if the announced prizes are not awarded.

In such cases civil claims for injunctive relief, for cease and desist and for damages can be filed as well as a claim for publication of the judgment can be made.

Additionally the confiscation of infringing products can be ordered by the authority according to Art. 53 Games of Chance Act.

Finally, there is the possibility that the personal data processing aspects of the promotion could breach GDPR, which has maximum fines of up to the higher of:

- €20 million, or

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- 4% of the promoter's worldwide annual revenue.

RESTRICTIVENESS OF REGULATIONS

How restrictive are the legal obligations applicable to prize promotions?

In Austria there are only a handful of provisions setting out requirements regarding prize promotions. Those provisions are not unduly onerous, as there is no registration or other formality requirement. Therefore most prize promotion mechanisms are allowed as long as it is not a game of chance as defined by applicable Austrian gaming laws. Also the provisions of the Unfair Competition Act prohibiting misleading or aggressive prize promotions need to be complied with. Finally, GDPR has introduced various obligations around processing personal data which have significant application to prize promotions (eg. use of submissions including personal data, winner publicity, etc.).

REGULARITY OF SANCTIONS

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

Administrative fines are rarely imposed by the competent regional administrative authorities (Bezirksverwaltungs-behörden). In the few existing cases the fines have always been moderate.

Note: Prize draws that are games of chance, as defined under the Austrian Games of Chance Act, require a license. Their operation without a license is a criminal offense.

Misleading practice due to unlawful conduct of promotional games often give rise to complaints of competitors. A few complaints result in proceedings in front of the courts.

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