



# PRIZE PROMOTIONS AROUND THE WORLD

Belgium



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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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## BELGIUM



Last modified 14 January 2019

### GOVERNING LAW

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

Name	Law or Code?
Games of Chance Act 1999, as amended	Law
Lotteries Act 1851	Law
Code of Economic Law 2015, including rules on fair terms in consumer contracts and rules in relation to unfair commercial practices	Law
Privacy Act 2018, as a transposition and specification of the European General Data Protection Regulation	Law

### EXTRA-TERRITORIALITY

*Do national regulators enforce rules against entities operating abroad?*

Yes, this is possible as the respective rules are criminally sanctioned. However, as a general observation, the enforcement risk against foreign operators seems rather low.

An exception to that last statement should be made for prize promotions which fall under the ambit of 'games of chance' (poker games, casino games, etc), which are heavily regulated and enforced by the Belgian Gaming Commission, including through actions against operators established abroad.

### SKILLS COMPETITIONS

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

Yes, but it should be ensured that the winner is selected only on the basis of his physical or intellectual

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skill, not on chance (not even partly). The skill involved should be sufficiently convincing (e.g. not: What is your name?, which requires no effort). There is no need to involve an external jury to assess the entries made in this respect.

Specific rules may apply in cases where the winner is selected on the basis of both skill and an element of chance (see [Prize Draws](#) section).

## PRIZE DRAWS

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

Lawful, provided:

1. The promotion also involves some degree of physical or intellectual effort, hence the promotion does not solely depend on chance. If no effort is required from the participant or the required effort is too hard (e.g. a very difficult question, like how many people will participate in the promotion, so that it comes down to guessing), the contest is to be considered a prohibited lottery (note: a company can organize a lottery in collaboration with and through a not-for-profit organization that has obtained a license from one of the competent public authorities but this is likely to substantially increase the cost of the promotion).

And

2. Participants do not pay to enter. 'Payment' is interpreted to mean any stake or direct contribution required from the participants to enter, eg any price to be paid or the obligation to purchase goods or services at a price higher than its market rate (i.e. purchasing a newspaper containing a participation form at its normal price is not considered a stake from the participants). Internet connection, mail and phone costs (with the exception of phone calls to an 0900- or an 070-number (i.e. at higher rates) and premium text-messages) are not considered to be a stake from the participants.

Or, if it is the case that (2) is not applicable (hence, participants do need to pay to enter the promotion):

3. A license is obtained from the Belgian Gaming Commission (required both for the offline and online offering of games of chance)

## SELECTION OF WINNERS

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

None but it is strongly recommended to set out requirements (e.g. age) and restrictions in a terms and conditions document, especially as the promotions will often be offered to consumers (filing the terms and conditions with a notary public is not required by law).

There is no formal requirement to involve an external jury, judge or panel to select the winners, but doing so may decrease the risk of disputes afterwards.

## JUDGES

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

There is no formal requirement to involve an external jury, judge or panel to select the winners, but doing so may reduce the risk of disputes afterwards.

## **PRIZES**

### *Are there any restrictions on the prizes awarded?*

Generally, none.

If a company organizes a lottery in collaboration with and through a not-for-profit organization that has been granted a license to organize lotteries (see [Prize Draws](#) section), the prize awarded may not, in general, consist of the payment of money.

## **REGISTRATION REQUIREMENTS AND FEES**

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

#### **Registration Requirements**

There is no requirement to register prize promotions.

Games of chance (involving an element of chance and requiring the participant to make a stake) can only be offered by companies that have obtained a license from the Belgian Gaming Commission (in principle: casinos, arcades and betting shops). The number of these licenses is limited.

Lotteries (solely depending on chance) are generally prohibited and can only be organized by the Belgian National Lottery or, after formal approval, by some non-profit organizations for charitable purposes. In the latter case the competent authority for providing formal approval depends on the geographical scope of the lottery. Companies can work together with such approved not-for-profit organizations.

#### **Fees/Taxes payable**

These licensed companies for games of chance as referenced above in 'Registration Requirements' are subject to a specific tax regime.

In the current interpretation and enforcement of the legislation relating to lotteries, no specific taxes are being imposed on the organizing company.

## **OTHER LOCAL REQUIREMENTS**

### *Are there any other key local requirements?*

It is recommended that supporting terms and conditions appear in Dutch and French if the prize promotion targets consumers.

Significant conditions, or information which, if omitted, is likely to mislead, must be communicated before purchase or, if no purchase is necessary, before entry into the promotion. Examples of significant conditions include: restrictions on entry (eg age, geographical), how to participate, costs of

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participating, start and close dates, details of prizes (and restriction of prizes).

**Note:** Where there are space limitations e.g. Twitter/banner ads, you must communicate as much information as possible and direct the entrant to where all significant terms are stated.

A promoter's name and address must be stated unless it is obvious from the context.

The Code of Economic Law (which carries potential criminal liability for breach) specifically prohibits claiming to offer a prize without awarding it, and creating a false impression that a consumer has won a prize.

## TIMING

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

No, although time should be allowed to deal with data protection issues (eg 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?*

Yes, Dutch and French language versions are required if the prize promotion targets consumers.

## PENALTIES FOR NON-COMPLIANCE

*What are the penalties for non-compliance?*

In the case of prohibited games of chance:

- In the case of unlawful operation of games of chance:
  - For individuals: fines from €800 (approx. US\$896) to €800,000 (approx. US\$896,223) and/or imprisonment from 6 months to 5 years;
  - For companies: fines from €24,000 (approx. US\$26,887) to €1,600,000 (approx. US\$1,792,450).
- In the case of advertising, facilitating the operation or recruiting players for unlawful games of chance:
  - For individuals: fines from €208 (approx. US\$233) to €200,000 (approx. US\$224,056) and/or imprisonment from 1 month to 3 years;
  - For companies: fines from €4,000 (approx. US\$4,481) to €576,000 (approx. US\$645,281).

In the case of prohibited lotteries:

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- The perpetrators, administrators, agents or employees:
  - For individuals: fines from €400 (approx. US\$448) to €24,000 (approx. US\$26,887) and an imprisonment from 8 days to 3 months;
  - For companies: fines from €4,000 (approx. US\$4,481) to €48,000 (approx. US\$53,773).
- Those who have distributed unlawful lottery tickets:
  - For individuals: fines from €208 (approx. US\$233) to €8,000 (approx. US\$8,962) and an imprisonment from 8 days to 1 month or only one of these sanctions;
  - For companies: fines from €4,000 (approx. US\$4,481) to €16,000 (approx. US\$17,924).

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 (approx. US\$22.4m); or
- 4% of the promoter's worldwide annual revenue.

## RESTRICTIVENESS OF REGULATIONS

*How restrictive are the legal obligations applicable to prize promotions?*

The rules in Belgium allow for the organization of prize promotions quite easily without formal requirements. Having said this, it should be taken into account that certain prize promotion mechanisms are prohibited in Belgium and can therefore not be organized. Also, 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?*

For lotteries, there is low enforcement.

For games of chance, enforcement is high.

### KEY CONTACTS



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