



# PRIZE PROMOTIONS AROUND THE WORLD

Brazil



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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.

# PRIZE PROMOTIONS AROUND THE WORLD

## BRAZIL



Last modified 10 January 2019

### GOVERNING LAW

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

Name	Law or Code?
Federal Law No. 5,768, of December 20, 1971 ('First General Regulation on Promotions')	Law
Decree No. 70,951/72, of August 9, 1972 ('Decree 70.951') (provides specific regulations on Promotions)	Law
Ordinance MF No. 41/2008, of February 19, 2008 ('Ordinance 41') Updated general regulation of promotions	Law
Ordinance MF No. 422/2013 (related exclusively to Cultural Promotions)	Law
Federal Law No. 13,756/2018, of December 18, 2018 (changes the competence authority to deal with matters relating to Promotions from CAIXA to SEFEL)	Law

### EXTRA-TERRITORIALITY

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

Yes. The Brazilian laws/rules are considered to apply to prize promotions in Brazil, including promotions operated purely online.

Prize promotions in Brazil require prior approval from the Ministry of Treasury, through its internal department named Secretariat for Fiscal, Energy and Lottery Accompaniment ("SEFEL").

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Although the laws are silent regarding prize promotions organized by entities operated abroad, the First General Regulation on Promotions set forth that promoter entities must perform commercial, industrial, service and/ or real estate activities, as well as being in compliance with all tax payment and social security obligations. For that purpose, prize promotions can only be organized by companies duly registered in Brazil with a valid Corporate Taxpayer Identification Number (CNPJ/MF), which means that foreign companies must run prize promotions through their Brazilian subsidiary or in partnership with a Brazilian company that is in compliance with said requirements.

The only exceptions to the requirement for approval occurs in case of exclusively cultural promotions, in which no marketing purpose is involved, and prize promotions organized by public entities.

The distribution of the prize may be based on three different formats of prize promotions: Prize Draws (Sorteio), Coupons (Vale-Brinde) or Contests (Concurso).

Finally, with respect to language, the law is very protective towards consumers, and it is necessary to offer all information and content in Portuguese.

## SKILLS COMPETITIONS

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

Yes.

For the contest (Concurso) form of prize promotion, a contest occurs through intelligence tests, selection of predictions, calculations, or similar competitions of any nature. It is required that the conditions of promotions are applied uniformly, so as to guarantee equal treatment and opportunity for everyone interested in participating in the prize promotion.

Promoters may provide that entry is subject to the participant presenting or delivering a label, wrapping, or packaging and/ or satisfying any requirements, preconditions or stipulations required by the promoter, relating to the products or commercial activity of the promoter, provided that said material does not constitute a series of multiple labels/wrappers/ packaging (see [Other local requirements](#)).

## PRIZE DRAWS

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

Yes.

For the prize promotion formats known as Prize Draws and Coupons, winning is connected to chance.

Firstly, with respect to Prize Draws, assigned numbers must be issued and distributed concomitantly, randomly and equitably.

As regards to the Coupons format of prize promotion, the method of winning is instantaneous, as it occurs by the winning coupon or prize being discovered inside the product or its packaging. This must be done in accordance with rules set forth by government agencies responsible for public health and control of weights and measures. In this case, the maximum value of the prize cannot exceed R\$400.00 (approx. US\$100).

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## SELECTION OF WINNERS

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

Promoters must guarantee that the prize promotion is conducted and the distribution of the assigned participation numbers are made in a concomitant, random and equitable way.

The authorized entity will be the one responsible for identifying and notifying the winners. In case the winner does not collect its prize in up to 180 days, its right will be forfeited and the promoter must pay a corresponding sum as income to the state. Brazilian law does not allow the promoter to find an alternative winner.

## JUDGES

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

There is no provision in this regard under Brazilian Law.

## PRIZES

*Are there any restrictions on the prizes awarded?*

Yes. The distribution of cash prizes and the conversion of prizes to cash is prohibited. Also, promoters may not distribute as prizes: medicines, weapons and ammunition, explosives, fireworks, tobacco and derivatives, alcoholic beverages above a certain alcoholic content.

Furthermore, prizes must not:

- Be related to or encourage gambling;
- Generate an immoderate profit for promoters;
- Impact negatively on the education of a child or adolescent;
- Involve coupons or any other thing that imitates or resembles the national currency.

General authorized prizes that are distributed in Brazil are:

- Goods produced in Brazil or regularly imported;
- Residential units, located in the country or in urban areas;
- Tourism trips (encompassing the transport from the residence to the destination and from the destination to the residence of the winner, lodging and at least one meal);
- Scholarships;
- Tickets to concerts, parties and plays, along with a physical prize of any value.

## REGISTRATION REQUIREMENTS AND FEES

# PRIZE PROMOTIONS AROUND THE WORLD

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

An Authorization Certificate permit must be obtained from SEFEL.

The fee to apply for this Authorization will depend on the prize total value:

Prize Value	Fee
Up to R\$ 1,000.00 (Up to approx. US\$250)	R\$ 27 (US\$7)
From R\$ 1,000.01 to R\$ 5.000.00 (From approx. US\$ 250 to US\$ 1,254)	R\$ 133 (US\$ 33)
From R\$ 5.000,01 to R\$ 10.000.00 (From approx. US\$ 1,254 to US\$ 2,507)	R\$ 267 (US\$ 67)
From R\$ 10,000.01 to R\$ 50.000.00 (From approx. US\$ 2,507 to US\$ 12,536)	R\$ 1,333 (US\$ 334)
From R\$ 50,000.01 to R\$ 100,000.00 (From approx. US\$ 12,536 to US\$ 25,072)	R\$ 3,333 (US\$ 836)
From R\$ 100,000.01 to R\$ 500,000.00 (From approx. US\$ 25,072 to US\$ 125,360)	R\$ 10,667 (US\$ 2,674)
From R\$ 500,000.01 to R\$ 1,667,000.00 (From approx. US\$ 125,360 to US\$ 417,951)	R\$ 33,333 (US\$ 8,357)
Above R\$ 1,667,000.01 (Above approx. US\$ 417,951)	R\$ 66,667 (US\$ 16,715)

**Note:** Fees as at 10 January 2019 and subject to change.

## OTHER LOCAL REQUIREMENTS

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

The maximum value of a prize will be fixed based on the operating income of the promoter or the nature of its economic activity, so as not to distort the market.

The Authorisation certificate number must be included in all promotional material.

The prize promotion must not allow the promoter(s) to use the promotion authorisation to exploit the promotion as a source of income.

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Promoters of prize promotions must not create an exaggerated expectation of obtaining prizes.

The award of a prize cannot be conditional on the participant collecting a series of product-related items (eg cards, stickers, objects, labels, packaging, and wrappers).

The distribution of prizes must not be linked to the results of the Sports Lottery. Promoters must ensure equal treatment for all competitors.

## TIMING

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

It is required by the law that all requests for Authorisations must be filed within the minimum prior term of 40 days before the initial date of the promotion and/or its marketing campaign.

Also, the execution period of the promotion may not exceed 12 months.

## TRANSLATIONS

*Are the terms required to be translated by law?*

All documents that are mandatory to request the Authorization Certificate must be presented in Portuguese, as well as all information disclosed to consumers / participants.

## PENALTIES FOR NON-COMPLIANCE

*What are the penalties for non-compliance?*

The main situations where Administrative Proceedings may be initiated and sanctions may be imposed are:

- Promoting free distribution of prizes without prior authorization of SEFEL;
- Non-compliance with the approved promotions terms and conditions;
- Failure to deliver an accountability report to SEFEL, after the end of the promotion.

In those scenarios, the Brazilian legislation provides for the possibility of the following penalties:

- Cancellation of the authorization;
- Prohibition of free distribution of prizes for a period of up to two years;
- Fine up to 100% of the total value of the prizes;
- Fine of 10 to 40 times the highest minimum wage in force in Brazil (this can be doubled in the case of recurrence).

Such penalties may be applied independently or together, and may be combined with the suspension / cancellation of the Authorisation Certificate.

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## RESTRICTIVENESS OF REGULATIONS

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

Not very restrictive. While authorization is required, the authority is usually aiming to approve promotions and work alongside promoters in order to find a better way to enable the promotion to be run.

In view of that, it is not likely that a prize promotion mechanic will be refused altogether.

## REGULARITY OF SANCTIONS

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

Fines are imposed, however not very often. There are no provisions for prison sentences.

### KEY CONTACTS



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