



# PRIZE PROMOTIONS AROUND THE WORLD

Czech Republic



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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.

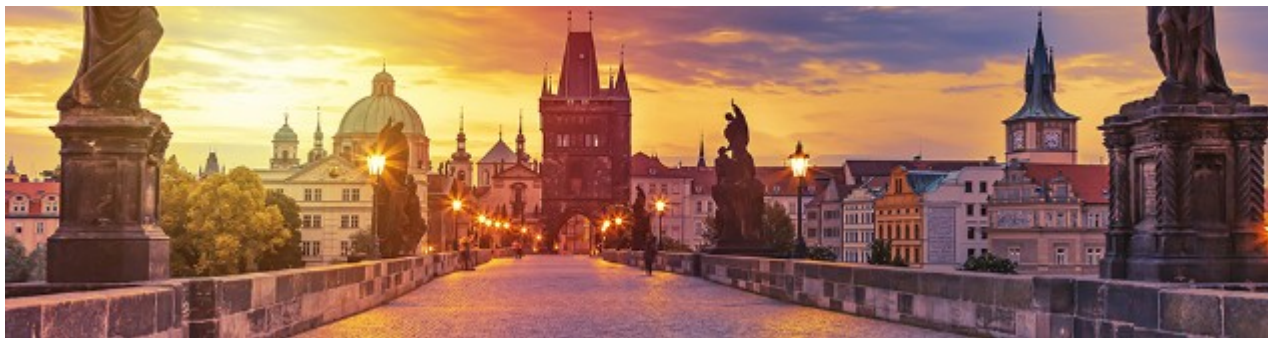
More broadly, our global advertising and marketing team is able to support the full range of advertising-related work, from copy clearance to dealing with advertising regulators and litigation, to negotiating advertising and sponsorship deals, to e-privacy issues and ad-tech. Our advertising and marketing 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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## CZECH REPUBLIC



Last modified 07 August 2019

### GOVERNING LAW

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

Name	Law or Code?
Civil Code, Act No. 89/2012 Coll.	Law
Consumer Protection Act, Act No. 634/1992 Coll.	Law
Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation or GDPR)	Law

### EXTRA-TERRITORIALITY

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

Czech regulators do not enforce rules against entities operating abroad, unless such entities focus on Czech customers in their activities or otherwise conduct their activities in the territory of the Czech Republic.

### SKILLS COMPETITIONS

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

General conditions relating to prize promotions stemming from consumer protection law must however be observed. In particular:

- Competition rules must be transparent, understandable and not mislead consumers.

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- The competition rules should be as detailed as possible in relation to the terms of participation in the contest and the method of determining or selecting winners.
- It is necessary to plan for a situation when multiple winners share first place, which can happen in certain skill, speed or betting competitions. Unless other terms and conditions have been agreed, participants who achieve the same result would be entitled to an equal share of the prize. If this is not desired, such eventuality should be excluded in the rules. It follows that terms and conditions should be very clear on this point, e.g. by determining the winner as the one who has not only achieved the correct result, but who was the first person to do so.

## PRIZE DRAWS

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

Yes. However, in this scenario, it is necessary to avoid a situation where the prize promotion could be interpreted as a game of chance. Operation of games of chance is regulated by Czech law and is not allowed without a permit. The general distinction is that in order to be interpreted as a game of chance (and therefore subject to gambling regulation), the customer must provide a stake the return of which is not guaranteed and the result of the game must be determined based on chance or other unknown circumstance. In other words, it is not considered as gambling when the game either (i) does not require the customer to provide any stake or (ii) a stake is provided, but the result of the game is not in any way dependent on chance.

This means that if an element of chance is present in the selection of the winner, the participants must not provide any stakes (payment) the return of which would not be guaranteed.

Purchase of goods at their usual price or participation in a marketing event is not considered to be a stake. However, participation in a prize promotion cannot be tied, for example, to the purchase of goods at a price above their normal price. Similarly, if the prize promotion takes place via text messages (SMS), the price may not exceed the standard price according to the tariff of the mobile operator. Otherwise, the difference between the normal price and the increased price could be considered to be a stake within the meaning of the gambling regulation.

## SELECTION OF WINNERS

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

It is however strongly recommended to set out requirements for the selection of winners and the awarding of prizes and restrictions in the terms and conditions applicable to the prize promotion, especially if the promotion will be offered to consumers.

The terms and conditions have to be transparent for participants before they enter the prize promotion, which means that among other things, information must be provided about how winners will be selected (e.g. by random draw) and notified (e.g. by email, telephone or regular mail) and what prizes will be awarded and when.

## JUDGES

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

No, there are no particular requirements in relation to judges or judging for skills competitions, but any

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judging process has to be communicated in the associated terms and conditions of the respective competition in a clear and unambiguous manner before entering the competition, so that the participants are not misled about the judging process.

## PRIZES

*Are there any restrictions on the prizes awarded?*

There are no particular restrictions on prizes awarded; however, it must be legal to distribute the prize to the person who wins (e.g. no alcohol/ weapons/ tobacco products to minors).

## REGISTRATION REQUIREMENTS AND FEES

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

### REGISTRATION REQUIREMENTS

- Prize promotions do not require any registration or permit.

### FEES/TAXES PAYABLE

- The tax consequences must be assessed on a case by case basis.
- The general rule is that the individual receiving a prize is subject to Personal Income Tax at the rate of 15%. This tax is applicable in case the value of the prize exceeds CZK 10,000 (approx. US\$440) and the individual receiving the prize is obliged to observe this tax obligation in his/her tax return.

## OTHER LOCAL REQUIREMENTS

*Are there any other key local requirements?*

No.

## TIMING

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

There are no special requirements in this regard.

## TRANSLATIONS

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

Yes. The terms and conditions and other documents relating to the prize promotion must be translated to Czech whenever the prize promotion is directed at consumers.

## PENALTIES FOR NON-COMPLIANCE

*What are the penalties for non-compliance?*

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Prize promotions are in general supervised by the Czech Trade Inspection. Misleading the consumers in connection with prize promotions may lead to a fine of up to 5 million CZK (approx. US\$220,000).

There is also a possibility that the personal data processing aspects of the promotion could breach the GDPR, which imposes fines of up to 20 million EUR (approx. US\$22.4m) or 4 % of the entity's worldwide annual revenue.

If the prize promotion fulfilled the criteria of gambling as explained above, the entity operating such prize promotion without a permit could be fined with an administrative penalty of up to 50 million CZK (approx. US\$2 million) if the entity is a company and up to 500,000 CZK (approx. US\$22,000) if the entity is a private individual. Operation of gambling without a license may also trigger criminal liability.

## RESTRICTIVENESS OF REGULATIONS

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

As there is no registration requirement for prize promotions in the Czech Republic, and the distinction from illegal gambling is quite clear, we do not consider the legal obligations under Czech law to be onerous.

The rules in the Czech Republic allow for the organization of prize promotions quite easily without formal requirements. Having said this, it should be taken into account that GDPR has introduced various obligations around processing personal data which have significant application to prize promotions (e.g. use of submissions including personal data, winner publicity, etc.).

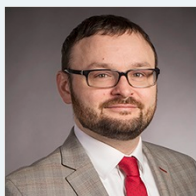
## REGULARITY OF SANCTIONS

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

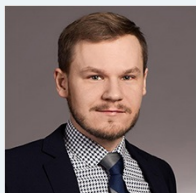
As regards sanctions for non-compliance with regulations specific to prize promotions (i.e. as explained above, mainly consumer protection laws), these are not very common. There are cases where companies have been fined for advertising prize promotions with rules which were not transparent for consumers or pretending to run prize promotions while no actual prizes were awarded (false offers of prizes). Such actions were considered by the regulator to be aggressive, misleading or generally unfair commercial practices towards consumers.

As regards sanctions for unlawful operation of gambling (without a license), these are more common and the regulator in this field imposes serious sanctions for non-compliance. It is therefore important to carefully assess whether the prize promotion does not fulfill the criteria for being understood as gambling in order to mitigate this risk.

## KEY CONTACTS



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