



PRIZE PROMOTIONS AROUND THE WORLD

Hungary



Downloaded: 29 Sep 2020

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

HUNGARY



Last modified 21 March 2019

GOVERNING LAW

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

Name	Law or Code?
Act 34 of 1991 on Gambling Operations ('Gambling Act')	Law
Government Decree No. 183/2017. (VII. 5.) on the Gambling Supervisory Authority	Law

Note: Providing gambling services without a Hungarian gambling license is illegal and may lead to administrative and even criminal offense proceedings. Prize promotions in general do not constitute gambling under Hungarian gambling regulations. However, caution is needed if the characteristics of gambling come into play (especially if payment is required to participate in the prize promotion and if winning the prize depends on chance).

EXTRA-TERRITORIALITY

Do national regulators enforce rules against entities operating abroad?

Yes, but only if the services are considered as gambling services under the Gambling Act. The Gambling Supervisory Authority ('GSA') exercises its regulatory powers if (i) the gambling services covered by the Gambling Act are operated from the territory of Hungary, or (ii) the customer participates in such games in the territory of Hungary, or (iii) the service is aimed at customers living in the territory of Hungary, particularly when the service is made available in Hungarian, or if advertised in the territory of Hungary.

Accordingly, any enforcement risk against foreign operators seems rather low in the case of prize promotions, even if the prize promotion is regulated by the Hungarian Gambling Act (see regulations on prize draw below). At the same time prize promotions which are considered as gambling (contest of

PRIZE PROMOTIONS AROUND THE WORLD

chance) (e.g. poker games, casino games, etc), are heavily regulated and enforced by the Hungarian GSA, including through actions against operators established abroad.

The Hungarian Competition Authority and the Consumer Protection Authority may also enforce consumer protection rules against entities operating abroad if the breach in connection with the prize promotion affects consumers in Hungary.

SKILLS COMPETITIONS

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

Yes, prize promotions based on skill are allowed; however, if the following conditions are fulfilled it will still be considered as gambling and regulated by the Gambling Act:

- the player agreed to pay cash or any other form of consideration to participate in order to receive a cash prize or something of value in the event of a certain outcome or a future contingent event;
- winning or losing depends exclusively or to a material degree upon an element of chance.

Accordingly, if the skill element and the element of chance cannot be separated, it is most likely that such activity will be considered as gambling activity under the Gambling Act.

PRIZE DRAWS

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

Yes. However, if the conditions of gambling mentioned above are met, it might be considered as a gambling activity, which is unlawful. Under the Gambling Act, 'prize draws' shall be reported to the GSA in advance (but no license is required). Pursuant to the Gambling Act, a prize promotion will qualify as a 'prize draw' only if the following requirements are met:

- it is related to the purchase of goods or services;
- free of charge (there is no payment in addition to the usual market price of the product or service);
- the determination of the winner is conducted through the 'public drawing' of a ticket.

If these requirements are not met (e.g. participation is skill-based and not based on purchase of goods), the organizer has no obligation to notify the GSA and the provisions of the Gambling Act will not apply, unless the activity is considered as gambling activity, e.g. because participation is not free of charge. Cash prize is not possible in the case of prize draws.

SELECTION OF WINNERS

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

There are no specific requirements for prize promotions in general. However, in the case of prize draws, the same degree of publicity shall be awarded to the drawing process, the winning tickets and the prizes as that provided when advertising the 'prize draw'. The GSA may conduct inspections. A notary public must be present at each drawing, unless the GSA prescribed otherwise in the

PRIZE PROMOTIONS AROUND THE WORLD

authorization. The organizer shall arrange for the presence of the notary public and shall bear the costs of the notary public.

In the case of prize promotions organized for consumers, it is also strongly recommended to set out the requirements of selecting the winners and awarding the prizes and the possible restrictions in a set of terms and conditions. The terms and conditions have to be transparent for participants before they enter the prize promotion.

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 (other than the presence of a notary public in the case of prize draws) or judging for skills competitions.

PRIZES

Are there any restrictions on the prizes awarded?

As mentioned, a cash prize cannot be awarded in the case of prize draws. Other than that, there are no particular restrictions on prizes awarded; however, in general prizes must be lawful to distribute (e.g. products which cannot be advertised cannot be awarded either, e.g. weapons, tobacco products etc.).

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 in general. However, prize draws must be reported to the GSA for registration at least 10 days before publishing the prize draw.

Fees / Taxes Payable

There is a minor administrative fee for the registration of prize draws (approx. EUR 10 (approx. US\$11)). The organizer of the prize draw must also pay a so-called supervision fee, which is 0,001% of the value of the prize, but minimum of approx. EUR 15 (approx. US\$17), maximum of approx. EUR 1,500 (approx. US\$1,700).

The organizer of the prize promotion must pay personal income tax on the prize (if won by a private individual). If the prize is not taken up by the winner, the organizer must pay the value thereof as game tax.

OTHER LOCAL REQUIREMENTS

Are there any other key local requirements?

The key requirements for prize promotions addressed to the Hungarian market can be summarized as follows:

PRIZE PROMOTIONS AROUND THE WORLD

Prize promotions should:

- not fall under the Hungarian gambling regulations;
- not be organized/advertised if advertising is prohibited or restricted (e.g. tobacco products, alcohol, firearms/weapons/ammunitions);
- be clearly identifiable as such;
- not create the false impression that the prize is already won, which would constitute as an unfair commercial practice;
- respect the winner's privacy, for instance by publishing their names only in case of explicit consent;
- limit the use of participant's data only for this particular purpose (except where the participants have explicitly consented to the data being used for further purposes, e.g. email newsletters);
- provide easily accessible terms and conditions, which, themselves, shall ensure clear and unambiguous consumer information concerning inter alia:
 - the name and address of the organizer;
 - any qualifying requirements, including the category of persons entitled to take part or excluded;
 - how to participate, including possible costs of participating;
 - details of each prize and its value; possible follow-up costs (e.g. costs for picking up a car);
 - period of the promotion, especially the closing date;
 - how winners will be selected; and
 - where and when the names of the winners will be published.

TIMING

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

Prize draws must be reported to the GSA in advance.

TRANSLATIONS

Are the terms required to be translated by law?

Supporting terms and conditions should appear in Hungarian in order to be clear and unambiguous for participants in Hungary.

PRIZE PROMOTIONS AROUND THE WORLD

PENALTIES FOR NON-COMPLIANCE

What are the penalties for non-compliance?

In the case of infringement of the provisions of the Gambling Act in connection with prize draws, a fine within the range of approx. EUR 150 (approx. US\$170) up to approx. EUR 1,500 (approx. US\$1,700) may be imposed by GSA. If the provisions of the Gambling Act are otherwise infringed (e.g. conducting unlawful gambling activity), different amounts of fines can be imposed, depending on the type of infringement. The maximum fine (e.g. in the case of gambling activity without a license) is approx. EUR 310,000 (approx. US\$347,000). Carrying out gambling activity without a license may involve criminal charges as well. Misleading consumers in connection with prize promotions may lead to consumer protection fines imposed by the Consumer Protection Authority or the Competition Authority.

Note: On 25 May 2018, the General Data Protection Regulation (GDPR) of the European Union came into force, which substantially increased the administrative fines for data protection breaches with fines of up to € 20,000,000 (approx. US\$22.4m) or 4% of the total worldwide turnover of the infringer from its preceding business year.

RESTRICTIVENESS OF REGULATIONS

How restrictive are the legal obligations applicable to prize promotions?

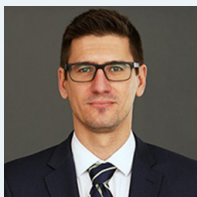
The rules in Hungary allow for the organization of prize promotions quite easily without formal requirements (except for prize draws). Having said this, it should be taken into account that certain prize promotion mechanisms are prohibited in Hungary and therefore cannot be organized. Also, GDPR has 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?

The GSA does not impose serious fines frequently in connection with prize promotions. The GSA is more active in connection with unlawful gambling activities carried out in Hungary.

KEY CONTACTS



Zoltan Kozma
Counsel
DLA Piper Hungary
zoltan.kozma@dlapiper.com
T: +36 1 510 1100

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.