



# PRIZE PROMOTIONS AROUND THE WORLD

India



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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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## INDIA



Last modified 10 January 2019

### GOVERNING LAW

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

Name	Law or Code?
Public Gambling Act, 1867 along with the relevant state legislations (a 'Key Prize Legislation')	Law
Lotteries (Regulation) Act, 1998 and the Lottery (Regulation) Rules, 2010 (a 'Key Prize Legislation')	Law
Indian Penal Code, 1860	Law
Prize Chits and Money Circulation Schemes (Banning) Act, 1978 (a 'Key Prize Legislation')	Law
Prize Competitions Act, 1955 (a 'Key Prize Legislation')	Law
Prevention of Money Laundering Act, 2002 read with The Prevention of Money Laundering (Maintenance of Records) Rules, 2005	Law
Foreign Exchange Management Act, 1999, read with the Foreign Exchange Management (Current Account Transactions) Rules, 2000, and the Master Direction on Other Remittance Facilities, 2016	Law
Information Technology Act, 2000 read with	Law

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the relevant rules, more particularly the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Information) Rules, 2011	
Consumer Protection Act, 1986	Law
Consumer Protection Bill, 2018	Bill (as at date of publication this bill has been passed by the lower house of the Indian parliament and shall become law, pursuant to the upper house of the Indian parliament passing it, followed by the receipt of Presidential assent. Upon enactment, it will repeal the Consumer Protection Act, 1986)
Advertising Standard Council of India Code	Code
Telecom Regulatory Authority of India Act, 1997 read with Telecom Commercial Communications Customer Preference Regulations, 2010	Law

## EXTRA-TERRITORIALITY

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

The Key Prize Legislations do not have an extra-territorial application and prize promotions which are purely operated online and outside India do not fall within the jurisdiction of the relevant regulators of Key Prize Legislations in India.

However, if prize promotions are advertised to customers in India and a significant nexus is established in India, then regulators may enforce the relevant laws (including Key Prize Legislations) against the promoters of such prize promotions.

The Indian Penal Code, 1860 and Information Technology Act, 2000 have extraterritorial applicability and in the event that sponsors of prize promotions are held to be in violation of these laws, the regulator is empowered to prosecute for offences committed outside India. The Indian regulators also have the power to block foreign websites which violate Indian laws.

## SKILLS COMPETITIONS

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

Yes, but ensure:

- That the winner is determined predominantly on the basis of his or her skill and not chance; and
- That the terms are notified to the entrant before entry into the competition.

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Competitions where success depends on a substantial degree of skill i.e. one in which success depends principally upon the superior knowledge, training, attention, experience and adroitness of the player, are permitted under Indian law. This being said, it may be noted that a prize promotion which is predominantly skill based would be constituted as a game of skill despite there being an element of chance. Such prize promotions would be permitted under Indian law.

## PRIZE DRAWS

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

If a competition is determined predominantly on the basis of chance, then it is unlawful if participants pay to enter or to claim/receive a prize. However, a prize promotion which is skill based and only has an element of chance may not be illegal per se.

## SELECTION OF WINNERS

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

There are no specific regulations around selection of winners and award of prizes in a competition, however, as a good practice measure, promoters must ensure that prize competitions are conducted under proper supervision, adequate resources are available to administer them, enough time is allowed for each stage of the competition and the process of selection of winners is fair and independent.

Further, the Advertising Standard Council of India Code requires:

- That advertisements inviting the public to take part in lotteries or prize competitions permitted under law or which hold out the prospect of gifts shall state clearly all material conditions as to enable the consumer to obtain a true and fair view of their prospects in such activities;
- Advertisers to make adequate provisions for the judging of such competitions, announcement of the results and the fair distribution of prizes or gifts according to the advertised terms and conditions within a reasonable period of time; and
- That with regard to the announcement of results, an advertiser's responsibility is discharged adequately if the advertiser publicizes the main results in the media used to announce the competition as far as is practicable and advises the individual winners by post.

## JUDGES

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

There are no specific regulations in relation to judges or judging for skills competitions. However, for the sake of good practice the panel of judges must be independent, competent, with set standards/criterion for judgment. Further, the criteria and mechanism for judging entries must be made known before, or at time of, entry.

## PRIZES

*Are there any restrictions on the prizes awarded?*

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The Prize Competition Act prohibits 'prize competition(s)' (i.e. crossword prize competitions, missing-word prize competitions or picture prize competitions, or any puzzle based upon the building up, arrangement, combination or permutation, of letters, words or figures) in which the total value of the prize, whether in cash or otherwise, offered in any month exceeds Rs 1,000 (approx. US\$14) and the number of entries for such prize competition exceeds Rs 2,000 (approx. US\$28).

Other than as mentioned above, there are no specific regulations in relation to prizes for competitions. However, for the sake of good practice, prizes awarded must be as described in their marketing communications, or reasonably equivalent to that description. Participants in instant-win promotions must get their winnings at once or must know immediately what they have won and how to claim without delay, unreasonable costs or administrative barriers.

## REGISTRATION REQUIREMENTS AND FEES

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

### Registration Requirements

Prize Competition Act, 1955 requires a person who promotes or conducts any 'prize competition' (as defined above) to obtain a license wherein the total value of the prize(s) to be offered in any month does not exceed Rs 1,000 (approx. US\$14). The promoters of such prize competitions are also required to keep accounts and submit the same to the licensing authority at regular intervals determined by the applicable laws.

### Fees / Taxes Payable

Depending on the State in India where the license is obtained, a nominal amount will need to be paid as a license fee. In relation to tax obligations, a promoter of a prize competition (irrespective of residency) is liable to withhold tax at a certain percentage of the prize money paid to an Indian resident, should the value of such prize money exceed a pre-determined threshold.

## OTHER LOCAL REQUIREMENTS

*Are there any other key local requirements?*

- Promoters must ensure that the participants are above 18 years of age. In case of minors (ie below 18 years), the legal guardian must also be a party to all agreements on behalf of the minor.
- Further, based on the nature of the prize promotions and remittance of money in/out of India, there may be implications from the perspective of Indian foreign exchange laws which may be required to be examined on a case to case basis. A person resident in India is restricted from dealing in foreign exchange for the purpose of making remittance of lottery winnings, securing prize money/awards, purchase of tickets and/ or otherwise participating in lotteries and sweepstakes. These restrictions also apply to lottery-like schemes existing under different names such as money circulation schemes etc.
- If the data collected by the promoter falls within the scope of 'sensitive personal information' (as defined below), the promoter should include specific and express consent of the participant for

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collecting such data and for onwards sharing (if so proposed).

- As per the applicable data protection law in India, sensitive personal data or information includes personally identifiable information relating to:
  - Passwords;
  - Financial information such as bank account or credit card or debit card or other payment instrument details;
  - Physical, physiological and mental health condition;
  - Sexual orientation;
  - Medical records and history; and
  - Biometric information of a person.
- In case the participant is required to purchase a certain product which entitles the participant to enter into a lucky draw in relation to that product, it should be ensured that:
  - The product indicates the date of closure of the offer;
  - All 'material conditions' are disclosed;
  - If there are any conditions that apply to the lucky draw, ensure that the words 'conditions apply' appear in bold and such conditions are made available to the participant on request;
  - If a prize is being offered by draw of lots for participants who purchase a particular product, ensure that the prize does not reflect an increase in the price of the product; and
  - The prize that is offered does not cause any loss or injury to the participant whether by eliminating or restricting competition or otherwise.
- The Consumer Protection Bill, 2018 proposes permitting the conduct of certain prescribed contests, lotteries, games of chance or skill, in the context of promoting, directly or indirectly, the sale, use or supply of any product or any business interest. It is proposed that such contests, once prescribed under the relevant rules (that may be notified by the Central government), will be exempted from being classified as 'unfair trade practices'.
- Persons carrying on activities for playing games of chance for cash or payments in kind are "reporting entities" under the Prevention of Money Laundering Act, 2002 (read with the Prevention of Money Laundering (Maintenance of Records) Rules, 2005), and are required to maintain records of all transactions including a record of all cash transactions of the value of more than Rs 1,000,000 (approx US\$14,200) or its equivalent in foreign currency, all series of cash transactions connected to each other of individual value less than Rs 1,000,000 (approx US\$14,200) or its equivalent in foreign currency where such series of transactions have taken place within a month, and the monthly aggregate exceeds an amount of Rs 1,000,000 (approx US\$14,200) or its equivalent in foreign currency.

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## 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?*

None required. However, the preferred approach in India is to have the terms and conditions translated into English.

## PENALTIES FOR NON-COMPLIANCE

*What are the penalties for non-compliance?*

The majority of the offences under the Key Prize Legislations are punishable with a fine of up to Rs 1,000 (approx. US\$14) or a prison term of two years, or with both.

A violation of the relevant provisions of the Indian Penal Code, 1860, is punishable for a term which may extend to six months and/or a fine amounting to Rs 1,000 (approx. US\$14).

Under the Consumer Protection Act, 1986, a person is liable for punishment under the applicable provisions, with imprisonment for a term ranging between one month to three years, and/or with a fine ranging between Rs 2,000 (approx. US\$28) to Rs 10,000 (approx. US\$140), or with both. However, the Consumer Protection Bill, 2018 has proposed enhanced penalties, with imprisonment for a term up to six months and/or a fine up to Rs 2,000,000 (approx. US\$28,400), in case of failure to comply with any direction of the central authority proposed to be established thereunder. In case of failure to comply with any order made by the existing consumer protection forums (i.e. district commission, state commission and national commission), a person is liable for punishment under the applicable provisions, with imprisonment for a term ranging between one month to three years, or with a fine ranging between Rs 25,000 (approx. US\$355) to Rs 100,000 (approx. US\$1,400), or with both.

Under the Information and Technology Act, 2000, the maximum compensation/penalty payable to the person affected by a contravention is Rs 25,000 (approx. US\$355).

## RESTRICTIVENESS OF REGULATIONS

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

There is no umbrella legislation in India which lays down detailed requirements in relation to a prize promotion. Prize promotions are generally allowed as long as they do not amount to gambling or a lottery, or an unfair trade practice under the applicable laws. There is no particular registration/licensing requirement, except in the case of a 'prize competition'. Overall, the legal regime governing prize promotions in India is not particularly restrictive.

## REGULARITY OF SANCTIONS

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

It is not common for the relevant authorities to impose monetary fines or prison sentences. There have been very few cases in the past, where sanctions have been imposed within India.

### KEY CONTACTS



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