



PRIZE PROMOTIONS AROUND THE WORLD

Italy



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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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ITALY



Last modified 10 January 2019

GOVERNING LAW

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

Name	Law or Code?
Decree of the President of the Republic of 26 October 2001 No. 430 (the 'DPR')	Law
Bulletin Circular of the Ministry of Productive Activities (now Ministry of Economic Development) 28 March 2002, No. 1 (the "Circular").	Law

With regard to the advertisement of the prize promotions:

Name	Law or Code?
Legislative Decree of 6 September 2005 No. 206 (the 'Consumer Code')	Code
Legislative Decree 2 August 2007 No. 145 (Misleading Advertising)	Law
Legislative Decree 2 August 2007 No. 146 (Commercial practices)	Law
Commercial Communication Code of the Advertisement Self-Regulatory Authority (the 'IAP Code')	Code

With regard to the processing of personal data:

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Name	Law or Code?
Regulation (EU) 2016/679 on protection of natural persons with regard to the processing of personal data and on the free movement of such data (the "GDPR")	Law
Legislative Decree of 30 June 2003 No. 196 and subsequent amendments (the "Privacy Code") with regard to the processing of personal data	Code

EXTRA-TERRITORIALITY

Do national regulators enforce rules against entities operating abroad?

The DPR applies to prize promotions aimed at sponsoring the knowledge of the promoter's products and services within the Italian territory, both in the case of promotions directed to consumers and in the case of promotions addressed to other subjects (such as professionals, employees, retailers or mediators). Provided that a prize promotion is not addressed to Italy, national regulators would not enforce the DPR against entities operating abroad. However, the assessment on whether a promotion can be considered to be addressed to Italy shall be evaluated on a case by case basis.

Should the prize promotion be addressed to Italy, there are two different scenarios:

- If the company is established outside of Italy in one of the EU Member States, the laws of that State shall apply instead of the DPR and the Circular and companies should comply only with Italian general consumer law (e.g. the Consumers Code and the Legislative Decree no. 70 of 9 April 2003 and subsequent amendments, on e-commerce); while
- If a company is established in a non-EU Country, the DPR and the Circular shall apply. In this scenario, the promoter established outside of the Italian territory can run a prize promotion, but would be required by law to appoint a fiscal representative in Italy or ask for a direct identification VAT number from the Italian Tax Authority (subject to certain conditions provided by the applicable fiscal laws) in order to comply with all the formalities as per the DPR. In such case, national regulators would be entitled to enforce the rules against the foreign promoter through the representative located in Italy.

SKILLS COMPETITIONS

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

Yes, but it is necessary to ensure that:

- Participants are not required to pay any contribution.

'Payment' is interpreted to mean any kind of contribution/entry fee save for the price for the purchase of the promoted product/service

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and

- The stringent formalities required by the DPR are complied with.

Unless a promotion falls under one of the exceptions provided by the DPR, it is not possible to run multi-jurisdictional promotions; any activity related to the prize promotion must be carried out in Italy and also the server used for the promotion must be located within the Italian territory.

The exceptions provided by the DPR include:

- Promotions aimed at spreading artistic or scientific works where the prize is due as remuneration for the work done;
- Promotions run by TV channels where the prizes are offered directly to the audience watching the show, unless the operation intends to promote products belonging to enterprises other than TV channels;
- Promotions where the prize consists of:
 - Discounts on the same products/services (or products/services of the 'same kind') as those purchased on a non-discount basis; or
 - A discount on different products, provided that such discount is not aimed at encouraging the purchase of the discounted product.
- Promotions under which the prizes, further to a purchase, consist of vouchers to be used in a subsequent purchase within the same point of sale or in any other point of sale of the same brand;
- Promotions where prizes have a very low value (such as small gadgets, flags, calendars etc.);
- Promotions where the prizes are granted to schools, hospitals or similar and have social or charity purposes.

In the above mentioned cases, the rules of the DPR do not apply. However, these exceptions are interpreted quite narrowly by the national regulator and therefore a case by case assessment is necessary.

PRIZE DRAWS

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

Same restrictions that apply for skills competitions (see [Skills competitions](#) section) also apply to prize draws (both called Concorsi a premio).

SELECTION OF WINNERS

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

For Skills Competitions and Prize Draws, the winner must be selected either in the presence of an

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Italian Notary or an Officer of the Chamber of Commerce. In the case where the selection of winners is undertaken electronically, the results generated shall also be certified by an expert.

The Italian Notary or the Officer of the Chamber of Commerce present to the Skill Competition and Prize Draws shall draft the official minutes of assignment of the prizes and of closure of the promotion once the prizes are delivered to the winners. Prize winners should receive their prizes within 180 days of the closure of the promotion.

Nevertheless, the presence of a Notary / Officer shall not be required where the prizes are awarded shortly after the consumers enter the promotion, by way of automated or electronic systems (such as "Instant Win" or "Scratch and Win" etc.) which, by their very nature and with regard to the timing and methods of the execution, entail the exclusion of the Notary / Officer.

In any case, in multiphase prize promotions, the presence of the Notary / Officer can be restricted to the semi-final and final phases.

JUDGES

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

No, there are no particular requirements in relation to the judges or judging for skills competitions. However, it is highly advisable for the terms and conditions of the competition to be as clear as possible, providing a clear overview of both the criteria for participation in the promotion and the mechanic of the judging process.

PRIZES

Are there any restrictions on the prizes awarded?

A definition of prize can be inferred from the DPR, which states that prize can be goods, services, discounts, and shall have economic value. Cash prizes cannot be offered, but discounts and golden coins can be awarded.

With regard to prizes, the DPR also requires the promoter to clearly indicate to the participants in the skill competition / prize promotion the value of the prize.

REGISTRATION REQUIREMENTS AND FEES

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

Registration Requirements

The terms and conditions must be filed with the Ministry of Economic Development at least 15 days before the beginning of the prize promotion.

Fees/Taxes payable

In case of Skills Competitions and Prize Draws arranged by any entity established outside the Italian territory, it shall appoint a so-called 'fiscal representative' (i.e. either a person or entity resident in Italy) for tax purposes or, if the entity is based within the EU or in a country which has reached a specific

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international agreement with Italy, a direct identification VAT number may be requested from the Italian Tax Authority.

Organizers must post a guarantee equal to 100% of the value of prizes offered.

Organizers cannot deduct VAT on the prizes of promotions and shall pay a tax equal to 25% of the value of the prizes awarded.

OTHER LOCAL REQUIREMENTS

Are there any other key local requirements?

Terms and conditions must contain all the information required by the DPR.

The organizer shall also post a bank guarantee (with an expiration of at least 1 year from the conclusion of the prize draw) equal to the whole value of the prizes to be awarded to the benefit of the Ministry of Economic Development.

Both documents, as mentioned in the [Timing](#) section, must be filed with the Italian Ministry of the Economic Development at least 15 days prior the beginning of the prize promotion.

It is worth noting that very stringent formalities need to be adopted prior to and during the course of both skills competitions and prize draws.

TIMING

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

The terms and conditions and the bank guarantee equal to the aggregate value of the prizes shall be filed with the Ministry of Economic Development at least 15 days prior to the commencement of the Skills Competition/Prize Draw through an online procedure.

TRANSLATIONS

Are the terms required to be translated by law?

Terms and conditions must be provided to participants in Italian.

PENALTIES FOR NON-COMPLIANCE

What are the penalties for non-compliance?

In the event of late delivery of the documentation to the Ministry of Economic Development promoters are subject to fines of between € 2,065.83 (approx. US\$2,300) up to € 10,329.14 (approx. US\$11,570).

In case of performance of prize promotions according to a mechanic different from the one outlined in the terms and conditions or notified to the Ministry of the Economic Development, fines of between € 1,032.91 (approx. US\$1,150) and € 5,164.57 (approx. US\$5,785) are applicable.

In the event of promotions contravening the requirements of the DPR, the applicable sanctions shall be

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between € 1,032.91 (approx. US\$1,150) and € 2,582.28 (approx. US\$2,900). This sanction is doubled if the prize promotion is carried out after the prohibition issued by the authorities. Also, if the promotion is qualified as illegal gambling, fines of between €50,000.00 (approx. US\$56,000) up to €500,000.00 (approx. US\$560,000) are applicable.

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 (i) €20 million (approx. US\$22.4m), or (ii) 4% of the promoter's worldwide annual revenue.

RESTRICTIVENESS OF REGULATIONS

How restrictive are the legal obligations applicable to prize promotions?

The DPR provisions are quite detailed and restrictive. More in particular it is important to point out that international / multi-jurisdictional promotions and competitions are not generally allowed under Italian law (see [Skills competitions](#) section). Finally, GDPR has introduced various obligations around processing personal data which have significant application to prize promotions (eg.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?

Fines are frequently imposed if reported by individuals through the dedicated hot line.

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