



PRIZE PROMOTIONS AROUND THE WORLD

South Korea



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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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SOUTH KOREA



Last modified 14 January 2019

GOVERNING LAW

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

Name	Law or Code?
Monopoly Regulation and Fair Trade Law ('FTL')	Code
Guidelines for Review of Unfair Trade Practices	Law
Act on Special Cases Concerning Regulation and Punishment of Speculative Acts ('Act on Speculative Acts')	Code

Note: The above constitute generally applicable rules. Some industries have additional, industry-specific regulations concerning prize promotions (gaming, pharmaceuticals, media, etc).

EXTRA-TERRITORIALITY

Do national regulators enforce rules against entities operating abroad?

Article 2-2 of the FTL imposes extraterritorial jurisdiction for acts that occur overseas but have an effect on the Korean domestic market (i.e. Korean customers). The Korean Supreme Court has stated that the 'effect on the Korean market' must be limited to cases where there is a direct, considerable, and reasonably foreseeable effect on the Korean market. The Supreme Court added that such determination should be based on a comprehensive and case-by-case review of various factors, including the substance and intent of the conduct, the characteristics of the services or goods at issue, the transaction structure and how it affects the Korean market, etc.

Most discussions concerning the extraterritorial application of the FTL are in the context of cartel

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enforcement. While we are not aware of any specific precedent in the context of prize promotions, we believe it would be possible for prize promotions originating overseas, targeting Korean customers, to be subject to enforcement under the FTL and other applicable regulations.

SKILLS COMPETITIONS

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

There are no particular regulations concerning skill-based prize promotions, and such promotions would be regulated under the general provisions regarding unfair trade practices pursuant to the FTL. Such promotions would be permissible if the prizes are not improper or excessive (based on business norms) and as long as the terms and conditions of the promotion are accurately specified and advertised.

PRIZE DRAWS

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

The Act on Speculative Acts prohibits 'obtaining goods or benefits from several people and using chance-based methods to determine win/loss to give such people profit or loss.' A person must obtain approval from the district police to engage in 'speculative acts' such as lotteries, sweepstakes, lucky draws, and giveaways.

However, it is unclear whether this requirement applies to a contest in which the contest sponsor does not directly collect commission or fees from the contest itself, but rather receives an indirect benefit, such as publicity. As far as we are aware, there has been no judicial or administrative precedent that addresses whether deriving indirect benefits or profit would render promotional activities a speculative activity.

SELECTION OF WINNERS

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

There are no regulations concerning the selection of winners and award of prizes. However, it could be an issue if the process of selection or award of prizes were particularly unfair, or if the terms and conditions were not accurately specified and advertised.

JUDGES

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

There are no regulations concerning judges and judging for skills competitions.

PRIZES

Are there any restrictions on the prizes awarded?

Prizes must not be improper or excessive (based on business norms) and the substance of the prize must be accurately specified and advertised.

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Previously there was a regulation that limited the maximum value of gifts or prizes provided to customers through sweepstakes or contests as an ancillary product to the main transaction, but that rule has been abolished as of July 1, 2016.

REGISTRATION REQUIREMENTS AND FEES

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

Registration Requirements

In terms of registration requirements, as discussed above in the section on [prize draws](#), any business involving 'speculative acts' must be approved in advance by the district police. However, it is unclear whether this requirement applies to a contest in which the contest sponsor does not directly collect commission or fees from the contest itself, but rather receives an indirect benefit, such as publicity.

Fees / Taxes Payable

There are no fees payable.

In terms of taxes, a prize is considered 'other income', and subject to personal income tax and local income surtax. Where the value of a prize exceeds ₩50 000 (approx. US\$42) the prize-giver is required to withhold 22% of the prize amount for tax purposes. When a Korean company (or foreign company's Korean affiliate) engages in prizes to promote sales, the value of the prizes is deductible as expenses incidental to sales for corporate income tax purposes.

OTHER LOCAL REQUIREMENTS

Are there any other key local requirements?

No requirements, other than those identified in other sections.

TIMING

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

No, unless prior approval is required for businesses involving 'speculative acts' (refer to section on [Prize draws](#)).

TRANSLATIONS

Are the terms required to be translated by law?

None required.

PENALTIES FOR NON-COMPLIANCE

What are the penalties for non-compliance?

Potential penalties are as follows:

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- A Korea Fair Trade Commission (KFTC) corrective order
- An administrative fine of up to 2% of relevant revenues, or up to ₩500 million (approx. US\$420,000)
- Up to three years' imprisonment or a criminal fine of up to ₩200 million (approx. US\$168,000)

Further, if the substance of the prizes were not accurately specified/advertised, then this could constitute a violation of the Fair Labelling and Advertisement Act, with potential sanctions of up to two years' imprisonment and criminal fines of up to ₩150 million (approx. US\$126,000).

However, it is worth noting that all of the KFTC enforcement actions involving prize promotions in the past ten years (the public records for which are accessible on the KFTC website) have been subject only to a corrective order without any fines or criminal referral.

RESTRICTIVENESS OF REGULATIONS

How restrictive are the legal obligations applicable to prize promotions?

As discussed in the section on [restrictions on prizes](#), there are no limits on prizes as of July 1, 2016. Therefore, the only restrictions on prize promotions are based on the general regulations of the FTL. Given these changes in relation to prize promotion-related regulations, it is unlikely that this area will be very actively regulated.

REGULARITY OF SANCTIONS

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

Very rarely. All of the KFTC enforcement actions involving prize promotions in the past ten years (the public records for which are accessible on the KFTC website) have been subject only to a corrective order without any fines or criminal sanctions.

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