



PRIZE PROMOTIONS AROUND THE WORLD

Luxembourg



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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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LUXEMBOURG



Last modified 01 August 2019

GOVERNING LAW

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

Name	Law or Code?
Law of 20 April 1977 on the operation of games of chance and betting in connection with sporting events, as amended ("1977 Law")	Law
Law of 30 July 2002 regulating certain commercial practices, punishing unfair competition and transposing Directive 97/55/EC of the European Parliament and of the Council amending Directive 84/450/EEC on misleading advertising in order to include comparative advertising (Art. 21) ("2002 Law")	Law
Luxembourg Criminal Code (Art. 302)	Code
Regulation (EU) 2016/679 of April 27, 2016 on the protection of natural persons with regard to the processing of personal data (GDPR)	Law

Note: The 1977 Law provides that the operation of games of chance is prohibited, except for prize promotions referred to under article 21 of the 2002 Law (i.e. "free lotteries, contests and raffles exclusively for commercial propaganda purposes"). However, the 2002 Law was repealed on 23 December 2016 (see below). Therefore, a strict construction of the 1977 Law could mean that prize promotions are now prohibited in Luxembourg. Nevertheless, this does not seem to be the case, as many prize promotions have been (and continue to be) organized since 2016.

Note: The 2002 Law, which provided for the conditions to be fulfilled for the purpose of organizing prize promotions, was repealed by the Law of 23 December 2016 on sale and sidewalk sales and misleading and comparative advertising. The relevant provisions of the 2002 Law were never replaced. Its principles continue to be applied by certain players on the Luxembourg market as good practice, as no other legal sources are available on this subject. However, there is no certainty that it will be applied and enforced as such.

EXTRA-TERRITORIALITY

Do national regulators enforce rules against entities operating abroad?

Yes, as the respective rules are criminally sanctioned. However, there seem to be quite low levels of enforcement relating to simple prize promotions (free lotteries, raffles etc.).

Actual 'games of chance' (such as casino games) are heavily regulated and the regulation is enforced in Luxembourg, including through actions against operators established abroad.

It is uncertain whether such conditions remain applicable given the current status of the law (see Governing law). A number of operators on the Luxembourg market nonetheless continue to apply the principles of the previously applicable law as good practice.

SKILLS COMPETITIONS

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

Yes, as long as it is ensured that the winner is selected on the basis of his/her physical or intellectual skills only, and not (even partly) on chance.

Please note that under the previously applicable 2002 Law, if the prize promotion was based on the combination of the skills of the participants and luck (such as a game where participants must complete a crossword puzzle game and then a prize draw is made between all the participants who correctly completed the crossword puzzle), then it was only authorized when all of the conditions of the 2002 Law were met (see below).

It is uncertain whether such conditions remain applicable given the current status of the law (see Governing law). A number of operators on the Luxembourg market nonetheless continue to apply the principles of the previously applicable law as good practice.

PRIZE DRAWS

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

Yes, under the previous law (under which the exception in the 2002 Law applied), when the following conditions were fulfilled: (i) the organizer had to establish terms and conditions for the participation in such prize promotion, which had to be registered with a bailiff; (ii) the terms and conditions about the prize were not misleading; (iii) the participation form had to be separate from any purchase order for a

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good or service; (iv) the draw was not to be subject to any consideration of any kind, or any obligation to purchase; and finally (v) the organizer who gave the impression that the customer had won a prize, had to provide such prize to the consumer.

It is uncertain whether such conditions remain applicable given the current status of the law (see Governing law). A number of operators on the Luxembourg market nonetheless continue to apply the principles of the previously applicable law as good practice.

Actual games of chance such as slot machines, sports bets, and casinos are highly regulated, and under certain circumstances, prohibited, in Luxembourg.

SELECTION OF WINNERS

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

Yes, under the previously applicable 2002 Law. Participation in a draw, whatever the terms and conditions, could not be subject to any financial compensation of any kind whatsoever, nor to any purchase obligation. Moreover, the conditions for the awarding of the prizes were to be transparent for participants.

It is uncertain whether such conditions remain applicable given the current status of the law (see Governing law). A number of operators on the Luxembourg market nonetheless continue to apply the principles of the previously applicable law as good practice.

JUDGES

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

No, under the previous applicable law.

It is uncertain whether such conditions remain applicable given the current status of the law (see Governing law). A number of operators on the Luxembourg market nonetheless continue to apply the principles of the previously applicable law as good practice.

PRIZES

Are there any restrictions on the prizes awarded?

No, not under the previously applicable law. However, anything contrary to public order or the distribution of which is prohibited or regulated (e.g. tobacco, drugs...) should not be awarded as prizes.

It is uncertain whether such conditions remain applicable given the current status of the law (see Governing law). A number of operators on the Luxembourg market nonetheless continue to apply the principles of the previously applicable law as good practice.

REGISTRATION REQUIREMENTS AND FEES

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

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REGISTRATION REQUIREMENTS

Yes, under the previously applicable law. The organizer of a prize promotion had an obligation to establish, in advance of any advertising message pertaining to the prize promotion, some terms specifying the conditions and the course of such commercial operation. Those terms and a copy of the documents to be provided to the relevant consumers had to be filed with a bailiff who ensured their lawfulness. The full text of the terms and conditions was to be sent free of charge by the organizer to any person who requested them.

It is uncertain whether such conditions remain applicable given the current status of the law (see Governing law). A number of operators on the Luxembourg market nonetheless continue to apply the principles of the previously applicable law as good practice.

FEES/TAXES PAYABLE

Yes, if the organizer decides to apply the principles of the previously applicable law and to file the terms of the prize promotion with a bailiff.

The bailiff's fees are usually rather low.

OTHER LOCAL REQUIREMENTS

Are there any other key local requirements?

Yes, under the previously applicable law. First, documents advertising the prize promotion were neither to cause confusion of any kind in the mind of the participants nor mislead about the number and value of prizes or the conditions of their allocation. Then, the entry form had to be separated from the purchase order for the associated good or the service (if any). Finally, an advertiser who, through the design or presentation of the communication advertising the prize promotion, gave the impression that the consumer had won a prize, had an obligation to provide such prize to the consumer.

It is uncertain whether such conditions remain applicable given the current status of the law (see Governing law). A number of operators on the Luxembourg market nonetheless continue to apply the principles of the previously applicable law as good practice.

TIMING

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

Yes, if the organizer decides to apply the principles of the previously applicable 2002 Law, time should be allowed to file the terms and conditions with a bailiff, which may take a few hours or up to a couple of business days.

It is uncertain whether such conditions remain applicable given the current status of the law (see Governing law). A number of operators on the Luxembourg market nonetheless continue to apply the principles of the previously applicable law as good practice.

Furthermore, time should also be allowed if the organizer has not yet made the appropriate steps towards becoming compliant with the GDPR requirements as regards the management of the personal data collected and processed in connection with promotional operations, including, without limitation,

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the creation and maintenance of a record of data processing activities, appropriate information notices provided to data subjects, and formal processes implemented in order to enable the latter to exercise their rights (i.e. access, rectification and erasure, data portability, objection, restriction of processing, the right to digital legacy).

Where the processing of personal data in the context of promotional operations is likely to result in high risks to the rights and freedoms of natural persons (e.g. where such data is used to profile participants), the organizer must also proceed with a Personal Data Impact Assessment.

In Luxembourg, since the entry into force of the GDPR on May 25, 2018, the general principle is that each processing purpose for which personal data is processed must be evidenced with a record of data processing activities. Therefore, it is not a requirement to make a record entry for each promotion, but to have one record entry encompassing the management of the personal data collected and processed in the course of such operations (provided that means of processing and data processed are similar). If personal data is transferred outside of the European Economic Area, it is necessary to ensure that the recipient is located in a country recognized by the European Commission as ensuring an adequate level of personal data protection, or that a proper transfer mechanism is implemented (e.g. binding corporate rules, European Commission model clauses).

In addition, the organizer may need to allow time to implement 'Privacy by Design' and 'Privacy by Default' principles to any further processing of personal data in the context of promotional operations (i.e. ensure that appropriate technical and organizational measures are implemented to meet the requirements of the GDPR and that, by default, only the personal data that is necessary for the purposes of promotional operations is collected and processed).

TRANSLATIONS

Are the terms required to be translated by law?

No. There is no requirement as such. However, it is generally advisable to have the terms translated in one of the three official languages of Luxembourg, namely French, German or Luxembourgish.

PENALTIES FOR NON-COMPLIANCE

What are the penalties for non-compliance?

- In the case of unlawful operation of games of chance:
 - For individuals: fines from 251€ to 25,000€ (approx. US\$285 to US\$28,400) and/or imprisonment from 8 days to 6 months;
 - For companies: fines from 502€ to 50,000€(approx. \$570 to US \$57,000).
- In the case of having knowingly tolerated games giving rise to excessive stakes or bets on a regular basis in premises accessible to the general public; or having made an unauthorized gaming establishment known by ways of notices, announcements, posters or any other means of publication; or having knowingly received bets or distributed winnings on a regular basis in premises accessible to the general public without prior authorization; or, for the purpose of betting, having sold or offered for sale information on the chances of success of competitors involved in a sporting event:
 - For individuals: fines from 251€ to 15,000€ (approx US\$285 to US\$17,000) and/or imprisonment from 8 days to 1 month;
 - For companies: fines from 502€ to 30,000€(approx. US \$570 to US \$34,000).

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These penalties can be doubled in the case of:

- repeat offence within five years of a conviction under the same legal provision; or
- the offence being committed against a person under the age of 21.

In any of the above cases, perpetrators may also be sentenced to the loss of some of their civil rights (e.g. right to vote, right to hold a public position, etc.).

- In the case of installation in public places of any cash dispensers, consumer tokens and, in general, any device whose operation is based on skills or chance and which is intended to provide a gain or consumption against some kind of financial compensation:
 - For individuals: fines from 251€ to 15,000€ (approx. US\$285 to US\$17,000) and/or imprisonment from 8 days to 6 months;
 - For companies: fines from 502€ to 30,000€(approx. US \$570 to US \$34,000).

In the case of prohibited lotteries:

- For organizers, administrators, agents or employees:
 - For individuals: fines from 500€ to 30.000€(approx. US\$570 to US\$34,000) and/or imprisonment from 8 days to 3 months;
 - For companies: fines from 1,000€ to 60,000€(approx. US\$1,100 to US\$68,000).

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:

- €20 million (approx. US \$22.7 million); or
- 4% of the promoter's worldwide annual revenue.

It is uncertain whether such conditions remain applicable given the current status of the law (see Governing law). A number of operators on the Luxembourg market nonetheless continue to apply the principles of the previously applicable law as good practice.

RESTRICTIVENESS OF REGULATIONS

How restrictive are the legal obligations applicable to prize promotions?

Other than the potential requirement to register with a bailiff, the level of restrictiveness is not high. However, 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.).

It is uncertain whether such conditions remain applicable given the current status of the law (see Governing law). A number of operators on the Luxembourg market nonetheless continue to apply the principles of the previously applicable law as good practice.

REGULARITY OF SANCTIONS

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

We are not aware of any relevant published case law on this subject matter. There seems to be low levels of enforcement regarding lotteries and prize promotions. The risk of enforcement is higher for

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actual games of chance (e.g. casino games).

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