



# PRIZE PROMOTIONS AROUND THE WORLD

Netherlands



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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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## NETHERLANDS



Last modified 19 January 2019

### GOVERNING LAW

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

Name	Law or Code?
The Dutch Games of Chance Act (Wet op de Kansspelen)	Law
Code of Conduct for Promotional Games of Chance. (Gedragscode Promotionele Kansspelen) ('Code of Conduct')	Code
Advertising Code for Games of Chance, offered by Licensees, by virtue of the Games of Chance Act (Reclamecode voor kansspelen die worden aangeboden door vergunninghouders ingevolge de Wet op de Kansspelen) ('Advertising Code for Games of Chance')	Code
General Data Protection Regulation (Algemene Verordening Gegevensbescherming) ('GDPR')	Law
GDPR Implementation Act (Uitvoeringswet Algemene Verordening Gegevensbescherming) ('UAVG')	Law
Telecommunications Act (Telecommunicatiewet)	Law

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## EXTRA-TERRITORIALITY

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

The Code of Conduct can be seen as an exception to the Games of Chance Act. As a general rule, games of chance are prohibited in the Netherlands and prize promotions are allowed only when certain criteria have been met. If the criteria have not been met, the Dutch regulator enforces rules, including against entities operating abroad where such entities target the Dutch market. Relevant factors for assessing whether or not the Dutch market is targeted are: using a .nl website, use of Dutch language and the use of specific Dutch payment systems (e.g. iDeal).

In addition, if the prize promotion violates the Advertising Code for Games of Chance, the Advertising Code Committee (ACC) may ask for assistance from other advertising committees abroad to act against the infringer (the ACC is a member of the European Advertising Standards Alliance and considers most EU countries to operate suitable systems).

Finally, in instances where privacy/direct marketing rules are violated, it is unlikely that the applicable regulators will start legal action against foreign entities based outside of The Netherlands.

## SKILLS COMPETITIONS

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

Yes, purely skill based competitions are allowed, but ensure the winner is picked on the basis of skill and not chance.

Examples of what constitutes an element of skill include: drawing a picture, answering a riddle or answering certain types of questions.

## PRIZE DRAWS

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

Subject to compliance with other requirements (see [Other local requirements](#) section), advertisers are allowed to organize a promotional game of chance where the entrant wins a free gift(s) (e.g. prize draw, sweepstake).

In instances where the total value of prizes (or a prize if there is only one prize) to be won is equal to or exceeds € 4,500 (approx. US\$5,000) but does not exceed € 100,000 (approx. US\$112,000), a prize draw may be organized once per year per product, service, brands or company, provided that:

- Participants do not pay to enter;
- That terms and conditions are in accordance with the Code of Conduct; and
- The marketing and terms and conditions are not misleading, incomplete or give rise to false expectations.

Also, rules apply regarding the amount of actual draws for each promotion i.e. the number of occasions per year when winners can be selected.

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In instances where the total value of prizes (or a prize if there is only one prize) to be won is below € 4,500 per year, there is no limit to the amount of prize draws that may be organized (although rules apply regarding the organization and marketing of the prize draw).

Prize draws where the total value of prizes (or a prize if there is only one prize) exceed € 100,000 (approx. US\$) are not allowed.

## SELECTION OF WINNERS

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

Selection of the winners(s) of prizes or free gifts from participants shall take place in an impartial manner. This can take place in several manners, for example through a notary, bailiff, independent person or through a computer process.

The results of the drawing have to be communicated within 3 months of the closing date of the promotion.

## JUDGES

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

The conditions for awarding the prizes must be transparent for participants and the award of such prizes must be conducted in an impartial manner.

## PRIZES

*Are there any restrictions on the prizes awarded?*

For prize draws, the total maximum value of prizes to be won (or a prize if there is only one prize awarded) should not exceed the amount of €100,000 (approx. US\$112,000) per year.

There is no maximum amount for skill-based games.

## REGISTRATION REQUIREMENTS AND FEES

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

### Registration Requirements

No registration requirements apply.

### Fees/Taxes payable

No registration fees apply.

Gaming tax is 30.1% and can be paid by either the promoter or the prize winner.

For prizes under €449 (approx. US\$500), no taxes have to be paid by the promoter or the prize winner.

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## OTHER LOCAL REQUIREMENTS

*Are there any other key local requirements?*

For prize draws:

- The prize value (whether for one prize or several prizes combined) must not exceed €100,000 in value per year
- Maximum of one game of chance in relation to any product, service or organization per year, with a maximum of 20 drawings, i.e. a maximum of 20 occasions per year when winners can be selected which means that a maximum of 20 winners can be picked for the one game of chance.

**Note:** Small games of chance with a maximum value of prize(s) of €4,500 (approx. US\$5,000) can be organized as often as the promoter wishes.

- The provider shall impose on minors that parental consent should be obtained; and
- The provider shall ensure there is a complaints procedure and shall provide the address or phone number where complaints can be lodged.

## TIMING

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

No.

## TRANSLATIONS

*Are the terms required to be translated by law?*

Not required (but recommended in Dutch).

## PENALTIES FOR NON-COMPLIANCE

*What are the penalties for non-compliance?*

The Gaming Authority (Kansspelautoriteit, 'KSA') may impose administrative fines of up to €830,000 (approx. US\$930,000) or 10% of the annual turnover of the year preceding the year in which the violation was committed for offering illegal games of chance.

In instances where the violation is considered an economic offence (i.e. if it is established that the violation was wilfully committed), the violation may be punished by imprisonment not exceeding two years.

In practice, fines between € 100,000 (approx. US\$112,000) and € 500,000 (approx. US\$560,000) on gambling providers, their directors and gambling software suppliers have been imposed by the KSA.

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Furthermore, the Advertising Code Committee may issue a 'recommendation' for violations of the Advertising Code for Games of Chance, which means that the violator is recommended to discontinue the promotion in the form in which it is currently being or has been advertised.

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\$22.4m); or
- 4% of the promoter's worldwide annual revenue.

## RESTRICTIVENESS OF REGULATIONS

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

Prize promotions are generally accepted in the Netherlands, provided that they are in compliance with the Code of Conduct. The steps necessary to avoid not falling into the category of 'promotional game of chance' under the Code of Conduct are (while important) not very restrictive. 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.).

## REGULARITY OF SANCTIONS

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

Fines and prison sentences are rarely imposed (unless not compliant with the Games of Chance Act or Code of Conduct).

If promotions are not compliant, for example the total value of prizes to be won exceeds the amount of €100,000 (approx. US\$112,000), the KSA might become involved but this is relatively rare.



## KEY CONTACTS



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