



# PRIZE PROMOTIONS AROUND THE WORLD

Poland



Downloaded: 25 Sep 2021

# PRIZE PROMOTIONS AROUND THE WORLD

## 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.

# PRIZE PROMOTIONS AROUND THE WORLD

## POLAND



Last modified 14 January 2019

### GOVERNING LAW

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

Name	Law or Code?
The Code of Ethics in Advertising of the Advertising Council (Rada Reklamy)	Code
The Code of Ethics in Direct Marketing of the Polish Marketing Association - SMB (Polskie Stowarzyszenie Marketingu - SMB)	Code
The Civil Code of 23 April 1964 (Journal of Laws 2018, item 1025 as amended)	Law
The Gambling Act of 19 November 2009 (Journal of Laws 2018, item 165)	Law
The Consumer Rights Act of 30 May 2014 (Journal of Laws 2017, item 683, as amended)	Law
The Act on Rendering Services by Electronic Means of 18 July 2002 (Journal of Laws 2017, item 1219)	Law
Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation or GDPR)	Law

# PRIZE PROMOTIONS AROUND THE WORLD

## EXTRA-TERRITORIALITY

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

Under Polish law, regulation of prize promotions is very limited. The Polish Civil Code states only that a person that has promised a reward for the performance of a particular act by a public announcement to an unspecified number of people is obliged to keep the promise. There are no other specific legal regulations regarding prize promotions (unless the promotion is considered to be a lottery or other game set forth in the Gambling Act in which case additional obligations apply).

However, consumer law and data protection law should be taken into consideration. Moreover, if the prize promotion is operated online, the Act on Rendering Services by Electronic Means should also be also taken into consideration.

In relation to prize promotions which are operated online and outside the Polish jurisdiction, the Polish Act on Rendering Services by Electronic Means should not generally apply. According to the relevant provision of this regulation, the provision of electronic services is subject to the law of the member state of the European Union in which the service provider is a resident. However, there are some exceptions to this general rule: for example, irrespective of the location of the service providers, when a prize promotion is directed to Polish consumers, then the Polish consumer law determined in separate legal acts applies. Therefore, the terms and conditions of the prize promotion must be in line with the Polish Act on Consumer Rights and the Polish Civil Code's provisions regarding business to consumer relations.

Furthermore, the GDPR applies to the terms and conditions of the prize promotion if the data controller of the participants' data is an entity located in the EU. The entities based outside the EU will also be obliged to comply with the the GDPR if the processing activities relate to the offering of goods or services to individuals in the EU.

## SKILLS COMPETITIONS

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

Yes, under the following circumstances:

- The winner must be chosen on the basis of skills (i.e. the best work or act), and not on the basis of chance. If the conditions for winning have been fulfilled by several persons independently, each of them shall be entitled to a full prize, unless only one prize has been promised. If only one prize has been promised, the first person who comes forward to claim the prize shall receive it; and where several persons come forward at the same time – the person who first fulfilled the conditions for winning. Additionally, a public promise of a prize for the best work or for the best act is ineffective if it does not specify the period in which the prize may be claimed. The above rules stem from the provisions of the Polish Civil Code.

Even if a promotion contains elements of skill but the final result is determined on the basis of chance, this would likely be considered a lottery and official approval (by public authority) would be required. Elements of chance are acceptable as long as they are not decisive as to the final decision about the winner (e.g. it is acceptable that at the first stage of the promotion a limited number of participants are chosen by a draw if the final results regarding the winner are based on skill).

# PRIZE PROMOTIONS AROUND THE WORLD

- Terms of the prize promotion should be notified to the participants prior to their participation in the promotion.

## PRIZE DRAWS

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

Not without a permit. Namely, if a prize promotion includes an element of chance in the selection of the winner, it may be considered to be a lottery or a promotion lottery, which requires obtaining an official permit under the Gambling Act.

Under Polish law, a game will be deemed to be a lottery where the outcome is significantly dependent on chance (the main condition), the prize is either cash or a physical prize (there is no legal definition of a physical prize under the Polish law, however a prize is considered to be physical if it is neither cash nor its equivalent (e.g. gift certificates, vouchers etc.); thus, for instance physical prizes are cars, books, trips etc.), and participants purchase goods, services or another game ticket to enter the lottery.

## SELECTION OF WINNERS

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

There are no specific legal requirements for the selection of winners and the award of prizes.

However, the entity organizing the contest must determine the rules for selecting winners and awarding prizes. For skills competitions, the terms should also include the criteria for assessing the participants' skills.

## JUDGES

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

There are no particular requirements in relation to judges or judging in skills competitions. The evaluation of whether and which work or act deserves the reward is made at the competition organiser's' discretion unless the T&C's of the competition (the "reward promise" under the Polish Civil Code) stipulate otherwise. The criteria and mechanism for judging must be notified to the participants before they enter the promotion.

## PRIZES

*Are there any restrictions on the prizes awarded?*

There are no specific legal restrictions on the prizes awarded, unless - based on general regulations - economic circulation of a particular item/service is excluded or restricted. In addition, the terms of the prize promotion should determine the amount, value and type of the prize, as well as information on whether it is possible to receive a cash equivalent of the prize instead of the prize itself.

## REGISTRATION REQUIREMENTS AND FEES

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

# PRIZE PROMOTIONS AROUND THE WORLD

## Registration Requirements

There is no requirement to register prize promotions. In case of promotion lotteries, the organizer is obliged to obtain a permit, subject to a payment.

## Fees/Taxes payable

The tax consequences must be determined on a case by case basis, as different types of the prize promotions are subject to different tax consequences - especially if a given prize promotion is considered to be a 'premium sales program'. Taking into account that in many cases also the intermediary companies are engaged in organizing prize promotions, determining the tax aspects of such promotions is a very complex issue. At the same time, tax consequences shall be determined not only from the perspective of the company organizing the promotion, but also from the perspective of the individual receiving a prize – as some prizes are subject to Personal Income Tax Law (and the company giving away the prize may be considered as a tax remitter).

From the perspective of a company organizing the prize promotions – the following aspects of the transaction shall be taken into account:

- Whether the cost of the promotion can be considered as a tax deductible cost (in most cases – yes, they can);
- Whether the input VAT on expenses incurred in relation to promotion can be deducted from the output VAT;
- The prize obtained by a given individual is subject to personal income tax or is exempted from taxation, and consequently, whether the company organizing the game is responsible for withholding tax (and in practice) economically paying any tax.

The above issues, especially the one related to Personal Income Tax, must be verified before organizing the prize programme – as, in practice, the tax issue may influence the prize amount. In Poland, if a prize is not covered by the exemption from Personal Income Tax (i.e. for a specific prize programme, the prizes of value lower than approx. EUR 470 are exempted from PIT), the company organizing the prize promotion usually gives additional prizes in cash to cover the Personal Income Tax).

## OTHER LOCAL REQUIREMENTS

### *Are there any other key local requirements?*

The promoter is obliged to respect the terms of the prize promotion notified to the participants. These terms cannot be, generally, changed during the promotion.

The promoter's name and address must be notified to the participants.

There are also some restrictions regarding prize promotions in other legal acts, e.g. it is forbidden to organize prize promotions conditional on the purchase of tobacco products.

## TIMING

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

# PRIZE PROMOTIONS AROUND THE WORLD

There are no special requirements in this regard.

## TRANSLATIONS

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

Yes.

The terms and conditions and other documents needed to enter the prize promotion must be translated to Polish when the prize promotion is directed to consumers.

## PENALTIES FOR NON-COMPLIANCE

*What are the penalties for non-compliance?*

If the prize promotion is considered to be a lottery, the party that organizes it without a permit must pay a penalty equal to 5 times the amount of a permit fee, which equals in total 50% value of the prize pool. In addition to the penalties imposed on the entity organizing the lottery, the Gambling Act provides for sanctions for individuals holding managerial positions – the relevant authority (head of the customs and tax office) may impose a fine up to approximately EUR 23,000.00 (approx. US\$25,800) for organising gambling games (including lotteries) without a concession, permit or required registration. Furthermore, under the Fiscal Penal Code, running or organizing a lottery contrary to the law or a permit is subject to a fine (maximum fine = approximately EUR 1,636,363.6 (approx. US\$1,833,000) – according to the current regulations and fine amounts applicable in 2019).

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?*

Under Polish law there are a limited number of restrictions and formal requirements regarding the organizing of prize promotions. Therefore, most prize promotion mechanics are allowed (provided the promotion is not considered as a lottery or another gambling game regulated in the Gambling Act). 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?*

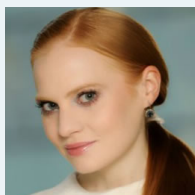
No information publicly available.



## KEY CONTACTS



Ewa Kurowska-Tober  
Partner  
DLA Piper Giziński Kycia sp.k.  
[ewa.kurowska-tober@dlapiper.com](mailto:ewa.kurowska-tober@dlapiper.com)  
T: +48 22 540 7402



Magdalena Koniarska  
Associate  
DLA Piper Giziński Kycia sp.k.  
[magdalena.koniarska@dlapiper.com](mailto:magdalena.koniarska@dlapiper.com)  
T: +48 22 540 78 19

## **Disclaimer**

DLA Piper is a global law firm operating through various separate and distinct legal entities. Further details of these entities can be found at [www.dlapiper.com](http://www.dlapiper.com).

This publication is intended as a general overview and discussion of the subjects dealt with, and does not create a lawyer-client relationship. It is not intended to be, and should not be used as, a substitute for taking legal advice in any specific situation. DLA Piper will accept no responsibility for any actions taken or not taken on the basis of this publication.

This may qualify as 'Lawyer Advertising' requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.

Copyright © 2017 DLA Piper. All rights reserved.