



# PRIZE PROMOTIONS AROUND THE WORLD

Romania



Downloaded: 18 Oct 2019

# 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

## ROMANIA



Last modified 23 January 2019

### GOVERNING LAW

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

Name	Law or Code?
Government Ordinance no. 99/2000 regarding the marketing of products and services ('GO 99/2000')	Government Ordinance
Government Ordinance no. 21/1992 on consumer protection	Government Ordinance
Law no. 148/2000 on advertising	Law
Law no. 158/2008 on misleading and comparative advertising	Law
Law no. 363/2007 on the fight against unfair commercial practices of traders in their relationship with consumers and the harmonization of regulations with European consumer protection legislation	Law
Government Emergency Ordinance no. 77/2009 on the organization and exploitation of games of chance	Government Emergency Ordinance
General Data Protection Regulation	European Regulation

### EXTRA-TERRITORIALITY

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

# PRIZE PROMOTIONS AROUND THE WORLD

GO 99/2000 applies to all commercial activities and services performed in Romania, irrespective of whether the organizer is a foreign entity or not.

The GO 99/2000 does not provide a distinction between prize promotions operated by a Romanian entity on the Romanian territory and prize promotions operated purely online outside of Romania, whether targeting Romanian consumers or simply allowing them to participate.

However, should Art. 6 of Rome 1 EU Regulation providing for the law governing contracts concluded between a consumer and a professional become applicable, Romanian consumers are protected by provisions included in national legislation which cannot be overwritten by the provisions of the promotion rules.

## SKILLS COMPETITIONS

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

Yes, but the organizer must ensure that the winner is selected based on their skills, knowledge and intelligence as demonstrated by their performance or entry.

## PRIZE DRAWS

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

A prize draw may be conducted if the participants do not have to make direct or indirect payment to enter the competition. (An example of an indirect payment is where an additional payment is required on top of the price of a product/service that is required to be purchased as condition of entry into the competition or an inflated price is charged for the good or service).

Expenses incurred by participants in respect of postal services as well as normal telephone costs are allowed.

A consumer competition could also be considered a game of chance and, thus, fall under the provisions of the gambling legislation if:

- Material prizes, generally monetary, are awarded following a public offer of potential winnings by the organizer and acceptance of this offer by the participant;
- A direct or indirect payment of a participation fee is required other than the normal cost of purchasing a good or service; and
- Winnings are awarded on the basis of game rules through a random selection of the results of the events to which the game relates, regardless of how these results are achieved.

If this is the case, the organizer must obtain certain authorizations and licenses.

## SELECTION OF WINNERS

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

Selection of the winners shall be based on a draw (for prize draw) or on the participants' performance

# PRIZE PROMOTIONS AROUND THE WORLD

(for skill competition).

The name of the winners and their prizes must be made public by the organizer of the prize promotion. However, GO 99/2000 does not impose a specific means for the publication of the winners' names and prizes granted, and thus, the organizer may choose the means of publication at its convenience.

## 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 for skills competitions.

## PRIZES

*Are there any restrictions on the prizes awarded?*

The organizer must ensure that prizes granted correspond with the descriptions indicated in the competitions rules, marketing presentations or other similar documents. Otherwise, advertising communications may be considered as misleading, for example:

- Where the advertising suggests to the addressee that he/she has won the prize, although the draw has not yet occurred
- Where the advertising suggests to the addressee that he/she won an important prize, when in reality the prize has a minimum or nominal value

The legal framework requires compliance with strict rules when advertising alcoholic drinks, tobacco, guns, weapons etc.; advertising for medicines issued with no medical prescription falls within the remit of the National Medicine Agency.

## REGISTRATION REQUIREMENTS AND FEES

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

### Registration Requirements

No registration requirements apply to prize promotions.

In terms of whether the organizer of a promotion should apply for tax registration in Romania - the position is unclear because the law is not straightforward as regards the nature of revenue obtained by individuals participating in promotions, which is relevant for tax registration purposes.

If the revenues qualifies as 1) a prize, then registration is required. However if the revenue qualifies as (2) revenue from abroad, no registration requirements exist. In the meantime, the safest approach would be for the organizer granting the prize to apply for tax registration in Romania.

### Fees/Taxes payable

According to the provisions of the Romanian Fiscal code, income from prizes obtained by a Romanian individual from a non-resident entity may be classified either as an income from a prize or as an income received from abroad. We are not aware of the approach of the tax authorities in Romania as regards

# PRIZE PROMOTIONS AROUND THE WORLD

the classification of the income received by a Romanian individual in such cases.

In our opinion, the safest approach for the payer of the income / entity granting the prize would be for the income paid to be considered as income from prizes, in which case the payer of the income has the obligation to withhold, declare and pay the relevant income tax towards the Romanian state budget; therefore a tax registration process should be followed in this respect, while the taxes / fee registration due are immaterial.

Nevertheless, if the income is classified as income received from abroad, the non-resident entity has no obligation in respect of income tax due in Romania, such obligation falls under the liability of the individual obtaining the income.

## OTHER LOCAL REQUIREMENTS

*Are there any other key local requirements?*

When organizing a prize promotion, the following rules must be complied with:

- The adverts must mention:
  - The nature, the number and the commercial value of the prizes and that the competition rules are available free of charge to any applicant;
  - The competition rules must be authenticated by a public notary; and
  - Mention the obligation of the promoter to publicly present the name of the winners and their prizes.

Representatives from the National Consumer Protection Authority, Ministry of Economy, and Ministry of Internal Affairs may request a copy of the competition rules, as well as a copy of the advertising materials. Organizers must hand over the required documentation within 5 days of the request date.

## TIMING

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

No, although time should be allowed to deal with data protection issues (e.g. ensuring an appropriate privacy notice is in place).

## TRANSLATIONS

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

GO 99/2000 does not clearly provide for the competition rules to be translated in Romanian. However, it is advised because of the requirement to get competition rules authenticated and to comply with consumer protection legislation which requires full and correct information to be provided to consumers.

## PENALTIES FOR NON-COMPLIANCE

*What are the penalties for non-compliance?*

# PRIZE PROMOTIONS AROUND THE WORLD

Under GO 99/2000, the non-compliance with the legal provisions might constitute a misdemeanor punishable by a fine which varies from RON 1,000 (approx. US\$235) up to 5,000 RON (approx. US\$1175), depending on the breach. 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; or
- 4% of the promoter's worldwide annual revenue.

## RESTRICTIVENESS OF REGULATIONS

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

GO 99/2000 set out general requirements which are not unduly onerous for the organizer. However, GDPR has introduced various obligations around processing personal data which have significant application to prize promotions (eg. 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 has been released by the Romanian competent authority, and therefore no information can be provided.

## KEY CONTACTS



Ana-Maria Andronic  
Counsel  
DLA Piper Dinu SCA  
[anamaria.andronic@dlapiper.com](mailto:anamaria.andronic@dlapiper.com)  
T: +40 372 155 816



Paul Babus  
Junior Associate  
DLA Piper Dinu SCA  
[paul.babus@dlapiper.com](mailto:paul.babus@dlapiper.com)  
T: +40 372 155 883



Flavius Florea  
Managing Associate  
DLA Piper Dinu SCA  
[flavius.florea@dlapiper.com](mailto:flavius.florea@dlapiper.com)  
T: +40372155829



Corina Badiceanu  
Associate  
DLA Piper Dinu SCA  
[corina.badiceanu@dlapiper.com](mailto:corina.badiceanu@dlapiper.com)  
T: +40372155853

**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.