



PRIZE PROMOTIONS AROUND THE WORLD

Thailand



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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.

PRIZE PROMOTIONS AROUND THE WORLD

THAILAND



Last modified 07 January 2019

GOVERNING LAW

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

Name	Law or Code?
The Thailand Gambling Act B.E. 2478 (1935) ('TGA')	Law
Ministerial Regulation No. 17 issued under TGA ('TGA-MR')	Law
The official letters of Department of Provincial Administrative (DOPA) (altogether referred to as the 'Letters')	Law
The Consumer Protection Act B.E. 2522 (1979) ('CPA')	Law
Ministerial Regulation Nos. 3 and 5 issued under the CPA ('CPA-MR')	Law

EXTRA-TERRITORIALITY

Do national regulators enforce rules against entities operating abroad?

If the prize promotion is arranged and/or advertised online through a website (or social media page), hosted/located outside Thailand, and there is no entity/affiliate running this campaign within Thailand, it is not subject to restrictions under Thai laws.

SKILLS COMPETITIONS

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

PRIZE PROMOTIONS AROUND THE WORLD

Provided the winner is determined on the basis of skill not chance, skills competitions are not subject to any restrictions under Thai laws.

PRIZE DRAWS

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

Unlawful, as it is considered 'gambling' under the TGA, unless the participants do not pay to enter or to claim/receive the prize.

If the participants do not pay and it is not considered gambling under the TGA, it will be considered a 'prize promotion event' which is controlled under the TGA. A license must be obtained from DOPA prior to the prize promotion event.

Under the TGA, a prize promotion event is considered to be an arrangement for complimentary gifts or prizes, awarded to people trying their luck in any manner in the conduct of a business or in the pursuit of an occupation.

SELECTION OF WINNERS

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

Under the Letters, a prize promotion is only permitted to be run via the following methods:

1. By sending a voucher, card or part of a product (ie the bottle caps of bottles of water) to be drawn at the date, time and place specified under the License.
2. By opening a 'signboard.' These are arranged on TV shows, where a contestant chooses a 'signboard' representing the advertising sponsor of the TV show in order to hopefully win a prize.
3. By sending a text message via SMS or telephone system. The telephone numbers of the senders will be printed out to be drawn at the date, time and place specified under the License.

Under methods 1 and 2, the arranger must be the manufacturer or the exclusive distributor of the related products in Thailand (except shopping malls, department stores, banks or other corporate entities providing services). This is not a requirement if the prize promotion is conducted via method 3.

Details regarding the selection of winners (ie by lucky drawing) and award/prizes must be specified in the application and must be approved before the License is granted to the applicant/arranger.

JUDGES

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

There are no such requirements in relation to skill competitions.

PRIZES

Are there any restrictions on the prizes awarded?

PRIZE PROMOTIONS AROUND THE WORLD

Cash prizes are not permitted.

REGISTRATION REQUIREMENTS AND FEES

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

Registration Requirements

Yes, according to the TGA, a License is required to run prize promotions in the course of business.

Fees / Taxes Payable

The License fees vary, depending on the duration of each event as shown in the table below.

License Validity	Fee (฿)
1 day	300 (approx. US\$9.50)
Not exceeding 7 days	600 (approx. US\$19)
Not exceeding 1 month	1,500 (approx. US\$47.50)
Not exceeding 6 months	6,000 (approx. US\$190)
Not exceeding 1 year	9,000 (approx. US\$285)

If the prize is valued more than ฿1,000 (approx. US\$32), it is subject to 5% withholding tax, which will be deducted by the arranger. It is worth noting that cash cannot be awarded instead of the complimentary gifts or prizes specified in the License.

OTHER LOCAL REQUIREMENTS

Are there any other key local requirements?

An applicant must meet certain eligibility requirements before they will be able to apply for a license, including being a permanent resident of Thailand.

In addition, the applicant must provide all details related to the prize promotion event, including objectives, method, rules, date, time and place, duration, prize/award, winner selection, announcement method of the winner, names and job positions of the witnesses and advertisement method.

When advertising the prize promotion event, the arranger must also ensure that it complies with the CPA-MR, i.e. the following must be included in the advertisement:

- The license number;
- Criteria, method and any conditions;

PRIZE PROMOTIONS AROUND THE WORLD

- Date of commencement and ending of the event;
- The type of prize/award and its value.

In addition, the arranger must ensure that it complies with other specific regulations. For example, the prize promotion event and related advertisement of drugs are not allowed under law and regulations issued by Ministry of Public Health.

TIMING

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

The arranger is required to obtain the License prior to the prize promotion event. A period of at least 90 days is required for DOPA to review the application and grant the License, provided that all information and documentation is fully completed and acceptable to DOPA.

TRANSLATIONS

Are the terms required to be translated by law?

The License application forms and all supporting documents must be in Thai.

PENALTIES FOR NON-COMPLIANCE

What are the penalties for non-compliance?

For non-compliance with the TGA, i.e. arranging a prize promotion event without the License, the arranger could be liable to imprisonment for up to 1 year or a fine of ฿50 (approx. US\$1.50) – ฿2,000 (approx. US\$63) (if the arranger is a corporate entity, the imprisonment will not be imposed).

For non-compliance with the CPA, i.e. advertising the prize promotion event in breach of the CPA, the violator will be liable to imprisonment for up to 3 months or a fine of up to ฿30,000 (approx. US\$950), or both.

RESTRICTIVENESS OF REGULATIONS

How restrictive are the legal obligations applicable to prize promotions?

The way in which a prize promotion event is run is also restricted. Please refer to the section on [Selection of winners](#).

REGULARITY OF SANCTIONS

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

Non-compliance with the TGA is a common occurrence, particularly in relation to obtaining a license. As of yet, only fines have been imposed.

Please note that the TGA is in the process of being amended and is currently being considered by the

PRIZE PROMOTIONS AROUND THE WORLD

House of Representatives. Under the Bill, prize promotions by risk-taking will be governed by a new Act, the 'Prize Promotion by Risk-Taking Act.'

Pursuant to the most recent version of the Bill, arranging a Prize Promotion without a license would be subject to higher sections including imprisonment of 2 years and a maximum fine of ฿80,000 (approx. US\$2,530) or both.

KEY CONTACTS



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