



Istituto per l'Innovazione
Repubblica di San Marino

**SANMARINO
INNOVATION**

Guidelines n. 002/2019

Clarifications regarding the evaluation criteria of applications for the certification of High-Tech Enterprises



Guidelines n. 002/2019, “Clarifications regarding the evaluation criteria of applications for the certification of High-Tech Enterprises”

Provided that

- According to Regulation n. 001/2019 Regulation for the issue of the Certification of High Technology Enterprises, The Institute is the body responsible for issuing such certification in compliance with the provisions of Article 4 of the Delegated Decree of 13 June 2019 n.101;
- To obtain the certification, the applicant shall demonstrate to have an innovative idea of product, service, process, technology, organization or business model;
- The letter b), paragraph 1, article 3 of Delegated Decree n. 101/2019 requires that the applicant "is a company incorporated under San Marino law in the form of a limited liability company, newly created or established for less than 12 months";
- In accordance with Article 5 of Delegated Decree N. 101/2019, the Institute, among its supervisory, regulatory and sanctioning powers, has the duty to:

“a) to regulate, monitor and supervise high-technology activities through the issue of its own regulations and directives, addressed to the persons concerned and for the purposes of this Delegated Decree;

b) to constantly monitor all the practices, operations and activities carried out by the enterprises referred to in this Delegated Decree, to detect violations of the regulations and directives referred to in letter a), to address a formal complaint to the person concerned, setting a deadline for implementing corrective action, and to revoke the status of high-technology enterprise and the authorisations issued for failure to implement such corrective action;”.

Without prejudice to the abovementioned premises, the Institute adopts this Guideline in order to provide greater clarity with regard to the object referred to in the title of this provision, clarifying the



case studies of the sector and the detailed rules for applying the assessment criteria on a case-by-case basis.

A. Case 1) Liquidation of a pre-existing company and creation of a new company with the sole purpose of benefiting from the innovation regime.

Given that

1. The Institute has received applications for the certification of high technology enterprises, to access the benefits established in the Delegated Decree n.101/2019 which provides rules for company incorporation, by persons who already hold significant shareholdings or who hold positions in companies established under San Marino law, that have been in existence for more than 12 months from the submission of the application;
2. The same applicants liquidated the existing San Marino companies connected to them with the aim of pursuing the same business activity already undertaken through the new legal entity established under the provisions of Delegated Decree n.101/2019;
3. The business projects presented the same corporate structure (shareholders and governance) of the existing companies; Also, the economic activity which the newly created legal entity envisaged to carry out coincided precisely with that of the current company in liquidation. For these reasons, it was easy to establish a continuity of enterprise between the companies already in existence or in any case already in liquidation and the projects contained in the applications;
4. The applicants submitted business projects with the sole purpose of setting up a new company to benefit from the preferential tax regime and other benefits offered by Delegated Decree n.101/2019, otherwise denied to existing legal entities;
5. The substantiality of the enterprise is one of the three criteria that contribute to forming the final evaluation of the business project, as it emerges from the document published on the website of the Institute, named "Manual - How to apply for the High-tech Enterprise's certification", on page 19. This



criterion is composed of some subcategories, including the "impact on the local economy." In the above cases, the assessment of this element can only be negative, since the existing companies referred to in the previous points are taxable persons in San Marino under the ordinary tax regime. At the same time, the newco incorporated under the provisions of the Delegated Decree n.101/2019 would obtain a favorable tax regime, with a rate of General Income Tax pair to 0% for the first three years, to 4% for the following four years and to 8% for the last five years. It is a natural consequence of the access to the regime provided for by Delegated Decree n. 101/2019, a reduced tax revenue for the State Treasury. For this reason, such instances shall be considered as attempts to circumvent the limits imposed by the requirement referred to in letter b), paragraph 1, Article 3, of the Delegated Decree n. 101/2019.

Given the above

Because of a virtuous and correct economic policy of the country, it is desirable that San Marino companies already existing and operating on the market incorporate their spin-offs to develop high-tech projects pertaining to their economic activity and not instead that these are put into liquidation to establish new companies.

It has been established, therefore, that the cases set out above constitute attempts to enter into a preferential regime that guarantees illegitimate economic advantages. The Institute specifies that applications with the characteristics described above will have a negative result, in order not to support and encourage circumvention practices arising from a distortive use of the issue of the certification of the high-tech enterprises, and, on the contrary, to ensure the best functioning of the economic system of the country.

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