



SUBMISSION BY THE

IRISH SOFTWARE ASSOCIATION

TO THE

BUSINESS REGULATION FORUM

May 2006

Introduction

It is accepted that legislation and corporate governance are essential in any industry, but there is a danger of over-regulation and an increased difficulty to encourage seasoned, successful entrepreneurs to become actively involved in high-potential start-ups in the software industry.

The indigenous software sector employs 15,000 in 660 companies with the total software industry employing 25,000 in Ireland. Turnover in the software industry in Ireland was €15 billion in 2004 (€1.4 billion from indigenous sector), accounting for 13% of total exports.

The Irish Software Association

The Irish Software Association (ISA), is the principal trade association for the software industry in Ireland (and is an business association within IBEC). The ISA assists software companies to start, manage and grow their companies and to help them to be successful in global markets. The industry is made up of over 650 companies in Ireland, of which the majority are indigenous. The membership of the ISA ranges from very small to very large companies and includes the indigenous and multinational companies (majority of membership are SME's). Our members are at different stages of development and include both product software companies and service software companies.

Regulatory Reform

The ISA welcomes recent moves by Government to address the burden of regulation on Irish industry. The Company Law Review Group's recommendations in December to reduce the legislative burden relating to the duties and powers of company directors in companies with a turnover of **€15.2m or a balance sheet of €7.6m**. The recommendation to join both these thresholds together before being covered by the requirements is a welcome move.

In addition to the existing Business Regulation Forum, the recommendations put forward in the recently published Small Business Forum report and the acceptance of Minister Martin to increase the threshold for audit exemption to €7.3 million is also welcomed.

Unfortunately, the problem remains in terms of the inability to attract non- executive directors onto the boards of technology start- up companies.

The ISA is keen to work with Government to identify and implement a mechanism to reduce some of the current disincentives, change perception in the marketplace so as to encourage seasoned, successful entrepreneurs to become actively involved in high-potential start-ups.

Regulatory concerns for the Irish software industry

Tendering Process

The single biggest challenge for indigenous software companies is the ability to create the scale necessary to compete successfully in global markets. The issue of public procurement is among the primary reasons why companies cannot become large companies of scale from Ireland on the global market. Having won business from their own public service is an important credibility issue when many of these companies seek to supply the public service in export markets. However, the ability to win business in the public sector is proving very difficult for the majority of the indigenous software industry. A barrier to many SME's in the software industry from gaining opportunities to win Government IT contracts is in the public procurement tendering process and the regulation surrounding this process. The primary areas of concern are in relation to:

1. The Financial Capacity Criteria which is outlined in the Government RFP documents- in particular the ratio of historical turnover in relation to the value of the tender. The requirement sometimes specifies to have the average turnover for last 3 years greater than 3 times estimated project cost, and on other occasions the exact criteria being applied not being specified in detail.
2. Requirement to present the tenderer's balance sheets or extracts from the balance sheets for the previous three years.

For many small new companies both these requirements can prohibit their direct participation in tenders over €100k, as they do not have 3 years accounts with significant turnover, and their balance sheet may be weak.

The ISA re requesting the support of the Business Regulation Forum to amend this criteria which is hindering many SME's in the procurement process.

Administrative Costs of complying with regulations

The administrative and compliance costs such as filling in forms or other government information requirement need to be urgently addressed by the Business Regulation Forum. For many indigenous software companies who are SME's this is a serious burden on time and resources and often, the administrative costs are not proportional to the benefits that the regulation brings. We would ask that more innovative, time and cost efficient mechanisms are used to assist companies, particularly SME's to comply with the regulations. Innovative technologies can provide part of this solution. Also, where possible a cost benefit analysis should be carried out before regulations are put into place.

In conclusion, the ISA welcomes the opportunity to submit it's views and suggestions on business regulations that are impacting on the industry and are keen to ensure that the software sector can operate in a business environment that is not unnecessarily over-regulated or impacts negatively on business or competitiveness.