

Recent Changes in the Law That Affect Your Business

Ted Hallissey – Partner
Richard O’Sullivan – Solicitor
Nicola Dowling - Solicitor

Inchydoney Lodge & Spa
27 October 2005

P.J.O'Driscolls
SOLICITORS

41 South Main St., Bandon Co. Cork



PJ O'Driscolls

- Largest Law Firm in Cork County
- Uniquely able to advise on a broad range of issues
- Dedicated Team for legal advice required by businesses of all sizes

Compliance - What is it?

- A.K.A. “Corporate Governance”
- Complying with administrative rules
- Filing on time
- Keeping proper records & accounts



Compliance – Why is it an Issue?

- C.R.O. has computerised its systems
- O.D.C.E. has been established
- Link-ups with Revenue Commissioners
- Directors actually being prosecuted now



Compliance - What is the Issue?

- CRO – struck off 3,000 companies in 2004
 - 14,836 in 2003

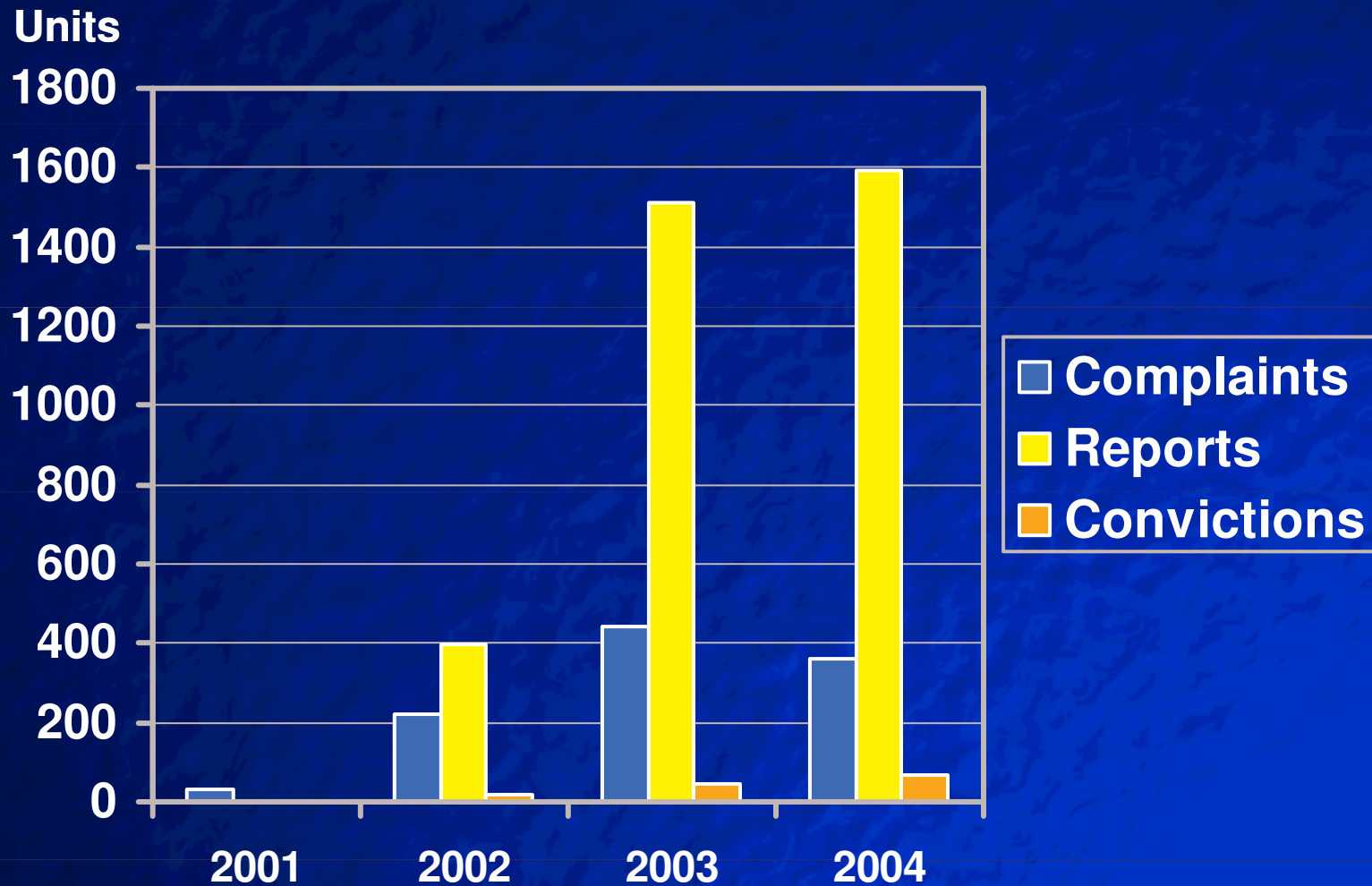
- ODCE
 - 2003 - 2,104 complaints/reports to ODCE
 - 2004 – 2,363 complaints/reports (+12.3%)

- ODCE is prosecuting in Court
 - 2003 – 43 criminal convictions
 - 2004 – 67 criminal convictions (+56%)

- **For the first time, the courts have imposed prison sentences**



Director of Corporate Enforcement



Source: ODCE Annual Reports 2001-2004

Personal Liability

- Civil and Criminal Liability
- Personal Liability for the Debts of the Company
- Huge fines and long prison terms
- On the Spot Fines



Compliance – What do you need to do?

- Separate company and personal affairs
- Keep proper company records
- Make all filings on time
- Ensure company follows technical rules
- If in doubt, GET ADVICE!



European Law Ruling

- *Commission v Van de Walle et al*
- Contaminated Soil = “Waste”
- Owner of Contaminated Land Affected
- May affect transfers of land



Employees (Provision of Information and Consultation) Bill 2005

- Places obligation on Employer to consult with employees before making important business decisions
- Provided requested by 10% of employees, an information and consultation procedure will need to be established which will inform employees of:
 - Recent and probable development of the business including its economic situation or employment situation
 - Decisions likely to lead to changes in work organisation or contractual relations



Directive – Timetable

- Phased Implementation
 - 150 or more employees (establishments 100) on enactment
 - 100 or more employees (establishments 50) 23 March 2007
 - 50 or more employees (establishments 20) 23 March 2008

- In absence of negotiated procedure, standard national agreements may be used or imposed



Confidentiality

- Duty of confidentiality imposed upon participant employees
- Employer may opt out of information and consultation procedure where the nature of that information or consultation would:
 - Seriously harm the functioning of the undertaking
 - Be prejudicial to the undertaking



Sanctions

- If convicted in the District Court, a fine of €3,000 may be imposed
- If convicted in the Circuit Court, a fine of €30,000 or a term of 3 years or both
- Will undoubtedly be used as a tool of attack by disgruntled employees particularly in unfair dismissal claims
- Right of redress to the Labour Court



Directive – What Do You Need To Do?

- Have preliminary discussions with employees
- Prepare an agreement now to suit the culture and circumstances of the Company
- Alternatively, follow the “Standard Rules” in the Bill



The Safety, Health & Welfare at Work Act, 2005

- Came into force on 1st September, 2005
- Has replaced all previous health & safety legislation and will replace all previous regulations including the construction regulations
- Raises the threshold for employers – the duty to ensure compliance with health & safety legislation is now absolute



Sanctions

- Statutory presumption of liability including personal liability for those occupying roles of directors and managers within a company
- Increased powers of health & safety inspectors include:
 - Power to publish “name & shame” lists
 - Can issue on the spot fines of €1,000



Sanctions

- Fines on conviction have increased to:
 - €3,000 if convicted in the District Court
 - €3 million in the Circuit Court
- Or alternatively prison sentences of six months and two years respectively



What should employers do?

- Review existing health & safety policies and procedures to ensure employer has done all that is necessary
- Carry out regular risk assessments and put in place a safety statement for workplace
- Consult with employees and provide training and instruction
- Appoint appropriate number of people to act as safety officers on behalf of employer



Thank You

P.J.O'Driscolls
SOLICITORS

41 South Main St., Bandon Co. Cork

