

# Heads Up – 1 December 2023 –

## Cut-Off date for implementing the Whistleblowing System



### Deadline for the firms to be compliant with Law 2/2023

We remind you that Law 2/2023 of 20 February on the protection of persons who report violations of the law and the fight against corruption (**Law 2/2023**) which transposed the [Directive \(EU\) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law \(europa.eu\)](#) (**Whistleblowing Directive**) came into force on 1 March 2023.

However, there was a 3-month period for organisations with more than 250 employees to be compliant.

There was still another deadline for companies with 50 to 250 employees, or even less than 50 employees in certain circumstances (including branches or agents of foreign regulated entities in the financial sector and those that provide services on a cross-border basis) to become compliant which ends on **1 December 2023**.



### What is the purpose of Law 2/2023?

The main purpose of Law 2/2023 is to strengthen compliance culture in public and private entities by protecting whistle-blowers in an employment or professional context who report violations of the law and the fight against corruptions and to protect individuals who report violations from retaliation.



### What do you need to do?

Spanish and some Non-Spanish companies (see below) are required to adapt their procedures and policies to Law 2/2023 and to ensure that they do comply with the relevant new requirements at the soonest and, in no case, later than **1 December 2023**.

Existing Whistle-blower Systems and those established at the parent company level shall be reviewed and be adapted to Law 2/2023.



### How can Simmons & Simmons help?

**Comply with Law 2/2023 before 1 December 2023**, including **(i)** review and update the existing policy and/or drafting a specific annex for Spain that is compliant with Law 2/2023, **(ii)** assist you with the relevant decisions to be adopted by the Board of Directors or the Government Body **(iii)** assist you in identifying the Director Responsible for the internal reporting system and provide them with a complete set of guidelines, **(iv)** file the relevant communications with the independent authority, and **(v)** training session focused on your activities.



### What are the main particularities of the Law 2/2023?

As a summary of the main features of this legal text ([please click to find a Newsletter with a higher level of detail with regards to the Whistleblowing Directive transposition in Spain](#)), we highlight the following:

- Law 2/2023 protects individuals who report not only infringements of the EU law, as defined in the Whistleblowing Directive, but also acts or omissions that may constitute a serious or very serious criminal or administrative offence in Spain, this includes offences involving financial loss to the Treasury and Social Security.
- Entities concerned includes those that, despite not having their domicile in Spain, carry out activities in Spain through branches or agents or by providing services without a permanent establishment.
- The Internal Reporting System, must be implemented by the Board of Directors or the Governing Body, and includes the appointment of a Director that will be the Responsible for the management of the System, and the approval of a Policy and an information management procedure with certain content.
- Written, oral and anonymous submissions have to be permitted in the Internal Reporting System.
- The Director Responsible for the internal reporting system will be notified to the new Independent Authority for the Protection of Whistle-blowers.
- A sanctioning procedure is foreseen in the event of non-compliance with the Spanish legislation.



### Are companies of less than 50 employees and non-Spanish companies obliged to comply with Law 2/2023?

Yes, when those entities fall within the scope of European Union law on financial services, products and markets, prevention of money laundering and terrorist financing, transport safety, or environmental protection.

Legal persons shall be deemed to be included in the preceding paragraph if, although not domiciled in Spain, they carry out activities in Spain **through branches or agents or by providing services without a permanent establishment.**

Reach out to [@Maria Tomillo](#), [@Jesús Gimeno](#) or [@Gema Fernandez](#) if you have any further questions or if you wish to obtain more information about the implementation of the Whistleblowing Directive in Spain or if you would like us to prepare a tailor-made service proposal to accompany you in the adaptation process to Law 2/2023.