



THE LAW SOCIETY  
OF SINGAPORE

ACCUITY

Industry Report:  
The Challenges of AML  
for Law Firms in Singapore 2019



## Law firms: A target for money launderers?

Since August 2007, Anti-Money Laundering ('AML') regulations applicable to the legal profession in Singapore have steadily increased, but concerns remain that some parts of the profession remain vulnerable. Money laundering worldwide is estimated to be worth between an astonishing 2% and 5% of global GDP a year<sup>1</sup>. To combat this, governments and regulators have introduced stringent compliance requirements for banks and other financial institutions designed to identify suspicious transactions and trace the ultimate source of funds.

With the growing regulations in the financial sector, financial criminals and terrorism financiers have looked for unguarded targets. Unfortunately, they have set their sights on non-financial professionals such as lawyers. Law practices are an attractive conduit for money launderers because of the services they offer, such as conveyancing and the establishment of private companies and trusts. Additionally, their services converge with common methods financial criminals use to launder money and hide the proceeds of crime. Furthermore, the involvement of a legal professional adds a veneer of respectability to any given transaction.

In October 2018, the Law Society working with Accuity, a global provider of risk and compliance, payments and know-your-customer solutions, conducted a survey among both Singapore law practices and foreign law practices to understand and identify the challenges facing law firms in meeting their AML obligations.

The results of the survey indicated that small law firms and firms with an emphasis on conveyancing might unwittingly be targets of money launderers and terrorism financing. This is partly due to an absence of a framework to deal with AML and counter terrorism financing ('CTF') and partly due to a lack of awareness about how financial criminals might leverage on law firms' services to achieve their outcomes.

### Other survey findings include:

- There are marked differences in the AML practices of the smaller and largest firms in Singapore, with small firms showing particular cause for concern;
- A third of small firms do not have documented AML procedures in place;
- Suspicious Transaction Reports (STRs) may be under-reported by law firms – and half of small firms do not document the process of filing suspicious transactions at all; and
- The data that firms use to screen clients may be unreliable and out of date.

### A. Fighting Money Laundering in Singapore

A risk assessment report by the Singapore Ministry of Finance in 2013 recognised that the region, as a thriving hub for business, transport and financial services, is vulnerable to money launderers. In recent years, the booming property market has raised concerns that real estate transactions are being used to 'clean' the proceeds of crime. As the market booms, so does the risk; real estate accounted for a third of criminal assets confiscated worldwide between 2011 and 2013<sup>2</sup>.

In 2003 the Financial Action Task Force ('FATF')<sup>3</sup> released guidelines on 'designated non-financial businesses and professions' (DNFBPs) that proposed that these businesses should be subject to the same anti-money laundering and counter terrorism financing (AML/CTF) regulations as financial institutions. Such businesses include lawyers, notaries, real estate agents, casinos, gambling service providers, company service providers, dealers in precious metals, auditors and trusts. This proposal has steadily been accepted, led by (but not restricted to) the members of the FATF; Singapore implemented the recommendation through an amendment to the Legal Profession Act in 2007, while

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<sup>1</sup> United Nations <https://www.unodc.org/unodc/en/money-laundering/globalization.html>

<sup>2</sup> Source: Financial Action Task Force

<sup>3</sup> The Financial Action Task Force is an inter-governmental body with 36 member jurisdictions that represents most of the major financial centres around the world

Hong Kong's Financial Services and Treasury Bureau extended its AML and CTF regulations to DNFPBs in 2018.

An evaluation report by the FATF in 2016 found that only five countries were assessed as 'compliant' or 'largely compliant' with its DNFPB recommendations. Singapore was designated as 'partly compliant'. Furthermore, in June of the same year, a survey conducted by the Law Society of Singapore indicated a continued lack of awareness regarding money-laundering risk among law firms and practitioners in Singapore.

## **B. Why are law firms vulnerable?**

Lawyers are a vulnerable point of attack for money launderers and other financial criminals for a number of reasons:

- There is significant convergence between the services that law firms offer and the methods that criminals use to launder money and hide the proceeds of crime – including conveyancing and the creation of trusts and private companies;
- Firms routinely handle significant amounts of money on behalf of clients. Passing this money through a law firm's account 'cleans' the money and allows criminals to disguise its origin;
- The engagement of a licensed law firm adds an appearance of respectability to the transaction; and
- Lawyer-client confidentiality may pose an ethical dilemma to many lawyers as to whether to maintain their confidentiality obligation or to report their clients for suspected money laundering.

## **C. Small law firms and exposure**

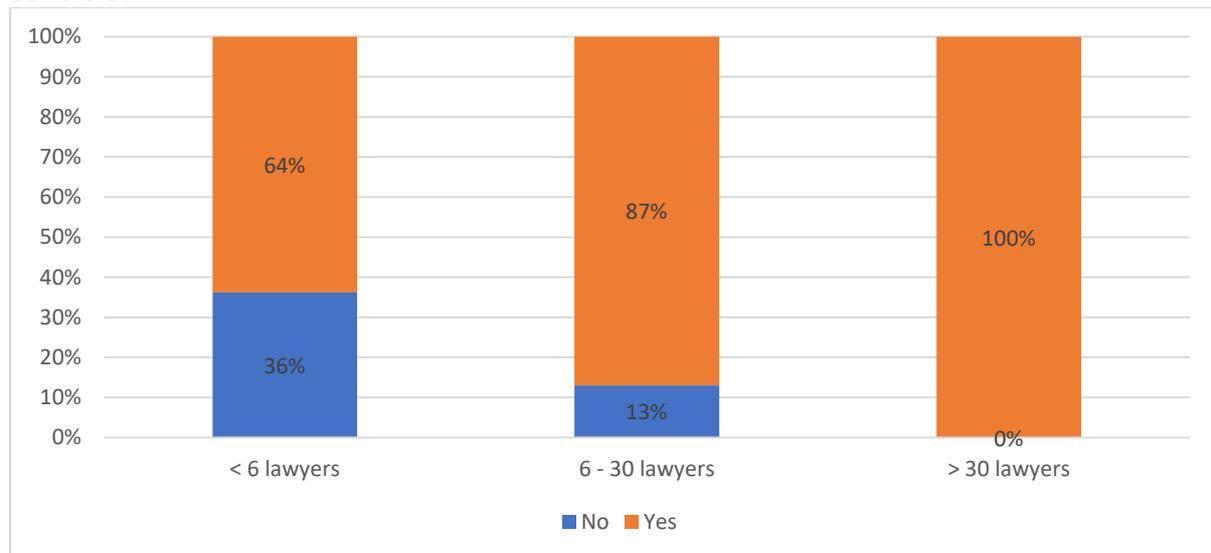
There is vulnerability to risk across all types of firms, large or small.

Law firms that have poor systems and controls, inadequate training and lax due diligence will make them an attractive target to money launderers.

The survey found that all of the largest firms have documented AML/CFT practices. However, 36% of small firms and 13% of mid-sized firms have no policies, procedures or controls in place (Figure 1).

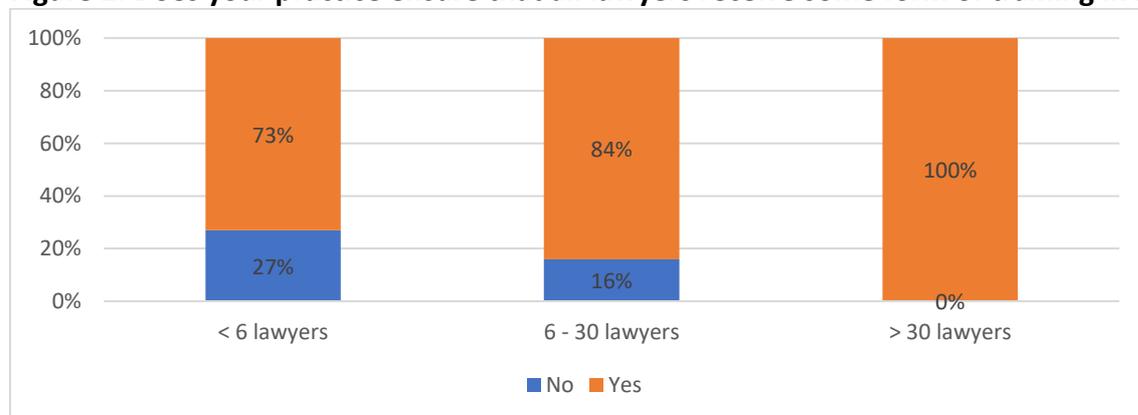
The fact that a firm is small does not protect it from the attention of financial criminals; money launderers will actively look for the weakest point and exploit it.

**Figure 1: Does your law practices have documented AML/CFT policies, procedures or controls?**



The survey also revealed that smaller firms may be unaware of, their AML training obligations. All large firms taking part in the survey said they train their lawyers in AML requirements, but 27% of small firms and 16% of medium-sized firms do not provide AML training (Figure 2). Training partners have an important role to play here, to make sure that they focus their attention beyond the financial sector and take account of the needs of DNFPBs.

**Figure 2: Does your practice ensure that all lawyers receive some form of training in AML?**



**D. Legal Professional Privilege and the low rate of Suspicious Transaction Reports made**

**The law**

Part VI of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (CDSA) says it is an offence to help another person retain, transfer or use the benefits of criminal conduct. Section 39(1) of the CDSA says that when a professional person knows or has reasonable grounds to suspect a property may be connected with criminal activity, it must be reported to a Suspicious Transactions Reporting Officer as soon as is reasonably practicable.

However, subsections (4) and (5) list the exceptions to section 39:

(4) Nothing in subsection (1) or (2) makes it an offence —

(a) for an advocate and solicitor, or an interpreter or other person who works under the supervision of an advocate and solicitor, to fail to disclose any information or other matter which is an item subject to legal privilege;

(b) for a legal counsel acting as such for his employer, or an interpreter or other person who works under the supervision of the legal counsel, to fail to disclose any information or other matter concerning the employer which is an item subject to legal privilege; or

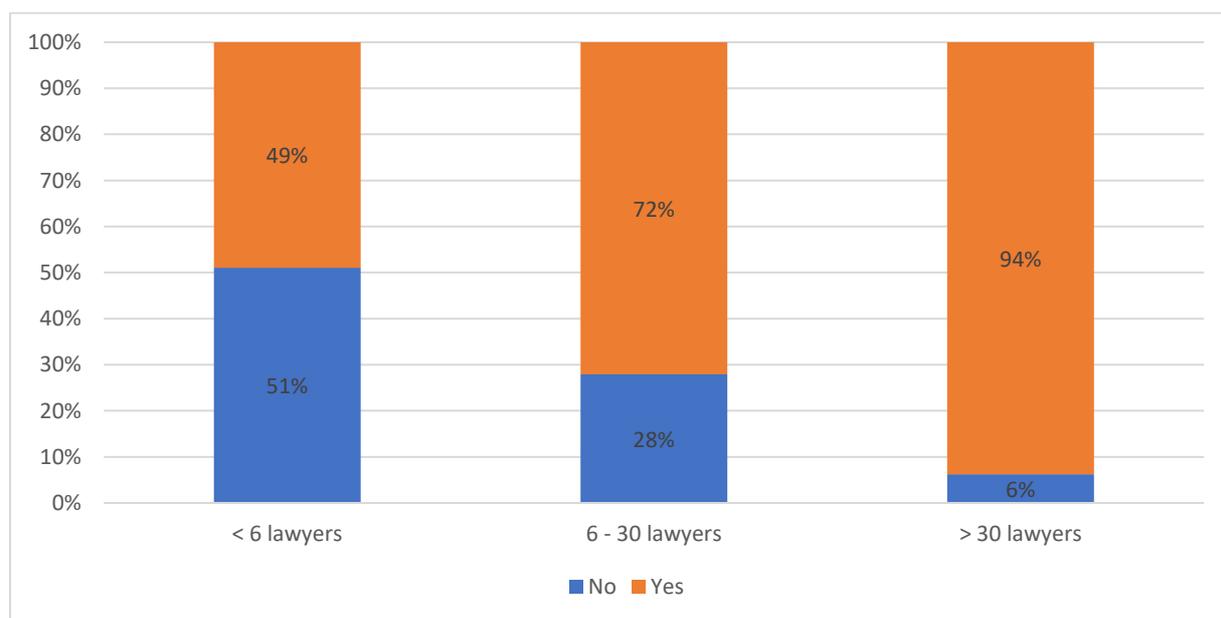
(c) for an arbitrator to fail to disclose any information or other matter which came to his attention in the course of any arbitral proceedings in which he acted as an arbitrator.

(5) It is a defence to a charge of committing an offence under this section that the person charged had a reasonable excuse for not disclosing the information or other matter in question.

The number of Suspicious Transactions Reports (STRs) filed by law practices is extremely low in Singapore. Only five firms taking part in the survey said they filed an STR in 2017, and while this increased to 14 firms in 2018, this represents just 5% of the total sample of firms surveyed.

The survey also suggests that some firms simply do not have the necessary apparatus in place to facilitate an STR filing. For example, 15% of small firms and 10% of medium-sized firms said they had no processes in place for determining when to file a suspicious transaction report. Half of small firms and a third of medium-sized firms said that the process of filing STRs, if they had one, was not documented (Figure 3).

**Figure 3: Is your process for filing STRs documented?**



### E. STRs gaining importance

Regulators are beginning to take a tough line against law firms that fail to file STRs. In 2018 Kang Bee Leng, a former director of Sterling Law Corporation in Singapore, was fined \$10,000 for failing to notify the authorities of a suspicious property transaction handled by the firm. Kang was responsible for the conveyance work on the purchase of a \$23.8m property by a Chinese national, Zhang Min, former president of Yucheng International Holdings. Kang carried out an online search on the client, which revealed news reports that the Yucheng Group was under investigation for fraud, but failed to file a suspicious activity report. Kang pleaded guilty and was fined, even though the transaction was never completed.

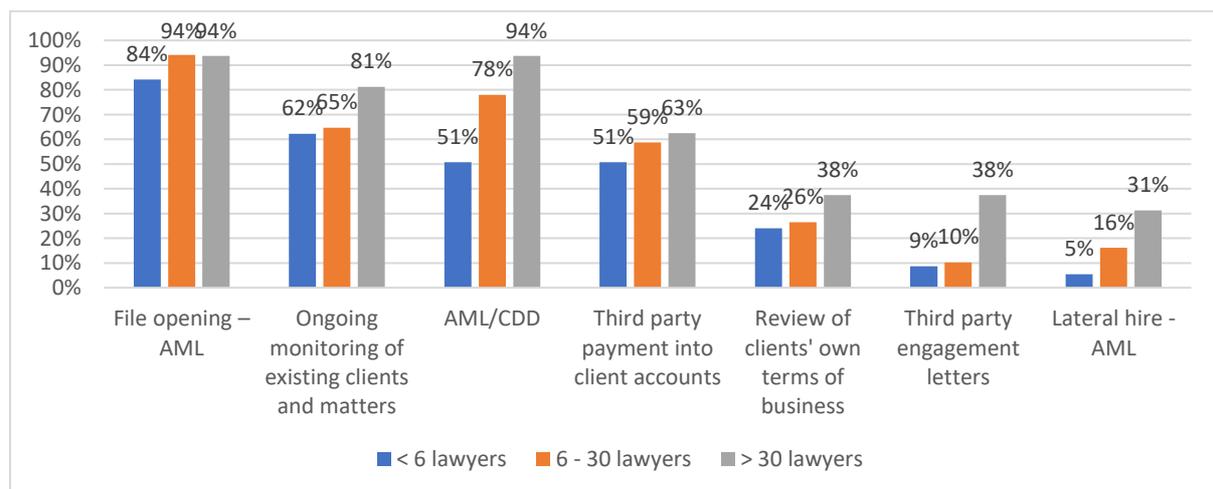
In November 2018, the Singapore government confirmed its plans to increase the penalties for failing to report suspicious transactions under the CDSA. The maximum fine for failing to file an STR – which previously stood at \$20,000 – has been increased to \$250,000 for an individual plus up to three years’ imprisonment, while the corporate penalty has increased to a maximum fine of \$500,000.00.

The increase in penalties reinforces the argument that this is an issue that needs to be tackled urgently. The legal profession needs a transparent debate of why more STRs are not filed, and the filing of STRs as best practice needs to be properly enforced.

Customer due diligence (CDD) checks and screening are the foundation of effective AML. Law firms are required to take ‘reasonable measures’ to establish the identity of a client (or in the case of a corporate entity, the identity of the person who controls the client), the nature of their business and the source of funds used in a transaction. Firms are also required to continuously monitor this information to keep it up to date. Part V advocates a risk-based approach to screening, which allows firms to focus on clients who are considered to be a higher risk.

Our survey found that 88% of firms carry out AML checks at the point they open a file on a client. But from this point onwards, firms’ focus on AML, particularly among smaller firms, seems to wane. Only 63% of the total sample carry out ongoing monitoring of existing clients (Figure 4).

**Figure 4: Which of the following compliance/AML screening checks do you perform?**

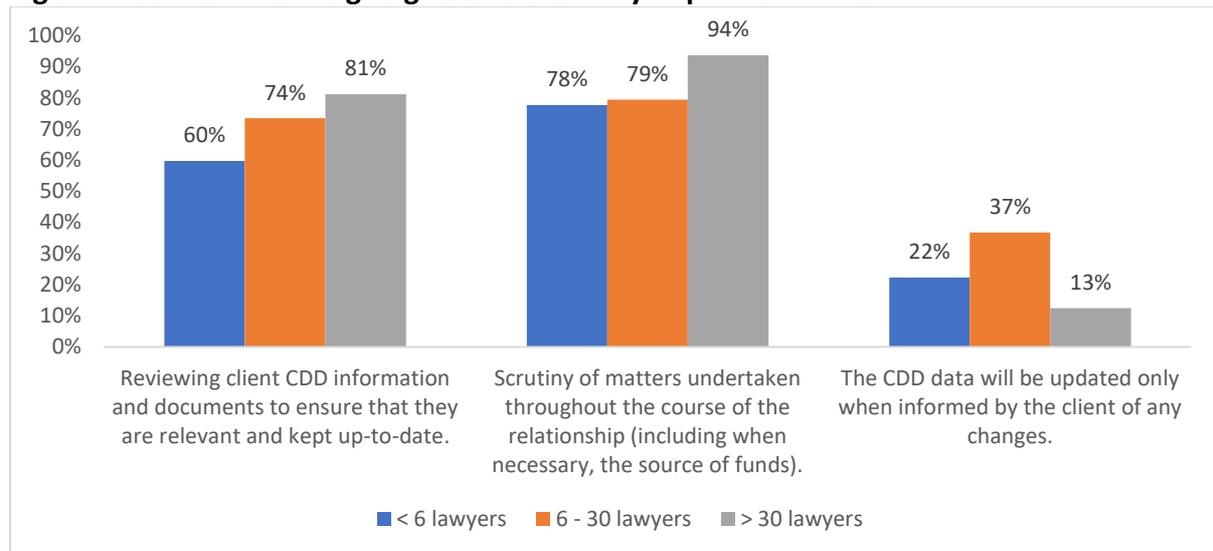


**F. Customer Due Diligence (CDD) checks throughout the lifecycle of a file**

Continual monitoring of customer due diligence data is particularly important, as circumstances often change and new information can be uncovered. Monitoring should be proactive rather than reactive, and cover the entire lifecycle of a client if firms are to manage risk effectively.

The survey found that an overall 63% of firms review customer due diligence (CDD) information, to make sure it remains up to date. A further breakdown indicates that 60% of small firms do this while 81% of large firms, take this step (Figure 5).

**Figure 5: Which of the ongoing CDD checks do you perform on clients?**



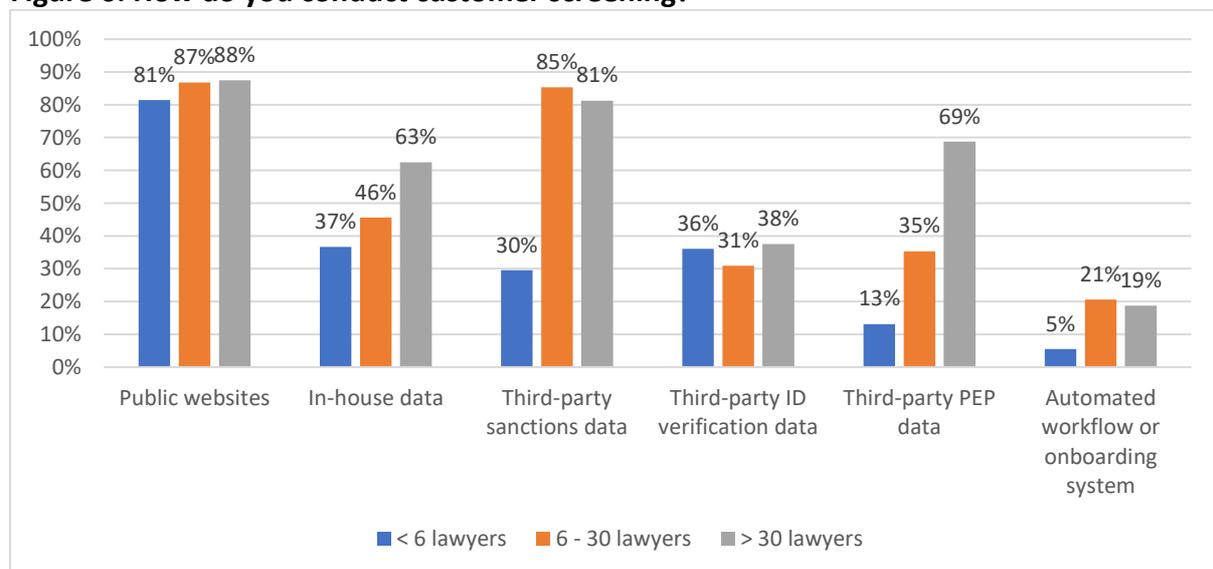
**G. Challenges facing law firms in implementing AML/CFT measures**

**(i) Unreliable Data**

The quality of the data used to screen clients is particularly relevant, as unreliable or out-of-date information considerably raises the risk of missing a red flag. Ideally, clients should be screened against regularly updated official sanctions lists and reliable negative news databases.

When asked how they currently conduct customer screening, 82% of participants said their main source of information was public websites; 40% use sanction screening lists provided by third parties, and 40% used their own data that they had gathered in-house and built up through their own experience. Only 10% had an automated workflow or client onboarding process in place (Figure 6).

**Figure 6: How do you conduct customer screening?**



In addition, 63% say they find establishing the source of a client's wealth challenging, while 55% say that tracing ultimate beneficial ownership is a problem.

#### **(ii) Lack of Automation**

48% of survey participants raised 'making AML less manual' as a problem. As of now, AML and screening processes across law firms are not routinely automated. The effective use of enabling technology would considerably increase effectiveness and accuracy of KYC and watchlist screening processes.

#### **Conclusion**

The survey results indicate that the level of compliance with AML obligations vary in relation to the size of the law firm. Overall, the larger law firms have more robust controls and screening in place. The firms with the weakest controls stand a higher risk of being targeted and exploited by financial criminals. Greater regulatory oversight and more stringent compliance requirements are inevitable, but it is also clear that the mind-set within the legal profession towards AML needs to change. Greater cost-effective automation of AML compliance, along with the routine use of reliable third-party databases for customer due diligence would enhance the identification, measurement and monitoring of money laundering risk more effectively. But this should also be supplemented with sector-wide support, good internal processes, and solid education for employees. When good AML compliance becomes habitual for all law firms, Singapore will be a safer place.