SECOND OPINIONS: WHAT ARE THE EMERGING RISKS FACING PROFESSIONALS IN THE FUTURE?

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The Institute's Compliance Department investigates complaints against its members. Over the past two years, complaints have been trending in the following areas:

Audits of owners' corporations of buildings – Property owners, concerned about their real estate investments, become frustrated when they lose confidence that the corporation's money is not being spent prudently. Complaints submitted to the Institute often arise from the misconception that auditors must verify every transaction in the accounting records and misunderstandings about the audit process. Although most of these complaints are dismissed, some investigations have revealed audit deficiencies which led to regulatory actions. To minimize risks associated with these engagements, practising members are encouraged to work with management companies to resolve concerns. They should reference *A Guide on Building Management Ordinance (Cap. 344)* published by Home Affairs Department and the Audit of Financial Statements of Owners' Corporations of Buildings section on the Institute's website.

Technical proficiency of senior accounting professionals within listed companies – Given public interest in listed companies, the Compliance Department investigates members who served as directors or senior accounting officials (i.e. as CFO) of companies for which deficiencies have been alleged. This exercise has revealed a trend of senior accounting officials unduly relying on the auditor, and – in some cases – abdicating their responsibilities for a company's financial reporting to the auditor. The Code of Ethics for Professional Accountants requires all professional accountants to maintain professional knowledge and skill to ensure that an employer receives competent services in accordance with applicable technical and professional standards. Failure to do so may result in regulatory actions.

Compliance with the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615) (AMLO) – In March 2018, the scope of the AMLO was extended to cover "designated non-financial businesses and professions" – including accountants. The Institute has taken a two-prong approach to ensure members comply with the AMLO. The practice review process now includes AMLO monitoring reviews. The Compliance Department investigates complaints against members who fail to perform procedures warranted under the AMLO. Initial AMLO-related investigations reveal a lack of understanding of members' requirements concerning risk assessment and customer due diligence. Members are encouraged to familiarize themselves with the *Anti-money Laundering Procedures Manual for Accountants*.

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Should the auditors, who have failed to detect the fraud perpetrated on the insolvent company, be held responsible for the losses in substance suffered by the company's creditors? For many years, it has been considered that auditors, in performing statutory audits, only owe duties to the company's shareholders as a collective body (Caparo v. Dickman (1990)) and should not be held responsible for creditors' losses.

However, it is a well-established principle that directors in an insolvent or a nearly insolvent company need to prefer the interests of creditors to those of shareholders if they are in conflict. Applying this to audit engagements, the auditors' duty may also extend to protecting creditors' interests when the company is insolvent or nearly insolvent provided these claims remain valid. The common law courts have also on a number of occasions highlighted the importance of protecting creditors' interest in insolvent companies.

In Stone & Rolls v. Moore Stephens (2009), Lord Mance in his powerful dissenting judgment held that the auditors should not be allowed to rely on the illegality defence when they had failed to detect the company's fraud, which caused the loss to the creditors. Subsequent cases suggest that this view has been gaining ground. In Bilta (No 2) (CA) (2016), Patten LJ cast doubt on Stone & Rolls and considered that its reasoning takes away the legal protection available to creditors.

In Hong Kong, in Days Impex (2017), Deputy Judge Lee refused to strike out the claim against auditors for reasons including that the proposition that auditors owed duties to creditors even when the company was insolvent or nearly insolvent was at least arguable.

Should an auditor take creditors' interests into account in planning the audit? It may well be prudent. A company engaged in managerial fraud tends to appear to be financially sound and its true position (usually hopelessly insolvent) is revealed only after the company collapses. The fact that the auditor concerned has been defrauded by the management in the first place is not an excuse for their negligence in detecting fraud. As stated in a recent legal case, fraud is the "very thing" from which the auditor has a duty to protect the company.

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The digital world is significantly smaller than the physical world and information can be transmitted over thousands of kilometres within a matter of seconds. Many professionals embrace this brave new world – but others seem reluctant to take their first steps forward. Failure to build and maintain an online presence is no longer an option, as late adopters may be labelled as outdated, and find themselves unable to enjoy the same professional opportunities they experienced in the pre-digitally connected world.

Fortunately, there are several websites that make it easy to build an online profile such as LinkedIn, Facebook and Twitter. Of those, LinkedIn is "the" site for professional networking. This platform offers you tremendous power to share your skill set or the professional services that you offer with a wide audience. You can also expect that most potential clients will google you and check your LinkedIn profile before engaging you.

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During a recent workshop, a senior executive volunteered that he would not take meetings with suppliers who do not have an "All-Star" or 100 percent complete LinkedIn profile. He added that "if the person who wants to meet with me doesn't even care enough about their own personal brand to be active on the site, then it is unlikely they are a good partner for us."

Another survey indicates that 50 percent of respondents will avoid doing business with suppliers without a fully completed LinkedIn profile.

More than 90 percent of recruiters use LinkedIn. A strong profile is therefore critical if you are job-hunting. Otherwise, you may be missing out on an excellent opportunity because you are digitally invisible to the company.

Being digitally-visible on LinkedIn requires you to follow seven easy steps.

1. Add your industry and location
2. Add an up-to-date current position with a description
3. Add at least two past positions
4. Add your education
5. Add at least three skills (you can add up to 50 – these are excellent for showing up in searches)
6. Add a professionally shot profile photo
7. Have at least 50 Connections