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**SUMMATIVE (FORMAL) ASSESSMENT: MODULE 7E**

**UNITED ARAB EMIRATES**

This is the **summative (formal) assessment for Module 7E** of this course and must be submitted by all candidates who **selected this module as one of their elective modules**.

**The mark awarded for this assessment will determine your final mark for Module 7E**. In order to pass this module, you need to obtain a mark of 50% or more for this assessment.

**INSTRUCTIONS FOR COMPLETION AND SUBMISSION OF ASSESSMENT**

**Please read the following instructions very carefully before submitting / uploading your assessment on the Foundation Certificate web pages.**

1. You must use this document for the answering of the assessment for this module. The answers to each question must be completed using this document with the answers populated under each question.

2. All assessments must be submitted electronically in **Microsoft Word format**, using a standard A4 size page and an 11-point Arial font. This document has been set up with these parameters – **please do not change the document settings in any way**. **DO NOT** submit your assessment in PDF format as it will be returned to you unmarked.

3. No limit has been set for the length of your answers to the questions. However, please be guided by the mark allocation for each question. More often than not, one fact / statement will earn one mark (unless it is obvious from the question that this is not the case).

4. You must save this document using the following format: **[studentID.assessment7E]**. An example would be something along the following lines: 202223-336.assessment7E. **Please also include the filename as a footer to each page of the assessment** (this has been pre-populated for you, merely replace the words “studentID” with the student number allocated to you). Do not include your name or any other identifying words in your file name. **Assessments that do not comply with this instruction will be returned to candidates unmarked**.

5. Before you will be allowed to upload / submit your assessment via the portal on the Foundation Certificate web pages, you will be required to confirm / certify that you are the person who completed the assessment and that the work submitted is your own, original work. Please see the part of the Course Handbook that deals with plagiarism and dishonesty in the submission of assessments. **Please note that copying and pasting from the Guidance Text into your answer is prohibited and constitutes plagiarism. You must write the answers to the questions in your own words**.

6.The final submission date for this assessment is **31 July 2024**. The assessment submission portal will close at **23:00 (11 pm) BST (GMT +1) on 31 July 2024**. No submissions can be made after the portal has closed and no further uploading of documents will be allowed, no matter the circumstances.

**ANSWER ALL THE QUESTIONS**

**QUESTION 1 (multiple-choice questions) [10 marks in total]**

Questions 1.1. – 1.10. are multiple-choice questions designed to assess your ability to think critically about the subject. Please read each question carefully before reading the answer options. Be aware that some questions may seem to have more than one right answer, but you are to look for the one that makes the most sense and is the most correct. When you have a clear idea of the question, find your answer and mark your selection on the answer sheet by highlighting the relevant paragraph **in yellow**. Select only **ONE** answer. Candidates who select more than one answer will receive no mark for that specific question.

**Question 1.1**

One of the **most significant barriers** to the restructuring process in the UAE has been:

1. The failure of the responsible authorities to enact laws which would encourage a business rescue culture.
2. The low rate of business failure in the UAE.
3. The absence of a moratorium on creditor actions after the commencement of a bankruptcy proceeding inhibits the restructuring process.
4. There could be criminal law consequences for business owners arising from the security agreements which a business might have with its creditors.

**Question 1.2**

What is the **principal difference** between the “mainland” UAE Bankruptcy Law and the insolvency laws of the two financial centres (the DIFC and the ADGM)?

1. The insolvency laws of the financial centres govern the insolvency of financial service businesses only, while the Bankruptcy Law governs the insolvency all other businesses.
2. The insolvency laws of the financial centres have no application and cannot be enforced in the UAE “mainland” (that is, outside of the financial centres), while the Bankruptcy Law is the only applicable law governing insolvency in the UAE “mainland”.
3. The Bankruptcy Law drew on the experiences of a number of jurisdictions, while the DIFC and AGDM insolvency laws and regulations are primarily based on the insolvency laws of one other country.
4. The Bankruptcy Law incorporates substantial elements of Islamic law, while the insolvency laws of the financial centres are based on the common law.

**Question 1.3**

Which statement **correctly describes** the relationship between the courts of the DIFC and the courts in mainland UAE?

1. The judgments and orders of the courts of the DIFC are not enforceable outside of the DIFC.
2. The judgments and orders of the courts of the DIFC are enforceable elsewhere in Dubai only through the Dubai courts.

1. The judgments and orders of the courts of the DIFC are enforceable elsewhere in Dubai only after recognition for enforcement by the Joint Judicial Committee.
2. The judgments and orders of the courts of the DIFC are not capable of enforcement outside of Dubai.

**Question 1.4**

As regards security in mainland UAE, a secured creditor’s rights, both in relation to real and personal property security, are not substantially affected by any formal insolvency process; the secured creditor can generally enforce its rights notwithstanding the debtor’s insolvency.

Is this statement True or False?

1. True.
2. False.

**Question 1.5**

Which statement is correct in relation to the operation of security interests for both real and personal property in the DIFC?

1. The law regulating security interests in land and personal property in the DIFC is based on Australian law.
2. A mortgagee of land in the DIFC requires a court order to allow it to repossess land subject to a mortgage.
3. The regulating security interests in land and personal property in the DIFC is based on English common law.
4. There are separate registers in which security interests in both land and personal property in the DIFC can be registered.

**Question 1.6**

Which of the following statements is incorrect in relation to creditor rights following the court’s decision to commence preventive composition under the UAE Bankruptcy Law up until the approval of the scheme?

1. All legal claims and proceedings and any judicial enforcement procedures against the debtor are suspended, unless otherwise decided by the court.
2. The commencement of preventive composition procedures will also suspend any criminal proceedings brought in relation to a dishonoured cheque, including against the signatory of the cheque.
3. Creditors may not bring or pursue claims against persons jointly liable with the debtor or any guarantors of the debtor’s debts.
4. Secured creditors may enforce their securities provided they have obtained court permission to do so.

**Question 1.7**

Which of the following is not a consequence or possible outcome of the commencement of preventive composition?

1. Interest on debts owed by the debtor stops accruing on the date of commencement of preventive composition.

1. The debtor can borrow further money during the period of preventive composition, with the court’s permission.
2. The debtor is not allowed to change its ownership in any way.
3. The court can order the rescission of effective contract to which the debtor is a party.

**Question 1.8**

Which of the following is not a basis for an application to the court for the commencement of bankruptcy proceedings under the UAE Bankruptcy Law?

1. If a secured creditor, having security over all or substantially all of the assets of a debtor, takes steps to enforce its security.
2. If a creditor (or a group of creditors) has given notice to a debtor requiring the debtor to pay a debt of AED 100,000, and the debtor has failed to discharge the debt within 30 business days of that notification.
3. Following the annulment or rescission of preventive composition by the court.
4. If a debtor is in default of its payment obligations for 30 consecutive business days.

**Question 1.9**

Rehabilitation is a DIFC insolvency procedure introduced by the 2019 law, which allows companies unable to pay their debts but able to reach agreement with its shareholders and creditors to agree to a plan referred to as a Rehabilitation Plan to achieve a court sanctioned plan that binds creditors. In regard to the rehabilitation procedure, which of the following statements is incorrect?

1. In order to initiate the rehabilitation process the company is required to make an application to court submitting the rehabilitation plan and nominating the proposed rehabilitation nominee.
2. A moratorium comes into effect for an initial 180 days, preventing creditors from commencing or continuing legal action against the company.
3. The moratorium disapplies contractual provisions that would otherwise enable a contract to be terminated upon insolvency.
4. Any creditor materially prejudiced by the moratorium may apply to court seeking the disapplication of the moratorium in relation to a particular contract.

**Question 1.10**

Which of the following statements is incorrect?

1. The DIFC courts will enforce judgments and arbitration awards from other countries in accordance with the Riyadh Convention (Riyadh Arab Agreement for Judicial Co-operation).
2. A foreign judgment is enforceable in mainland UAE as long as there is reciprocity between the UAE and the foreign state issuing the judgment for which enforcement is sought.
3. The ADGM courts may recognise reciprocity with a foreign jurisdiction in the absence of an applicable treaty if the Chief Justice of the Courts is satisfied that substantial reciprocal treatment will be assured regarding recognition and enforcement in that foreign country of the judgments of the ADGM courts.
4. The DIFC courts will enforce judgments and arbitration awards from other countries, even if the debtor has no presence of any type in the DIFC.

**QUESTION 2 (direct questions) [10 marks in total]**

**Question 2.1 [maximum 2 marks]**

What is the key point of distinction regarding the registration of real property interests, including mortgages, in the different emirates of the UAE? What is the key difference between the sale of mortgaged real property following a debtor default if that real property is in a financial free zone or if the real property is in “mainland” UAE?

1. [For real property, while there is general provision in the law of the UAE for providing mortgages on land, each emirate has its own land registration system and the registration and execution over mortgages may be governed by moderately different law and procedures in each emirate but the substance is generally the same. In the DIFC, the law is based on the Torrens system derived from Australia where registration on property in the land registry is an exclusive method of registration.
2. If the real property is in Mainland, the creditor can sell the land but need the approval of the court to proceed with the disposal of the mortgaged property. In contrast, in the financial free zone as per DIFC law, if the mortgage contract contains a power of sale in case of default, the creditor can take possession of the property if the creditor gives 60 days’ notice to certain relevant parties and there is no need to have a court order.]

**Question 2.2 [maximum 4 marks]**

Preventive composition and restructuring are both insolvency processes that an entity can adopt under the UAE Bankruptcy Law. They share a number of similarities regarding the entry into and conduct of each of the respective processes. While the processes are different, various “actors” assume similar roles in each process. Which actor is responsible for each of the following processes?

1. A decision on any application to commence an insolvency process.

[The only mechanism which is the court-supervised mechanism is available to start a preventive composition when only the debtor can make a petition to the court to initiate the process and for the appointment of the composition trustee by the court whereas a restructuring which is an alternative to liquidation can be started by a debtors and/or a creditor by petitioning to the court for an order to start the restructuring process. ]

1. A primary determination as to whether a debtor’s proposal should be adopted.

[Upon application for a preventive composition, the court may make an interim order to preserve the preventive composition or ask for more information. The court must also appoint an expert to make a report on the financial position of the applicant and have the view of the expert if the applicant met the necessary criteria for the preventive composition whereas for restructuring, upon application, the court has to appoint an expert from the panel of experts to give an assessment on the financial position of the debtor or the court may reject the application if no information is available. The Court shall determine if to accept the application within five business days from the application date or within five business days as from the expert report. The primary determination shall be by the court for both cases]

1. Confirmation of the primary determination as to whether a debtor’s proposal should be adopted.

[The expert from the panel of expert shall provide confirmation on the primary determination in both cases and the creditors also can make application to court to reject the debtor’s proposal.]

1. To supervise the implementation of the insolvency process by the debtor.

[A composition trustee appointed by the court shall supervise the insolvency process under the preventive composition although he must request for court permission to proceed with some changes in the process. Supervisor can also be appointed to supervise the process whereas for restructuring, the trustee appointed by the court and the court may appoint one or more supervisors to overview the process]

**Question 2.3 [maximum 2 marks]**

Under the UAE Bankruptcy Law, for a debtor, what is the key difference between the circumstances which could give rise to an application to commence preventive composition or an application to commence bankruptcy (whether leading to restructuring or liquidation)?

[The key differences which exist in respect to circumstances which give rise to start a preventive composition or restructuring and liquidation are listed below;

1. A debtor only can make an application for the commencement of preventative composition whereas restructuring or liquidation can be initiated through the court by either a debtor or creditor/s.
2. Preventive composition is more likely to be an option for the debtor whereas for restructuring, it is more an alternative to a liquidation process]

**Question 2.4 [maximum 2 marks]**

What is the key difference for a creditor regarding the commencement of preventive composition or bankruptcy of a debtor?

[A creditor cannot initiate a preventive composition in case of default of a debtor but can only object to the start of the preventive composition by making a petition to court whether as for bankruptcy, both the debtor and creditor can initiate the start of a bankruptcy procedure or object to the start of the procedure.]

**QUESTION 3 (essay-type question) [15 marks in total]**

**Question 3.1 [maximum 5 marks]**

Briefly explain the historical background to the introduction of the Bankruptcy Law. Describe which entities the Bankruptcy Law applies to and how it has been received and applied in the UAE.

[There was a weakness in the UAE insolvency regime and same came under spotlight in 2009 when there was a possibility that Dubai World would default its creditors and there was no law (although the Commercial Transaction law was prevailing at that time) as such to assist Dubai World to face this situation. Then, the position has changed with the introduction of the Bankruptcy law in 2016 and further amended in 2019, 2020 and 2021. The repealed the Commercial Transaction law and is based on experiences from different countries. The bankruptcy law is applicable to corporate entities and in 2019 Personal Bankruptcy Law was introduced to govern all debtors which do not fall under the ambit of bankruptcy law. The bankruptcy law provides for preventive composition and bankruptcy which is further split into restructuring and liquidation. The Bankruptcy law applies for entities which are incorporated in Mainland UAE and the Insolvency Act for DIFC and ADGM. It is difficult to say whether the bankruptcy law can be considered to be friendly to debtors or creditors but it provide a greater extend negotiation between debtors and creditors in respect to payment difficulties and also provide a bigger legal certainty than the situation which was prevailing before 2016. ]

**Question 3.2 [maximum 8 marks]**

If a debtor company seeks to enter bankruptcy, describe the ways in which the court is required to be actively engaged in the restructuring in bankruptcy process (assume that a restructuring is possible, that there are no unusual features to the bankruptcy, there are no secured creditors and there has been no criminal conduct by any person involved in the debtor). Your answer should provide references to the legislation.

[Upon application for restructuring, the court as per the Bankruptcy law is needed to appoint an expert from the panel of expert to form an opinion on the financial position of the debtor. The Court can disapproved the application if the required information has not been provided or can ask for further information when considering the application. The court has 5 business days to determine the application as from date of initiation or 5 business days upon receipt of the expert’ report to determine the application. If the application met the satisfaction of the court, the latter would order the start of the bankruptcy process and appoint a trustee. Although no legal proceeding can be initiated against the debtor once the order is made until the earlier that the restructuring plan is approved or ten months as from the start of the restructuring process which can be extended by the court for an additional four months after consultation with the trustee. The court on a final basis has five business days to consider any petition made by a creditor against the appointment of the trustee. The court may replace the trustee, or an expert previously appointed if they have made any volition or if it is against the interest of the creditors. The court will have to decide on the trustee fees and approve payment of the trustee fees. The court has 5 working days to consider any objection on the trustee fees. The court may also request to pay the trustee fee from the court treasury if the fund deposited by the debtor is insufficient. The court may appoint one or more supervisors from the group of creditors as their representative to supervise the restructuring process. The court has made available to the trustee all information the court has in his procession. The court may extend the period for which the trustee is required to provide the creditors list by another ten days. The court has 10 days consider any application from a creditor or the debtor on the creditors list and can also any claim on an interim basis.

The court under the Bankruptcy Act may also suspend any interest or any other penalties at the request of the trustee if notice has been provided to the creditor. If the court consider that the debtor has fail toward its obligation, the court may also order for recission of contract and make order to void term of leases which contain automatic cancellation clause.

The Court may rescind any contract leases, employments contracts at the request of the trustee or request for set-off rights. The court has the right to receive report from the trustee on the debtor’s business and possibility of restructuring and of disposing the business on a going concern basis if required and the court should also take in consideration that the report consider all creditor claims.

Upon submission of the trustee report and if restructuring process is viable, the court will request the trustee to convene a creditors’ meeting with 10 working days unless a liquidation process is more appropriate or the debtor is not willing to remain in office. The court shall consider the scheme which will be prepared by the trustee for the restructuring and may request the trustee to amend same if it is against the interest of all parties. Afterward, the court will direct the trustee to proceed with an invitation to creditors for a meeting to consider the scheme. The court may also request for the establishment of committees which will represent the classes of creditors or give direction for the conduct or appointment of representatives of classes of creditors.

The court may direct if those creditors those claims has been admitted on an interim basis may vote on the scheme at the creditors’ meeting.

Upon approval of the scheme at the creditors' meeting, the court shall approve the scheme if it satisfied that all affected creditors will at least received the same amount of distribution that the creditors will receive in a liquidation process.

The court shall have to approve whether in whole or in part any modification to be made by the trustee on the scheme after approval if the modification will affect any party interest.

The court shall have to approve any new financing if required at the request of the debtor or trustee or make any recission of the scheme and order for liquidation if the debtor has failed to satisfy the condition or if it is impossible to complete the restructuring.

Upon completion of the scheme, the court is required to confirm the completion of the restructuring.

**Question 3.3 [maximum 2 marks]**

In any insolvency system that involves the forced compromising of individual creditor claims, the requirement for court involvement is to ensure that the rights of all parties, including individual creditors, are being protected. The UAE Bankruptcy Law requires a high degree of court involvement. Briefly describe (100 to 150 words) whether you consider that the level of court involvement in approving a restructuring to be appropriate. Provide reasons for your answer.

[Although the court may force any individual creditor to compromise for the best interest of the restructuring, the court will always consider the interest of all creditors including the individual creditor. The court involvement is very important as it will take into consideration any petition made by any creditor against the restructuring process and also replace the trustee or expert if it is not in the interest of all creditor. We should note that the court will not accept any scheme if the amount to be received by the creditors from the restructuring plan is less that what should the creditors received from a liquidation process. ]

**QUESTION 4 (fact-based application-type question) [15 marks in total]**

RZA LLC operates a restaurant chain in various locations in Dubai. It was a thriving and successful business but has been negatively impacted by the increase in global food prices. It has exhausted all available funds and has no cash to pay creditors. RZA LLC owns a restaurant site which is under development, but the development is not expected to be completed for seven months. The site had been purchased by one of RZA LLC’s shareholders and was transferred to RZA LLC on the basis that payment for the site would be made by RZA LLC to the shareholder in full in 2024. In the meantime, the shareholder holds a mortgage over the property for the unpaid purchase price.

[Type your answer here]

Question 4.1 [maximum 5 marks]

The process of preventive composition requires adherence to a number of time-frames. Briefly outline the necessary steps and 10 specific steps that will determine the maximum time taken between making an application (the first step) and the registration of the scheme following final approval (the tenth and final step before its implementation).

Assume that: an expert’s report is required by the court; there are no disputes about whether a creditor is accepted or not; there are no amendments to the proposed scheme by the court; the scheme is accepted by the creditors without the requirement for any adjournment of the creditors’ meeting; the scheme is approved by the court following the meeting; and there are no other extensions.

[Upon application of the preventive composition, if the debtor is subject to any competent controlling body, the debtor has to give ten days’ notice to the controlling body. Once the court received the application, the first step will be that the court must appoint an expert to assess the financial position of the debtor and the expert has up to a maximum of twenty days to provide the court with the report. The court shall then have five working days to decide on the preventive composition and if accepted, the preventive composition start. The Court shall then appoint a trustee or a maximum of three to act jointly which has been recommended by the debtor or is enrolled from the table of expert. Any creditor has five days to petition the preventive composition and the court shall have five days consider the objection and the preventive composition process shall continue.

The court shall decide on the trustee fee and any party having interest in the preventive composition can object against the trustee’s fees. The court shall have five business days to consider the petition. Upon appointment of the trustee, the court and the debtor are required to provide all information they hold to the trustee within a time-frame that shall be decided by the trustee.

Upon the appointment of the trustee, the latter shall have to conduct an inventory on the asset of the debtor and prepare a report to be provided to the court. The trustee shall also have to prepare a

report on the creditors and submit same to the court. The trustee is empowered to request information from any person that hold information on the debtor and if there is any failure from that person, the trustee may oblige the person to comply to same by requesting an order from the court.

The debtor is obliged to remain in office during the preventive composition process. Upon start of the preventive composition process, all legal proceedings and/or criminal action against the debtor are suspended except that a secured creditor may enforce his right in respect to any securities but must first have the court permission to do so. The court shall have ten business days to determine the request after determining that no collusion exist between the debtor and the secured creditor. The trustee shall have five working days to cause a publication of the preventive composition 2 two widely-read newspapers in English and in Arabic. The notice shall request the creditors to file their claims within 20 business days and the trustee shall have to notify all known creditors on their known addresses. The creditors have to handle to the trustee all relevant documents in respect of their claims within the timeframe requested by the trustee and any further document if required. Once the expiry of submitting claim is over, the trustee is required to proceed with a list of creditors with all details and supporting and the trustee conclusion on the claims received. The trustee shall have ten business days to file the said report with the court for his determination.

With the assistance of the debtor, the trustee is required to provide the court with a preventive composition scheme within 45 days as from the date of the publication of the start of the preventive composition process. This period can be extended by the court for a further 20 business days period at the request of the trustee or the debtor. The implementation period of the scheme shall not overlap a period of three years but can be extended for the same period with the approval of a majority of creditors having two-thirds of the debts.

The debtor can provide a secured creditor with an alternative security, and if the latter refuse the security, the court may compel the creditor to accept same if the alternative security is of equal value. The secured creditor has to appeal same within five working days.

Upon receipt of the scheme, the court has 10 business days to confirm that the scheme takes into consideration, the interest of all interested parties. Upon approval of the scheme by the court, the latter shall request the trustee to conduct a creditors’ meeting and shall within five business days cause an advertisement to be published inviting the creditors at the meeting. Th creditors’ meeting should be held within fifteen business days for the creditors to approved the scheme. The scheme will be approved if a majority of creditors holding two-thirds of the debtor ‘s debt. Upon approval, the trustee has three business date to submit the scheme to the court and the court shall provide his final approval on the scheme within seven days.]

Question 4.2 [maximum 5 marks]

RZA LLC’s creditors rejected the proposed preventive composition scheme after a process of nearly four months. During that time, creditors, including staff, were not paid. The owners consider that without creditor support, restructuring would be impossible and liquidation is the only option available. With specific reference to the facts described above, describe the process that would be followed as part of any liquidation and, in particular, considering who could be appointed as trustee.

[Creditors from the above scenario may request that the proposed preventive composition scheme be rejected if the debtor has failed to meet the condition of the scheme or it is impossible to proceed with the scheme. The court can terminate the scheme on its own or at the request of a creditor. The debtor will be considered as committing an act of bankruptcy if he has default payment for more than 30 business days and from the scenario, the creditors including staff have not been paid for nearly four months.

Upon termination of the scheme, the court continue to act on the implementation of the process of liquidation and may appoint the actual trustee as bankruptcy trustee or another trustee to complete the liquidation process.

The appointed trustee has three business days to publish his appointment and state that RZA LLC’s is under a bankruptcy order. The trustee is required to cause a monthly report to the court on the progress of the liquidation of the RZA LLC’s asset and the bankruptcy process. RZA LLC’s creditors including the staff need to file their claims with the trustee within 10 business days as from the court order. Claims filed after the 10 business days would not be considered except if the court has any reason for failure. The trustee must consider the claims received unless the assets is insufficient to meet the legal cost and pay the secured creditors.

The trustee shall have to liquidate the asset of RZA LLC’s by public auction under the control of the court and the trustee may request the court for approval that the RZA LLC proceed with the disposal of the assets in six months which can be extended to eight months if it is in the public or creditor’s interest.

Proposal received by the trustee must be communicated to the court, any supervisor and RZA LLC’s. if there is any objection from the interested party, the court shall determine the objection. RZA LLC’s or some related persons cannot offer for the debtor’s asset.

Upon disposal of the asset, the appointed trustee shall proceed with the distribution in accordance with law and approved by the court. Claim not yet admitted shall be held with the court for further determination. Asset bearing securities are paid to the secured creditors after deduction of the trustee’s cost of sale and any excess fund remaining shall be distributed to RZA LLC’s. We should also consider that under the mainland prevailing law that the secured creditor’s right is not much affected as the secured creditor can dispose of any asset bearing securities with the permission of the court. Hence the shareholder holding the mortgage can dispose of the site to satisfy his claim. For the other asset, payment will be directed toward the court and trustee’s cost. The staff shall receive three months’ salary toward unpaid wages and salaries. The trustee shall also settle the remaining creditors from the remaining fund. The court shall afterward confirm the termination of the liquidation process, and include a final list of creditors with the remaining unpaid amount. The trustee shall afterward return all documents to RZA LLC’s. Any creditor whose debt has remained unpaid may enforce their right against any remaining asset.

RZA LLC’s may request the court to terminate the bankruptcy if all debts have been settled. RZA LLC’s shall be deemed to be fully rehabilitated after the expiry of five years after completion of the bankruptcy process or can be accelerated if all debts has been settled before the expiry of the period.

RZA LLC’s creditors rejected the proposed preventive composition scheme after a process of nearly four months. During that time, creditors, including staff, were not paid. The owners consider that without creditor support, restructuring would be impossible and liquidation is the only option available. With specific reference to the facts described above, describe the process that would be followed as part of any liquidation and, in particular, considering who could be appointed as trustee

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Question 4.3 [maximum 5 marks]

RZA LLC incorporated and registered a fully-owned subsidiary company in the DIFC to operate a restaurant in the DIFC. The subsidiary is called RZA Limited and it is incorporated as a DIFC company. RZA Limited is also unable to pay its debts. What actions can RZA Limited’s creditors take if they wish to see RZA Limited liquidated in the DIFC? In particular, who can take such actions and what steps would have to be taken? If the RZA was to be wound up, who would be responsible for it and what process would be adopted for addressing creditor claims in the winding up?

[Insolvency in the DIFC is governed by the DIFC insolvency Law. Company can be wound up in the DIFC either by a voluntary winding up or compulsory winding up. Voluntary winding up can be divided into two form which are members’ voluntary winding up and creditors’ voluntary winding up.

To proceed with the members’ voluntary winding up, the company need to be in a solvent position and the shareholder shall pass a resolution for winding up and appoint a liquidator whereas for creditors’ voluntary winding up, the company shall be insolvent and the shareholder shall pass a resolution for winding up and appoint a liquidator but the appointment of the liquidator will take effect once confirm at the creditors’ meeting. The creditors may appoint another person to act as liquidator and the insolvency practitioner appointed by the creditors shall be the liquidator.

Compulsory winding up will occur for the following reasons:

1. A creditor has request for payment for an amount of USD 2,000 but same has not been settle for a period of more than three weeks; or
2. An execution process has remained unsatisfied; or
3. when an entity is unable to pay its debts as and when they fall due; or
4. it can be shown that an entity’s liabilities which will also include prospective or contingent liabilities are greater than the entity assets (from the module 7E guidance text, it is stated “*it is proved that the value of the company’s assets exceeds the value of the company liabilities, including any prospective and contingent liabilities and this will mean that the company is solvent)*

RZA Limited’s creditors can applied for a compulsory winding up if the creditors want RZA Limited to be liquidated in the DIFC. If the creditors satisfied any of the above reason, they may make an application to the court for RZA limited to be wound up under the Insolvency Act.

Upon receipt of the application, the court will consider whether it is just and equitable to order the winding up. As the company is unable to pay its debts, the court will order the winding up of RZA Limited and appoint a liquidator or provisional liquidator. The liquidator shall then convene a creditors’ meeting to decide on the insolvency practitioner to be appointed as liquidator.

A compulsory winding up may be requested by the company, the directors or a creditor which can also be any prospective or contingent creditor, hence the creditors of RZA limited may make the request to the court.

A liquidator which should be a licensed insolvency practitioner who has the power set out in Schedule 3 of the law and the duty of the liquidator shall be to continue the business if applicable. The liquidator can also dispose of RZA Limited’s asset and proceed with the necessary activity toward the winding up of RZA limited and proceed with a distribution. The liquidator should also call for claims from creditors, request additional supporting from creditors in respect of their claim, accept or reject the claims received (in full or part), rank and proceed with a distribution to creditors and shareholder in rank and priority in accordance to law.

From the scenario, the is no secured creditor and if there was a secured creditor, the latter would have exercised his right by disposing the secured asset with the approval of the court and file any claim for any remaining claim which has remained unsettled. The liquidator shall address the claims received from creditors and proceed with a distribution in rank and priority in accordance to the Insolvency Act except if some may be net off as per netting law which override the existing provision of the DIFC Insolvency Law. To be able to recoup the outstanding amount, a creditor is required to file his claim and provide additional supporting if required to the liquidator. Creditors who have not file their claim will not receive any dividend except if any fund has remained after the liquidator has proceeded with a distribution to all creditors who have filed their claims.

The liquidator shall first settle the liquidation cost and keep some fund for claims which can still be lodged or are disputed. All outstanding claims shall rank equally for an insolvent company except that preference claim shall rank in priority. Preference creditors are determine by the Preference creditor Regulations 2008 and examples of preference creditors shall be employees and contribution to pension scheme. After settlement of any preference claim, the liquidator shall pay all creditors and if there is an remaining fund, the liquidator shall pay any interest bearing claim. Should there still be some fund, the liquidator shall remit same to the shareholders as per the constitution of the company.

The liquidator shall afterward conduct a final meeting and provide the creditors with a final report. The creditors may provide the liquidator with a release or otherwise the liquidator shall apply to the court for the release. The dissolution of RZA limited shall occur at the expiry of three months as from the date the final report was sent to creditors.

Should there be insufficient fund to cover the liquidation cost, the liquidator may provide a 28 days’ notice to creditors and member before requesting DIFC registrar of Companies to dissolve RZA Limited.

**\* End of Assessment \***