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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?

[In relation to real property, while UAE law makes general provisions for the granting of mortgages over land, each emirate maintains its own land registration system; the registration and enforcement of mortgages can be subject to slightly different and procedures in each emirate, although the substance of the law is generally the same. The key point of distinction regarding the registration of real property interests, including mortgages, in the different emirates of the UAE lies in the regulatory framework and governing authorities of each emirate.

While the law in the mainland UAE provides for the right of the mortgagee to sell the mortgaged property following debtor’s default, however, this right must be exercised through court. In the mainland UAE the general approach adopted appears to be that a mortgagee can file a petition to the court for an order for sale without first obtaining judgement for the debt. Once an order for sale is obtained, the court’s execution department will conduct the sale of the mortgaged property.

In the case of DIFC and ADGM the position is as follows:

Subject to the provision of power of sale provided as per mortgage contract, in the event of default by a mortgager, if such non-payment occurs or other default by debtor, a creditor holding a mortgage ove the debtor’s land can enter into possession of the land by providing 60 day’s notice to certain relevant parties and without the need for a court order; the creditor can sell the whole or partly of the land, receive rents and profits from the land and apply the proceeds of sale in the payment of the mortgage debt.]

**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.

[Preventive composition: There is only one mechanism available for entering preventive composition (article 6 of the Bankruptcy Law of UAE). Only the debtor can apply to the court for the appointment of a composition trustee by the court.

The Restructuring is an alternative to liquidation, it can be initiated by either debtor or a creditor and both are dealt with as part of bankruptcy procedure.

However, in both Composition as well as in restructuring, the decision on any application to commence an insolvency process is given the court.]

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

[Preventive Composition: Once the court is satisfied on draft of the scheme (after amendments as directed by the court), trustee is required to convene a meeting of creditors. The requisite majority for approval of the draft scheme is a majority of creditors holding two-third of the debtor’s debt(including those temporarily admitted).

the Only creditors whose debts have been admitted may vote on the scheme; except that the court may direct that creditor whose debts have been admitted on an interim basis may vote, if proposed by the trustee subject to any terms and conditions imposed by the court. There are no provisions governing the rights of priority creditors, other than secured creditors, in any scheme. Secured creditors may not vote on the scheme unless they have surrendered their securities.

The requisite majority for approval of the draft scheme is a majority of creditors holding two-third of the debtor’s debt (including those temporarily admitted).

Restructuring: The same thing is applicable here in restructuring too.

Therefore, primary determination as to whether a debtor’s proposal should be adopted is taken by eligible creditors in the creditors meeting in both the situations whether its preventive composition or Restructuring.]

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

[Preventive Scheme: Once the scheme has been approved the trustee is required to put the draft scheme before the court. Any creditor who voted against the scheme may object scheme and the court is required to make determination. The court’s decision is final.

Restructuring : The same authority i.e. Court only taken final decision.]

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

[Preventive Composition:

The trustee is responsible for supervising the implementation of the scheme. The trustee is required to monitor progress and inform the court of any failure of implementation and to report to the court every three months in any event.

Restructuring: here also trustee is responsible for supervising the implementation of the scheme.]

**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)?

[As per Bankruptcy Law there are specific legal provisions for debtor-led corporate rescue, by specially providing for “preventive composition” as state in article 5 of the Bankruptcy Law:

‘the purpose of the preventive composition procedure is to assist the debtor reach settlements with his creditors under a preventive composition scheme, under the supervision of the court, and by assistance of composition trustee appointed according to the provisions of this section of the Bankruptcy Law.

A debtor is required to initiate bankruptcy procedure if the debtor is in default of its payments obligations for 30 consecutive days. Pursuant to the 2020 bankruptcy Law Amendment, where an Emergency Financial Crisis exists, the UAE cabinet may establish a period which is intended to provide relief to debtors from the provisions of the Bankruptcy Law and which suspends the obligation of a debtor to initiate bankruptcy proceedings in accordance with the above provision if the debtor’s financial condition is caused by ab Emergency Financial Crisis (like Covid -19 period). In addition, the 2020 Bankruptcy Law Amendment decree law allows the UAE courts, on application by a qualifying debtor, to grant a short term (40-days period) of protection to allow a debtor to negotiate a settlement of its debts with its creditors.

Therefore, the key difference is that the application for preventive composition scheme terminates what would otherwise be the debtor’s obligation to apply to initiate bankruptcy proceedings and the debtor can continue to run the business. Also except as otherwise provided in the Bankruptcy Law, the commencement of preventive composition procedure results in suspension of legal proceedings against the debtor until the earlier of the approval of the preventive composition plan or 10 months following the court’s order.

Do, the Key difference lies in the financial status of the debtor:

Preventive composition : suitable for debtors facing financial difficulties but not yet insolvent, aimed at negotiating with their creditors.

Bankruptcy: suitable for insolvent debtors, with the process possibly leading to restructuring (if viable) or liquidation (if restructuring is not possible). ]

**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?

[Under the UAE Bankruptcy Law, the key difference for a creditor between the commencement of preventive composition and bankruptcy of a debtor centres on the debtor's financial condition and the procedural outcomes. Preventive composition is intended for debtors facing financial difficulties but not yet insolvent. This debtor-initiated process involves negotiating a restructuring plan with creditors to prevent bankruptcy.

Creditor Involvement: The court may also appoint one or more supervisors from the body of the debtor’s creditors. If several creditors seek to be appointed, the court is to determine which creditor is to be the supervisor. If both secured and unsecured creditors have been nominated, one supervisor is to be appointed from each group. Creditors are involved in negotiating and approving the restructuring plan. Approval of Creditors is required on the plan with two-thirds majority consent.

, and during this process, an automatic stay on enforcement actions is applied. This stay allows the debtor to continue operations while restructuring, offering creditors the potential for higher long-term recoveries if the business stabilizes.

Moratorium: the preventive composition procedure starts; it results in suspension of legal proceedings against the debtor until the earlier of the approval of the preventive composition plan or 10 months following the court’s decision to open preventive composition procedure. So, an automatic stay is placed on creditor enforcement actions, preventing creditors from pursuing individual claims and allowing the debtor time to restructure.

In contrast, bankruptcy proceedings are applicable to debtors who are insolvent and unable to pay their debts as they come due. A debtor is required to initiate bankruptcy if the debtor is in default of its payment obligation for 30 consecutive days. A creditor, or group of creditors collectively who are owed SED 100000 (USD 27226) may also apply to the court to initiate bankruptcy procedures if the creditor has given notice to the debtor requiring the debtor and the debtor has failed to discharge the debt within 30 business days. These proceedings can be initiated by either the debtor or the creditors and may lead to either restructuring under court supervision or liquidation of the debtor’s assets. In bankruptcy, creditors are organized into a committee and work with a court-appointed trustee, playing a significant role in approving any restructuring plan. An automatic stay is also imposed in bankruptcy to halt individual creditor actions. If liquidation occurs, the debtor’s assets are sold, and creditors are paid according to statutory priority, often resulting in lower recoveries than a successful restructuring or preventive composition.

Thus, preventive composition offers a cooperative and potentially more beneficial approach for creditors by focusing on business continuity and debt restructuring. In contrast, bankruptcy provides a formal mechanism for addressing insolvency, with the possibility of liquidation and typically lower recoveries for creditors.]

**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.

[Historical background to the introduction of the Bankruptcy Law:

Until 2016, in the UAE mainland, insolvency law was undeveloped. There were provisions in Law Number 18 of 1993 relating to commercial transactions (the Commercial Transactions Law) governing a bankruptcy by traders; the law provided for a basic mechanism for insolvency for those engaged in commerce, which was a process to be pursued through the courts, but these procedures were rarely, if ever, utilised. The shortcomings in the UAE insolvency regime were highlighted in 2009, when Dubai World, an investment company owned by the Dubai Government, faced the possibility of defaulting on its debts; any such default would have been the largest government default since 2001; the possibility of default caused international concern. The legal position changed in 2016, with the adoption of Federal Decree Law (Number 9) of 2016 relating to bankruptcy, which has since been amended in 2019, 2020 and 2021 (the Bankruptcy Law). The Bankruptcy Law repealed the bankruptcy provisions of the Commercial Transactions Law and put in place a consolidated insolvency regime for commercial (but not consumer) insolvencies in the UAE. The Bankruptcy Law draws on experiences from a number of jurisdictions.

Further, in 2019 the adoption of Federal Decree Law (Personal Bankruptcy Law) put in place a consolidated insolvency regime for debtors who did not fall within the ambit of the Bankruptcy Law, filling a gap which had previously existed within the legislation.

Although the insolvency regime in the UAE is relatively young, it has proved responsive to global trends. During Covid-19 pandemic, Federal Decree Law of 2020 (2020 Bankruptcy Law Amendment) was adopted and introduced a new section (Section 15) to the Bankruptcy Law that addresses situations where a debtor’s financial distress is the result of an “Emergency Financial Crisis”.

In the DIFC, the Insolvency Law DIFC Law Number 1 of 2019, as amended (DIFC Insolvency Law) and the associated DIFC Insolvency Regulations 2022 (DIFC Insolvency Regulations), are modelled on and adopt a number of provisions of the United Kingdom Insolvency Act 1986.

In the ADGM, the Insolvency Regulations 2022 and the further amendments to those Regulations are also based largely on the United Kingdom Insolvency Act 1986. However, the ADGM Insolvency Regulations are lengthier than the DIFC Insolvency Law and arguably appear to reflect the adoption of more of the United Kingdom legislation.

The UAE legal system outside of the financial free zones draws on elements of Islamic law (principally in relation to personal matters) and civil law, predominantly from France via Egypt (in relation to commercial matters).

The DIFC and the ADGM are common law legal systems and draw primarily, although not exclusively, on the laws of England and Wales for the laws applicable in the free zones.

Which entities the Bankruptcy law applies to:

The law applies to:

1. all companies governed by the Commercial Companies Law (the principal corporate legislation in mainland UAE);
2. any companies established under other legislation who by law or voluntarily have submitted to the provisions of the Bankruptcy Law;
3. free zone companies and establishments not governed by other insolvency procedures (which is essentially all free zone companies and establishments except those in the financial free zones);
4. any person who is a “trader” (engaged in commercial activities in a personal capacity); and
5. licensed civil companies of a professional character (professional partnerships, etcetera).

The Bankruptcy Law is available to essentially all commercial entities and individuals carrying on commercial activities (in respect of the individuals’ commercial affairs), except for state-owned companies, unless they have opted into the application of the law. The Personal Bankruptcy Law is available to debtors who do not fit within the ambit of the Bankruptcy Law.

How it has been received and applied in the UAE:

The Bankruptcy Law and the Personal Bankruptcy Law continue to develop and have been subject to amendments since enactment. Generally, the laws have been viewed as welcome and necessary progress by the commercial community. Although there are no official statistics available, anecdotally it is generally understood that the number of insolvency processes conducted under these laws remains limited. It is important to note that the UAE legal system does not operate on the basis of binding precedent. As such, the legal ruling in one case does not mean it would apply in other cases. While application of the Bankruptcy Law continues to develop, in the absence of a precedential system, there have not been a sufficient number of decisions to assess meaningfully how the law will reliably be applied in practice.]

**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.

[A debtor is required to initiate bankruptcy procedures if the debtor is in default of its payment obligations for 30 consecutive business days.

The 2020 Bankruptcy Law Amendment decree law allows the UAE courts, on application by a qualifying debtor, to grant a short term (40-day period) of protection to allow a debtor to negotiate a settlement of its debts with its creditors.

If the applicant is the debtor (or its competent controlling authority), the debtor is required to produce before the court, specified documents, including a description of its financial position, specified financial information, and the name of a trustee proposed to oversee the bankruptcy procedure.

When a bankruptcy application is made, the court is required to appoint an expert from the panel of experts to assess the financial condition of the debtor. The court may reject any application if the specified information is not provided. In determining the application, the court can require a person to provide further information, it can join other parties to the proceedings, and it can make interim orders in respect of the debtor’s property. The expert is required to report on the debtor’s financial condition and to give an opinion on the possibility of the debtor successfully restructuring. The court is required to determine the application for commencement of the bankruptcy procedure within five business days of the application initiating the procedures, or within five business days of the expert’s report, as applicable. If the court is satisfied that the necessary conditions have been met, an order will be made whereby the bankruptcy procedures commence at that point.

Once the court has made an order for the commencement of the bankruptcy procedure, the debtor may not manage its assets or pay creditors, except in accordance with the provisions of the Bankruptcy Law. Except as otherwise provided for in the Bankruptcy Law, the commencement of the bankruptcy procedures results in the suspension of legal proceedings against the debtor until the earlier of the approval of the restructuring plan or 10 months following the court's decision to open bankruptcy procedures (although the court may, in consultation with the trustee, extend this time period for up to an additional four months) of particular importance, the commencement of restructuring procedures will also suspend any criminal proceedings brought in relation to a dishonoured cheque, including against the signatory of the cheque.

If the court decides to accept the commencement of the bankruptcy procedure, the court is required to appoint a trustee, being either a person nominated by the debtor or a person enrolled in the table of experts appointed by the Financial Restructuring Committee. The trustee can be a natural or legal person, and up to three may be appointed to act jointly at any one time. Any creditor may object to the appointment of a trustee within five business days of the date of publication of the appointment; the objection is by way of application to the court, which is required to determine any objection within a further five business days, on a final basis. The bankruptcy procedure continues during the period of any objection and determination.

The trustee may ask the court for whatever might assist the trustee to perform his or her task, including the appointment of and delegation to one of the experts from the panel of experts. The court may substitute the trustee or an expert, either of its own volition or (if it is evidenced that the continuity of appointment of the trustee or expert may damage the interest of creditors) upon the application of the debtor. The trustee may also request to be relieved by the court.

The court shall determine the trustee’s fees and shall authorise payment from the funds deposited by the debtor when making the application.

Any interested party may object to the trustee’s fees, and the court must determine any objection within five business days of such an application being made.

If the funds lodged are insufficient for the payment of the trustee’s fees, the trustee or expert may apply to court for payment of the fees from the Court Treasury (and any funds paid from the Treasury will be repaid in priority over all creditors upon the first realisation of additional assets).

The court may also appoint one or more supervisors.

Upon making an appointment, the court is required to provide any information which it holds about the debtor to the trustee.

Following the expiry of the period for lodging claims, the trustee is to prepare a list of creditors, including details of the debts and the supporting information in relation thereto, the trustee’s views as to whether to accept or reject the claims and any proposal regarding repayment; the trustee is required to lodge the list with the court within 10 business days from the date of the period for lodging claims, which period can be extended, once for a similar period, by the court.

The debtor and any creditor, whether the creditor has been accepted or not, may object to the list by application to the court within seven business days from publication of the list.The court must determine any application within 10 business days of the application. The court’s decision may be appealed. The court may admit the debt on an interim basis (although no debt may be admitted if the creditor has brought a criminal claim in relation thereto). The court must finally determine the list of creditors. A creditor who fails to make a claim in the prescribed time period without good reason will not be engaged in the preventive composition procedure, although there is a mechanism for acceptance of claims made outside the prescribed period.

At the request of a trustee appointed under the bankruptcy procedures (and subject to notice to the creditor), the court may suspend interest and other penalties for non-payment. In the event of any failure by the debtor to perform its obligations, the other party may apply to the court for an order for rescission of the contract, but commencement of a restructuring does not automatically lead to a rescission. Terms of leases that provide for automatic termination upon an insolvency event occurring, are void, although a landlord can seek a court order for termination if the lease default continues for more than three months after the commencement of a restructuring procedure. The court may, at the request of the trustee, rescind contracts, leases, and employment contracts. Creditors may seek to exercise set-off rights as at the date of the commencement of the insolvency procedure.

Following the appointment of the trustee, the trustee is required to produce a report on the debtor’s business and to submit the report to the court in the period specified by the court. The report should address the possibility of restructuring the debtor’s business (in which case, the report requires a statement of the debtor’s commitment to continuing the business) and the possibility of selling the debtor’s business as a “going concern”, if the debtor’s assets are required to be sold.

The court is required to review the report to confirm that the report takes account of all creditor claims. Following submission of the trustee’s report to the court, the court is to direct the trustee to convene a meeting of creditors, by way of notice and advertisement. The meeting of creditors is to take place within 10 business days from the provision of the trustee’s report to the creditors. Unless the court considers that liquidation is appropriate, the court should direct the trustee to prepare a restructuring scheme. The court may not approve a proposed restructuring unless the debtor confirms its willingness to continue to carry on business and unless it appears that the proposed restructuring is viable.

If the court decides that the debtor should be restructured, the trustee is required to prepare and develop a scheme within three months of the trustee’s appointment. Any scheme must address the possibility of the business generating profits, how liabilities will be addressed, any proposals regarding the sale of the business, possible conversion of debt to equity and how any secured debts and collateral are to be dealt with. The scheme must have a time-frame for implementation of not more than five years, which can be extended by up to three years with the consent of a majority of the creditors holding two-thirds of the debt.

Once the proposed scheme has been prepared by the trustee, the trustee is required to submit it to the court. The court is required to review the proposed scheme within 10 business days of submission. The court can request the trustee to vary the scheme if it does not properly observe all parties’ interests and to re-submit the proposed scheme within a further five business day period.

Following that review, the court must request the trustee to issue an invitation to the creditors, within five business days, to a meeting of the debtor’s creditors to review the scheme. The creditors’ meeting is to be held within 15 business days of the date of the invitation. The meeting is also to be advertised. The trustee is required to provide the creditors with a copy of the proposed scheme. The court may also direct the formation of committees representing classes of creditors and may give directions about the appointment or conduct of any representatives of those classes at the meeting of creditors.

The trustee and the debtor must explain the restructuring at the creditors’ meeting. A creditor may propose amendments to the scheme at the meeting, and the court may direct further meetings to consider the proposed amendments.

Only creditors whose debts have been admitted may vote on the scheme; except that the court may direct that creditors whose debts have been admitted on an interim basis may vote, if proposed by the trustee, subject to any terms and conditions imposed by the court.

If the scheme is approved by creditors at the creditors’ meeting, the trustee is required to put the scheme before the court within three business days, for the court either to approve or reject the scheme. Any creditor who voted against the scheme may object to the proposed scheme within a further three business days and the court must make a determination within five business days from the date of submitting the objection. The court’s determination is final.

The court is required to give its decision approving the scheme urgently, provided that it is satisfied that all necessary conditions have been satisfied. The court must be satisfied that all affected creditors will receive at least as much as the creditors would have received if the debtor’s assets had been liquidated on the date of voting on the scheme. Furthermore, the court may not approve a scheme that affects the priority of any secured creditor rights. The court may order the acceleration of payment dates of longer-term debts, if that would be in the interests of the success of the scheme. The debtor, or any creditor whose debts are admitted, may object to the court’s decision disapproving or amending the scheme; any such objection must be made within 10 business days from the date of the decision.

If the court rejects the scheme, the scheme is returned to the trustee for amendment within 10 business days from the date of disapproval and must then be returned to the court, either for approval or for a decision to initiate the declaration of the debtor’s bankruptcy and the liquidation of the debtor’s assets.

If the scheme is approved by the court, the trustee is required to register the decision in the debtor’s governmental corporate register and publish a summary of the scheme within seven working days of the court’s approval.

The trustee is responsible for supervising the implementation of the scheme. The trustee is required to monitor progress and inform the court of any failure of implementation and to report to the court every three months in any event.

If the trustee considers that amendment to the scheme is required and such an amendment would affect any party’s rights, court approval for the amendment is required. If an application for approval is made, the court is required to notify all creditors who voted on the scheme and any other creditor the court considers it necessary to notify, to make any application in relation to the proposed amendments within 10 working days of the notification. The court may approve, in whole or in part, or reject, the proposed amendment.

If certain assets are considered to be essential to the operation of the debtor’s business, the court may direct that those assets not be sold, without the court’s permission, for any specified period during the implementation of the scheme.

In the restructuring procedure the court may, at the request of the trustee or the debtor, allow the debtor to take new finance with priority over existing debt and to allow that finance to be secured against unencumbered assets.

The restructuring is completed following the discharge of the obligations provided for in the scheme. Upon that occurring, the court is to make an order confirming the complete implementation of the scheme, which is to be advertised.]

**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.

[The level of court involvement in the UAE Bankruptcy Law for approving a restructuring is appropriate, given the legal provisions designed to protect the rights of all parties. The UAE Bankruptcy Law mandates significant court oversight throughout the restructuring process, outlining the court's role in supervising the preventive composition procedure to ensure fairness to all creditors.

The court's involvement includes:

1. ensuring no collusion between debtors and secured creditors,
2. appointing and substituting the trustee,
3. appointing one or more supervisors,
4. reviewing and confirming the trustee's report, accounting for all creditors,
5. directing the trustee to convene creditors' meetings,
6. directing the formation of creditor classes,
7. approving the final restructuring plan after receiving
8. majority consent from creditors representing two-thirds of the debt. This ensures broad support and legal compliance.

This extensive court involvement ensures transparency, prevents potential abuses, and protects minority creditors' interests, maintaining market confidence and the integrity of the insolvency 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.

[Following is the brief outline of the necessary steps and 10 specific steps that will determine maximum taken between an application (step1) and the registration of the scheme following final approval (tenth and final step):

Step 1: Application and interim order:

Application to court by the debtor to appoint a composition trustee. If the debtor is subject to the control of a “competent controlling body” (which is determined by separate cabinet direction), the debtor may apply for preventive composition, subject to the debtor giving the controlling body 10 days’ notice of the application.

Upon receipt of the application, the court may make interim orders to preserve the position, may request further information and may require funds to pay the costs of the preventive composition procedures.

Step 2: Appointment of Expert and submission of report:

Upon receipt of the application, the court is required to appoint an expert to prepare a report on the financial position of the debtor, which should include the expert’s views on whether the debtor has met the criteria necessary to accept the preventive composition application procedure.

The report must be delivered no later than 20 business days from the date of the expert being instructed to prepare the report.

Step 3: Decision by the court on acceptance or rejection of application and appointment of trustee:

The court is required to decide on the preventive composition application within five business days of application (if the application meets all necessary criteria) or from the date of the expert’s report. If the court accepts the application, the preventive composition procedure commences.

If the court decides to accept the preventive composition procedure, the court is required to appoint a trustee, being either a person nominated by the debtor or a person enrolled in the table of experts appointed by the Financial Restructuring Committee. The court may also appoint one or more supervisors from the body of the debtor’s creditors. The supervisor is required to assist the trustee and the court and shall serve the general body of creditors.

Step 4: Stand of secured creditors:

secured creditors may enforce their securities provided they have obtained court permission to do so. The court is required to determine any such creditor’s application within 10 working days of the date the application is made.

Step 5: Notification of commencement:

Within five business days of the trustee’s appointment, the trustee is required to publish a summary of the court’s decision to commence the preventive composition procedure.

The notice given by the trustee is also required to invite creditors to file claims within 20 business days from the date of publication.

Step 6: submission of List of creditors to court and its determination:

Following the expiry of the period for lodging claims, the trustee is required to prepare a list of claimants, including details of the debts and the supporting information in relation thereto, the trustee’s views as to whether to accept or reject the claims and any proposal regarding repayment.

The trustee is required to lodge the list with the court within 10 business days from the date of the period for lodging claims, which period can be extended, once for a similar period, by the court. The trustee is also required to advertise the list.

The court is responsible for finally determining the list of creditors.

Step 7: Submission of the scheme and review by the court:

The preventive composition scheme must be submitted to the court within 45 business days from the date of publication of the decision initiating the preventive composition procedure.

Within 10 business days from the date of submission of the scheme, the court is required to review the draft to confirm that it takes account of the interests of all interested parties.

Step 8: Creditors meeting and their approval for the draft scheme:

If the court is satisfied with the terms of the proposed scheme, the court is required to direct the trustee to issue invitations (by way of public advertisement, as well as any other means directed by the court) within five business days, to be given to the debtor’s creditors, for the purpose of attending a creditors’ meeting to discuss the proposed scheme.

The meeting is to be held within 15 working days of the date of direction to invite creditors. The court may make further directions about the proposed meeting, including postponing the same. The court may also direct the formation of classes of creditors and may give directions about the appointment or conduct of any representatives of those classes at the meeting of creditors.

At the creditors’ meeting, the trustee and the debtor are required to explain the proposed preventive composition scheme. The requisite majority for approval of the draft scheme is a majority of creditors holding two- thirds of the debtor’s debt (including those temporarily admitted).

Step 9: Draft scheme to court and its final approval:

Once the scheme has been approved, the trustee is required to put the draft scheme before the court within three business days, for the court either to approve or reject the scheme.

The court is required to give any decision approving or rejecting the scheme urgently.

Step 10: Registration of Scheme:

Within seven business days of the date of approval of the scheme by the court, the trustee is required to register the court’s decision confirming the approval in the debtor’s governmental corporate register and publish a summary of the scheme.]

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.

[Liquidation Process in mainland UAE and appointment of Trustee:

The court is required to make an order for the bankruptcy of the debtor and the liquidation of the debtor’s assets in certain prescribed circumstances, including:

(a) on the termination of a preventive composition as provided for under the Bankruptcy Law;

(b) if the debtor has applied for preventive composition in bad faith;

(c) if the restructuring procedures are inappropriate for the debtor;

(d) if the expert’s or trustee’s report concludes that restructuring in bankruptcy is impossible;

(e) if the creditors do not approve the restructuring;

(f) if the court rejects it or if the restructuring is rescinded or annulled.

So, in the given case since the creditors have rejected the proposed preventive composition scheme, and the owners consider that without the support of the creditors, restructuring is impossible, hence the liquidation is the only available option.

Therefore, on an application being filed, if the court makes an order for liquidation, the court is required to appoint a trustee to undertake the liquidation, although it can order that any expert or trustee previously appointed in relation to any other procedure should continue in office.

Following the making of the liquidation order, the appointed trustee must advertise the trustee’s appointment within three business days.

The debtor’s correspondence must state that the debtor is subject to a bankruptcy order.

The trustee is required to report to the court monthly on the progress of the liquidation of the debtor’s assets and otherwise in relation to the bankruptcy.

Creditors are required to make their claims with the trustee within 10 business days from the date of the judgment; claims lodged later are not admissible unless the court accepts the reason for any failure to claim.

The trustee is required to consider the claims made, unless the debtor’s assets are insufficient to pay legal fees and secured creditors.

All debts owed by the debtor fall due upon the order for bankruptcy. Future debts can be adjusted for an amount equivalent to legally payable interest and foreign currency claims must be converted to UAE currency at the rate prevailing at that date. At the request of a trustee appointed under the bankruptcy procedures (and subject to notice to the creditor), the court may suspend interest and other penalties for non-payment.

Following the bankruptcy of the debtor, the trustee is required to liquidate all of the debtor’s property by public auction, under the supervision of the court.

The trustee may ask the court to permit the debtor to undertake the sale of the debtor’s business and assets over a period of up to six months (which can be extended by up to two months), if it would be in the public interest or interest of creditors to do so.

The trustee is required to notify the court, any supervisors and the debtor of the substance of any proposals received for the purchase of the debtor’s business. If any interested party objects to any proposed sale, the court is the party to determine the objection. The debtor and certain related persons are ineligible to purchase the assets of the debtor from the trustee.

The proceeds of sale of the liquidation of the debtor’s assets are distributed by the trustee to creditors. The trustee must pay claims in the order provided for in the law, subject to court approval for the distribution and approval of payment of priorities. Claims for debts which have not been admitted are to be held by the court pending determination of the claims.

The proceeds of sale of any assets sold subject to a security interest are to be applied in payment of the debts owed to the secured creditor, less the trustee’s costs of sale.

Here in the particular case since the shareholder holds the mortgage rights on the underdeveloped property to the extent of unpaid amount, the proceeds of that property are to be applied in payment of that shareholder to the extent of unpaid amount after adjusting the trustee’s cost of sale. Any surplus after sale of the assets must be returned to the debtor.

In relation to other assets, the order of priority is the payment of the court costs and the trustee’s costs, unpaid wages and salary up to a maximum amount of three months’ salary, alimony debts under a judgment against the debtor, amounts due to governmental bodies and the costs incurred in supplying the debtor with goods and services following the commencement of the bankruptcy.

Here in the particular case, since it took more than 4 months to reject the proposed scheme by the creditors, in the priority of payment as described in above paragraph, unpaid wages and salary upto maximum 3 months shall be considered in priority of payment also.

Following the liquidation of the debtor’s assets, the court must make an order confirming the conclusion of the liquidation procedure, including the final list of creditors and the amounts remaining unpaid.

So, in this particular case, the unpaid creditors including employees name shall be considered in final list of creditors whose amounts remained unpaid.

The decision is to be advertised. The trustee is required to return all documents to the debtor following completion of the liquidation.

Following completion of the liquidation, any creditor may enforce any debt remaining unpaid (as admitted in bankruptcy) against any remaining assets of the debtor.

So, the remaining amount as reflected in the advertised list which would include that shareholders amount which might have remained unpaid from sale of underdeveloped property, employees and workmen dues remained unpaid etc would be able to enforce their rights against any remaining asset of the debtor.

The debtor can ask the court to terminate the bankruptcy if the grounds for the bankruptcy have ended (for instance, if all debts have been paid).

Following the expiration of the period of five years from the date of the completion of the bankruptcy, the debtor is deemed to be fully rehabilitated.

This time period can be accelerated if the debtor is able to discharge its debts before the expiry of this period.]

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?

[Questions to answer are :

1. What actions can RZA Limited’s creditors take if they wish to see RZA Limited liquidated in DIFC?
2. In particular, who can take such actions?
3. What steps have to be taken?
4. If RZA was to be wound up, who would be responsible for it?
5. What process would be adopted for addressing creditor’s claims in winding up?

Answer may be as under:

1. What actions can RZA Limited’s creditors take if they wish to see RZA Limited liquidated in DIFC?

Creditors Voluntary Winding up : RZA Limited’s creditors may go for Creditors’ voluntary winding up (for insolvent companies).

Compulsory Winding up: A creditor with a debt of at least USD 2,000 may apply to the court for an order winding up the company, even if voluntary winding up has already commenced.

Under the DIFC Insolvency Law, the liquidation of a company is addressed by Winding Up.

Any DIFC-incorporated company can be wound up under the DIFC Insolvency Law, as can a DIFC-registered branch of any foreign company. The DIFC Insolvency Law’s application is also extended to other DIFC registered or incorporated entities. Winding up is the process whereby a liquidator is appointed to realise the assets of the company and to distribute those assets as required by law.

1. In particular, who can take such actions?

Creditor’s voluntary winding up:

Here in the particular case, creditors of RZA Limited may take such action of applying for winding up of RZA Limited which is DIFC registered company ( subsidiary of RZA LLC).

Since the company is not solvent, shareholders can not apply for winding up only creditors of RZA Limited’s creditors may apply for Creditors voluntary winding up.

Creditors may go for Creditor’s Voluntary winding up and also for court ordered compulsory winding up.

Compulsory winding up:

An application to the court for the compulsory winding up of a company may be brought by the company, its directors, or any creditor (including any prospective or contingent creditor), or by the DIFC Authority where it considers the winding-up to be in the best interests of the DIFC and the DIFC court is of the opinion that it is just and equitable for the company to be wound up. A creditor with a debt of at least USD 2,000 may apply to the court for an order winding up the company, even if voluntary winding up has already commenced.

1. What steps have to be taken?
2. Passing of resolution to wind up the company
3. The company must cease to carry on business from the time of the passing of the resolution for the commencement of the winding up, although the company continues to exist and have legal personality during the winding up.
4. The powers of the directors cease upon the appointment of the liquidator (although that appointment does not occur immediately in a creditors’ voluntary winding up, so the directors retain control until the liquidator is appointed).
5. In the case of a creditors’ voluntary winding up, when passing the resolution to commence the winding up, the company may nominate a liquidator to be appointed, but the liquidator shall be the person nominated by the creditors (or in absence of any nomination, the person nominated by the company).
6. Upon the appointment of the liquidator, the directors’ powers cease.
7. The creditors may also appoint a liquidation committee at the meeting of creditors, to exercise the functions conferred on the committee under the DIFC Insolvency Law.
8. In the case of a court-ordered winding up, called a “compulsory winding up”, the court has jurisdiction to order the winding up of a company if among other reasons the company is unable to pay its debts, or if the court considers it just and equitable to wind the company up.The most common ground for the commencement of a compulsory winding up is that the company is not able to pay its debts. A company is presumed to be unable to pay its debts if:
* a creditor has made demand for payment of a debt which is for a sum of more than USD 2,000, and that demand has been unsatisfied for a period of more than three weeks; or
* any execution process is returned unsatisfied; or
* it is proved that a company is unable to pay its debts as they fall due; or
* it is proved that the value of the company’s liabilities exceeds the value of the company’s assets, including any prospective and contingent liabilities.
1. If RZA was to be wound up, who would be responsible for it?

If an order is made for the winding up of a company by the court, the court, in the order, must identify the person who is to be the liquidator of the company.

The liquidator so appointed may then elect whether to continue as liquidator or to summon a meeting of creditors and contributories for the purpose of choosing a liquidator.

If the creditors and contributories choose different people, the liquidator will be the person chosen at the creditors’ meeting.

The court also has jurisdiction to make an order to appoint a liquidator provisionally any time after the presentation of a petition to the court for the winding up of the company.

1. What process would be adopted for addressing creditor’s claims in winding up?
2. Submission of claims by creditors for the amount in writing to the liquidator. The document so lodged is described as a “proof” of debt. The creditor must set out in writing the claimed amount and provide supporting information to allow the liquidator to verify the claim. If the debt cannot be ascertained, the liquidator may estimate its quantum. A proof of debt must take into account any set-off which exists between the creditor and the company and may take account of accrued interest up to the date of the commencement of the winding up. A creditor may prove for a future debt and for a debt in a foreign currency, converted into US dollars. A secured creditor may only prove for the balance owing, or which is estimated would be owing, following realisation of any security interest.
3. Upon receipt of a proof of debt, the liquidator may require the creditor to provide such further information as may be necessary to evaluate the claim.
4. The liquidator may then admit or reject (in whole or in part) any proofs of debt for the purposes of determining whether to make a payment to the creditor, along with other creditors.
5. If a creditor is dissatisfied with the liquidator’s decision regarding a proof, the creditor may then appeal against that decision within 21 days of receiving notice of that decision, by application to the court; a member of the company or another creditor may also appeal against any such decision by the liquidator.
6. Whenever the liquidator has sufficient funds, he or she may declare a dividend and distribute that dividend among the company’s creditors.
7. In calculating and distributing a dividend, the liquidator is entitled to retain funds sufficient to pay the costs of the liquidation, claims which the liquidator believes could still be lodged and any disputed claims.
8. Preferential creditors’ claims are governed by the Preferential Creditor Regulations 2008. These regulations provide that, after payment of the expenses of the winding up, preferential creditors’ claims should be paid in priority to unsecured claims and in priority to claims secured by a security interest over all or substantially all of the assets of the company. While there are a number of categories of preferential debts, they are all debts that represent any amounts owed by a company to an employee or amounts which the company is obliged to pay for the benefit of an employee in the employee’s capacity as such (for instance, contributions to pension schemes). There are no other classes of preferential or priority claims.
9. In the event that the company has sufficient assets to pay all creditors in full for the creditors’ claims determined to the date of the commencement of the winding up, the company must then pay interest on such of those creditors’ claims as are interest-bearing.
10. In the event that all creditors (including those entitled to interest) have been paid in full, any remaining assets are paid to the shareholders and other contributories of the company, in the manner provided for in the company’s constitution (article 75 specifically provides this manner of distribution for voluntary windings up).
11. The liquidator may, by notice to the creditors, declare a final distribution without regard to the claim of any person who has not yet proved their claim in the winding up; the court may, on application by any person, postpone the date of a final dividend.]

**\* End of Assessment \***