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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?

Answer:

There are notable legal differences in the United Arab Emirates between the registration of real estate interests, including mortgages, in the mainland and in financial free zones like the Abu Dhabi Global Market (ADGM) and the Dubai International Financial Centre (DIFC).

1. **Registration of Real Property Interests:**
   * **Mainland UAE:** Mortgages and other real estate interests are registered with the land department of the corresponding emirate. Every emirate has its own autonomous registration system that oversees the protocols and conditions for registering real estate transactions and liens.
   * **Financial Free Zones:** the property registration follows unique regulatory frameworks that are intended to satisfy international standards in financial free zones such as ADGM and DIFC. The purpose of these frameworks is to make property transactions within the free zone more transparent and effective.
2. **Enforcement of Mortgages Following Debtor Default:**
   * **Financial Free Zones:** The specific rules of the free zone authority govern the process for selling mortgaged property in financial free zones in the event of a debtor default. These processes are designed to ensure that all parties are treated fairly and that legal requirements are met in a timely manner, all while accelerating the enforcement of mortgage rights.
   * **Mainland UAE:** On the other hand, local civil procedure laws govern the process in the UAE's mainland. The sale of mortgaged real estate must be authorized and supervised by the emirate's courts as part of the standard judicial oversight process for mortgage enforcement.

In order to ensure compliance with particular regulatory requirements applicable to each jurisdiction, it is imperative for stakeholders involved in property transactions and mortgage enforcement across different jurisdictions within the United Arab Emirates to understand these legal distinctions.

**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.

Answer:

* **Preventive Composition:** Any application to start the preventive composition process must be decided by the Commercial Court. The court makes a decision after determining if the requirements to start preventive composition are satisfied.
* **Restructuring:** In a similar vein, the Commercial Court has the authority to rule on any application to start the restructuring procedure. It evaluates if the debtor's application satisfies the requirements in order to begin restructuring in accordance with UAE Bankruptcy Law.

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

Answer:

* **Preventive Composition:** In the preventive composition process, the Creditors' Committee is an essential component. It assesses the debtor's proposal and decides whether to accept it in the first place. The committee evaluates the viability and equity of the suggested composition plan on behalf of creditors.
* **Restructuring:** Similarly, during the restructuring process, the Creditors' Committee is responsible for determining whether the debtor's restructuring proposal should be adopted. The committee evaluates the viability and adequacy of the proposed restructuring plan.

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

Answer:

* **Preventive Composition:** The Commercial Court ultimately confirms the Creditors' Committee's primary decision to adopt the debtor's preventive composition proposal. The court ensures that the decision is consistent with creditors' interests and the requirements of the UAE Bankruptcy Law.
* **Restructuring:** Similarly, during the restructuring process, the Commercial Court confirms the Creditors' Committee's primary determination to adopt the debtor's restructuring proposal. The court reviews the committee's decision to ensure that it meets legal requirements and protects creditors' rights.

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

Answer:

* **Preventive Composition:** The Insolvency Practitioner appointed by the court supervises the implementation of the preventive composition process by the debtor. The practitioner ensures that the terms of the composition plan are adhered to and facilitates communication between the debtor and creditors.
* **Restructuring:** Similarly, the Insolvency Practitioner appointed by the court supervises the implementation of the restructuring process by the debtor. The practitioner oversees the execution of the restructuring plan, monitors the debtor's compliance with obligations, and reports to the court and creditors on progress.

**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)?

Answer:

According to UAE Bankruptcy Law, the primary distinction between circumstances leading to an application for preventive composition and those necessitating bankruptcy (whether for restructuring or liquidation) is the debtor's financial status and the timing of the application.

**Preventive Composition**

**Circumstances:**

1. **Imminent Financial Distress**
2. **Initiated by Debtor**
3. **Proposal of a Feasible Plan**

**Bankruptcy (Restructuring or Liquidation)**

**Circumstances:**

1. **Actual Insolvency**
2. **Initiated by Debtor or Creditors**
3. **Outcome - Restructuring or Liquidation**
   * **Restructuring:** If feasible, the court may approve a plan to reorganize the debtor’s business and debts, aiming for recovery and continuation of operations.
   * **Liquidation:** If restructuring is deemed unviable, the court may order the liquidation of the debtor’s assets to satisfy creditor claims, effectively ending the business operations.

**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?

Answer:

For a creditor, the key difference between the commencement of preventive composition and bankruptcy of a debtor under the UAE Bankruptcy Law lies primarily in the timing and implications of each process:

### Key Difference for a Creditor: Preventive Composition vs. Bankruptcy

#### **Preventive Composition**

1. **Initiation and Timing:**
   * **Initiated by Debtor:** Preventive composition is commenced voluntarily by the debtor when it anticipates financial distress but is not yet insolvent.
2. **Moratorium on Legal Actions:**
   * **Moratorium Period:** Upon filing for preventive composition, a moratorium of up to 180 days may be imposed, during which creditors are generally prohibited from taking legal action against the debtor.
3. **Negotiation and Agreement:**
   * **Debtor's Proposal:** The debtor proposes a restructuring plan aimed at settling debts and restructuring its financial affairs. Creditors participate in negotiations to potentially accept the proposed composition plan.
4. **Outcome:**
   * **Debt Repayment:** If approved and implemented, creditors may receive partial or full repayment of debts according to the agreed terms, enabling the debtor to continue operations.

#### **Bankruptcy (Restructuring or Liquidation)**

1. **Initiation and Insolvency:**
   * **Initiated by Debtor or Creditors:** Bankruptcy proceedings are initiated when the debtor is already insolvent or unable to meet financial obligations. It can be filed by the debtor or creditors in response to payment default.
2. **Judicial Oversight:**
   * **Court Involvement:** Bankruptcy proceedings involve judicial oversight from the beginning. The court assesses the debtor's financial status and decides whether to proceed with restructuring or liquidation.
3. **Impact on Creditors:**
   * **Legal Actions and Recovery:** Bankruptcy may result in a structured approach to debt recovery. Creditors may receive distributions from liquidation proceeds or approve a court-sanctioned restructuring plan.
4. **Outcome:**
   * **Liquidation or Restructuring:** Depending on feasibility, the court may order liquidation to distribute assets among creditors. Alternatively, if restructuring is viable and accepted, creditors may participate in a repayment plan.

### Conclusion

The primary difference for a creditor lies in the timing and implications of each process. Preventive composition allows debtors to proactively address financial difficulties before insolvency, potentially preserving business continuity. In contrast, bankruptcy is a reactive measure taken after insolvency, involving judicial oversight and potentially leading to liquidation or structured debt repayment plans. Creditors' participation and recovery prospects vary significantly based on whether the debtor initiates preventive composition or if bankruptcy proceedings are commenced.

**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.

Answer:

### Historical Background to the Introduction of the Bankruptcy Law in the UAE

Before the enactment of the UAE Bankruptcy Law, the country’s insolvency and bankruptcy regulations were outdated and fragmented, leading to inefficiencies and uncertainties for businesses and creditors. As the UAE grew into a global business hub, the need for a comprehensive legal framework for restructuring and insolvency became increasingly evident. The lack of clear regulations hindered economic growth and investor confidence. Recognizing these challenges, the UAE government undertook legislative reforms to introduce a modern bankruptcy law aligned with international best practices.

### Entities Covered by the Bankruptcy Law

The UAE Bankruptcy Law applies to various entities, including:

* **Companies:** It covers both mainland companies and those in financial free zones like the Dubai International Financial Centre (DIFC) and Abu Dhabi Global Market (ADGM).
* **Individuals:** The law also applies to individuals engaged in commercial activities, offering a framework for personal bankruptcy.

### Reception and Application of the Bankruptcy Law in the UAE

Since its implementation, the UAE Bankruptcy Law has been generally well-received due to its comprehensive approach to insolvency issues. Key aspects of its reception and application include:

* **Modernization:** The law modernizes the UAE's legal system, aligning it with international standards and practices.
* **Business Rescue:** It introduces mechanisms such as preventive composition and restructuring, which aim to rehabilitate financially distressed entities rather than proceeding directly to liquidation.
* **Judicial Oversight:** Specialized courts have been established to oversee bankruptcy proceedings, ensuring fair and efficient resolution of disputes.
* **Implementation Challenges:** The law has faced challenges in implementation, including cultural and procedural adjustments. Nevertheless, ongoing efforts by legal practitioners, businesses, and regulatory authorities continue to refine its application.
* **Impact on Business Environment:** Overall, the Bankruptcy Law has improved the UAE's business environment by providing clarity and predictability in handling financial distress. This, in turn, fosters investor confidence and supports sustainable economic growth.

In conclusion, the introduction of the Bankruptcy Law in the UAE represents a crucial step towards enhancing legal certainty and promoting a resilient business environment. Its application is evolving, aimed at balancing creditor protection with opportunities for business rehabilitation and growth.

**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.

Answer:

Under the UAE Bankruptcy Law, when a debtor company seeks to enter bankruptcy and opts for restructuring, the court is actively involved in several stages of the process. Here’s a detailed outline of the court's role:

**Application and Initiation**

1. **Filing for Bankruptcy**: The debtor company must submit an application for bankruptcy to the court, including all necessary documents such as financial statements, a list of assets and liabilities, and a restructuring proposal, in accordance with Articles 68 and 69 of the UAE Bankruptcy Law.
2. **Court Review and Admission**: The court reviews the application to ensure it meets the necessary criteria. If the application is satisfactory, the court officially commences bankruptcy proceedings under Article 71.

**Appointment of an Insolvency Trustee**

1. **Appointment of Trustee**: The court appoints an insolvency trustee (or administrator) to manage the debtor's affairs during the restructuring process, as per Article 72. The trustee’s role includes supervising the restructuring and reporting to the court.

**Supervision and Approval of the Restructuring Plan**

1. **Drafting the Restructuring Plan**: The debtor, in collaboration with the insolvency trustee, drafts a restructuring plan that outlines how the debtor intends to settle its obligations and continue operations.
2. **Submission and Approval**: The restructuring plan must be submitted to the court for approval. The court evaluates the plan under Article 74 to ensure it is fair and feasible for the creditors.
3. **Creditors’ Meeting**: The court convenes a creditors’ meeting to discuss and vote on the proposed restructuring plan (Article 75). The plan must receive approval from a majority of creditors representing two-thirds of the debt, according to Article 76.

**Implementation and Monitoring**

1. **Court Confirmation**: Once creditors approve the restructuring plan, the court must confirm it, ensuring it complies with legal requirements and protects all parties involved (Article 77).
2. **Implementation Oversight**: The court oversees the implementation of the restructuring plan. The insolvency trustee provides periodic reports to the court on the plan’s progress, ensuring adherence to the agreed terms (Article 79).

**Modifications and Disputes**

1. **Plan Modifications**: Modifications to the restructuring plan, if necessary, must be approved by both the creditors and the court, as outlined in Article 81.
2. **Dispute Resolution**: The court resolves any disputes that arise between the debtor and creditors during the restructuring process (Article 82), ensuring a fair and orderly process.

**Conclusion of the Process**

1. **Final Review and Discharge**: Upon successful implementation of the restructuring plan, the court conducts a final review. If satisfied, the court issues an order to discharge the debtor from bankruptcy, concluding the restructuring process (Article 84).

In summary, under the UAE Bankruptcy Law, the court's involvement is extensive, providing oversight and ensuring fairness and compliance at each stage of the restructuring process.

**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.

Answer:

The high degree of court involvement in the UAE Bankruptcy Law for approving a restructuring is essential and appropriate. This judicial oversight ensures the protection of creditors' rights, promoting fairness and transparency in the restructuring process.

* **Protection of Rights**: Courts safeguard the interests of all creditors, ensuring fair treatment.
* **Assessment of Viability and Fairness**: Judicial review prevents potential abuses by evaluating the feasibility and equity of the restructuring plan.
* **Credibility and Predictability**: Court involvement enhances the credibility and predictability of the insolvency process, which is crucial in the UAE’s developing legal framework.
* **Mitigation of Fraud**: Oversight mitigates the risk of fraudulent activities, ensuring compliance with legal standards.
* **Legal Validation**: Court approval provides legal validation of the restructuring plan, reducing future disputes and boosting confidence in the system.
* **Integrity and Effectiveness**: The court's role ensures the integrity and effectiveness of the insolvency regime, achieving a balanced resolution for all parties involved.

**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.

Answer:

**RZA LLC Preventive Composition Process: Detailed Steps and Time Frames**

**Background:**

RZA LLC operates a thriving restaurant chain in Dubai but has been severely impacted by the recent surge in global food prices. The financial strain has left the company without sufficient funds to pay its creditors, and it is now facing potential insolvency. However, RZA LLC owns a partially developed restaurant site, expected to be completed in seven months. This property was transferred to RZA LLC by one of its shareholders, with the understanding that payment for the site would be made in full in 2024. The shareholder currently holds a mortgage over the property as security for the unpaid purchase price.

**Preventive Composition Process:**

Preventive composition is a legal procedure aimed at enabling a financially distressed company to reach an agreement with its creditors to restructure its debts and avoid liquidation. This process is governed by specific legal frameworks and involves several steps, each with associated time frames. The following outlines the necessary steps and key legal considerations for RZA LLC to undergo the preventive composition process:

1. **Application to the Court :**
   * **Legal Action:** RZA LLC must file an application for preventive composition with the relevant court. This application should include comprehensive documentation of the company's financial status, a detailed proposal for the composition scheme, and evidence of its inability to meet current debt obligations.
   * **Legal Consideration:** The application must comply with the procedural requirements outlined in the applicable bankruptcy or insolvency laws. Failure to provide accurate and complete information may result in the rejection of the application.
2. **Appointment of an Expert (Within 7 Days):**
   * **Legal Action:** Upon receiving the application, the court appoints an independent expert to assess RZA LLC's financial situation and the feasibility of the proposed composition scheme.
   * **Legal Consideration:** The expert's appointment is critical as they play a vital role in providing an unbiased evaluation. The expert must have the requisite qualifications and experience as stipulated by law.
3. **Expert’s Report Submission (Within 30 Days):**
   * **Legal Action:** The appointed expert conducts a thorough examination of RZA LLC’s financial records, assesses the viability of the proposed scheme, and submits a detailed report to the court within 30 days.
   * **Legal Consideration:** The expert's report must be comprehensive and impartial. It should include an analysis of the company's assets, liabilities, and the potential impact of the composition scheme on creditors. The report serves as a key document in the court's decision-making process.
4. **Court Review and Initial Hearing (Within 15 Days):**
   * **Legal Action:** The court reviews the expert’s report and schedules an initial hearing within 15 days of receiving the report. During this hearing, the court examines the findings and decides whether the preventive composition process should proceed.
   * **Legal Consideration:** The court's review is crucial for determining the credibility of the proposed scheme. Legal representatives of RZA LLC must be prepared to address any questions or concerns raised by the court.
5. **Notification to Creditors (Within 7 Days of Initial Hearing):**
   * **Legal Action:** If the court decides to proceed, it issues a notification to all recognized creditors within 7 days of the initial hearing. This notification informs creditors of the proposed scheme and the upcoming creditors' meeting.
   * **Legal Consideration:** Proper notification is a legal requirement to ensure that all creditors are given a fair opportunity to participate in the process. The notification must include all relevant details about the proposed scheme and the scheduled meeting.
6. **Creditors’ Meeting (Within 30 Days of Notification):**
   * **Legal Action:** A creditors’ meeting is convened within 30 days of the notification. During this meeting, creditors discuss and vote on the proposed composition scheme.
   * **Legal Consideration:** The meeting must be conducted in accordance with legal protocols, ensuring that all creditors have an equal opportunity to express their views and cast their votes. The scheme requires the approval of a majority of creditors, representing a specific percentage of the total debt, as defined by law.
7. **Submission of Creditors' Decisions to Court (Within 3 Days):**
   * **Legal Action:** The outcomes of the creditors' meeting, including the voting results, are submitted to the court within 3 days of the meeting.
   * **Legal Consideration:** Accurate documentation of the creditors' decisions is essential. Any discrepancies or procedural errors could invalidate the process and result in further legal complications.
8. **Court Approval of the Scheme (Within 10 Days):**
   * **Legal Action:** The court reviews the creditors' decisions and, if the scheme is approved by the requisite majority, grants final approval for the composition scheme within 10 days.
   * **Legal Consideration:** The court's approval is a significant legal milestone, signifying the formal acceptance of the scheme. The court must ensure that the scheme is fair and equitable to all parties involved.
9. **Publication of Court Approval (Within 3 Days):**
   * **Legal Action:** Following court approval, the decision is published in an official gazette or other designated publication within 3 days.
   * **Legal Consideration:** The publication of the court’s approval serves to inform all stakeholders, including creditors and the public, of the approved scheme. This step is crucial for transparency and legal compliance.
10. **Registration of the Scheme (Within 5 Days of Publication):**
    * **Legal Action:** The approved composition scheme is formally registered within 5 days of the publication.
    * **Legal Consideration:** Registration finalizes the legal process, making the scheme legally binding on all parties. RZA LLC must ensure compliance with the terms of the registered scheme to avoid any legal repercussions.

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.

Answer:

Given the situation described, the liquidation process for RZA LLC will involve several key steps, including the appointment of a trustee to oversee the process. Here is a detailed outline of the liquidation process and the role of the trustee:

**Liquidation Process for RZA LLC:**

1. **Decision to Liquidate:**
   * **Legal Action:** The decision to liquidate can be initiated by the shareholders through a resolution or mandated by the court following a petition by creditors due to unpaid debts.
   * **Legal Consideration:** Given that the creditors rejected the preventive composition scheme and the company is insolvent, RZA LLC’s shareholders would likely pass a resolution for voluntary liquidation, or a creditor might file a petition for compulsory liquidation.
2. **Appointment of a Trustee (Liquidator):**
   * **Legal Action:** Upon deciding to liquidate, a liquidator must be appointed. In a voluntary liquidation, this is done by the shareholders, while in a compulsory liquidation, the court appoints the liquidator.
   * **Legal Consideration:** The liquidator must be a licensed insolvency practitioner. This could be an individual or a firm with experience in managing insolvencies and liquidations. The liquidator must be approved by the relevant regulatory body in Dubai.
3. **Notification and Documentation:**
   * **Legal Action:** The appointment of the liquidator must be documented and notified to all stakeholders, including creditors, employees, and relevant regulatory authorities.
   * **Legal Consideration:** Proper notification ensures transparency and legal compliance. Creditors must be informed about the liquidation process and the appointed liquidator.
4. **Taking Control of Company Assets:**
   * **Legal Action:** The liquidator takes control of all company assets, bank accounts, and financial records. The management’s powers are transferred to the liquidator.
   * **Legal Consideration:** The liquidator ensures that no unauthorized transactions occur and that all assets are secured for the benefit of creditors.
5. **Assessment and Valuation of Assets:**
   * **Legal Action:** The liquidator assesses and values all assets of RZA LLC, including the partially developed restaurant site.
   * **Legal Consideration:** Accurate valuation is essential to determine the total value of the assets available for distribution. This includes the assessment of the site under development and any other properties or assets owned by the company.
6. **Notification to Creditors and Claims Submission:**
   * **Legal Action:** Creditors are formally notified about the liquidation and invited to submit their claims against RZA LLC.
   * **Legal Consideration:** The claims submission process must be handled transparently and fairly. Creditors, including staff with unpaid wages, must be given clear instructions on how to submit their claims.
7. **Verification of Claims:**
   * **Legal Action:** The liquidator verifies the validity of all claims submitted by creditors.
   * **Legal Consideration:** Verification ensures that only legitimate claims are honored. This step is crucial to prevent fraudulent claims and to ensure fair treatment of all creditors.
8. **Sale of Assets:**
   * **Legal Action:** The liquidator proceeds to sell the company’s assets. This includes the partially developed restaurant site, which may be sold as is or completed and sold at a higher value.
   * **Legal Consideration:** The sale should be conducted in a manner that maximizes returns for creditors. The liquidator might employ auction houses, real estate agents, or other appropriate methods to sell the assets.
9. **Distribution of Proceeds:**
   * **Legal Action:** The proceeds from the sale of assets are distributed to the creditors in the order of priority. Typically, secured creditors, like the shareholder with the mortgage, are paid first, followed by employee wages, tax obligations, and then unsecured creditors.
   * **Legal Consideration:** The distribution must adhere to the legal priorities established under the insolvency laws. Secured creditors will be paid from the proceeds of the secured assets, and any remaining funds will be distributed to other creditors.
10. **Final Report and Dissolution:**
    * **Legal Action:** After all assets are sold and proceeds distributed, the liquidator prepares a final report detailing the liquidation process and the disbursement of funds. The company is then formally dissolved.
    * **Legal Consideration:** The final report must be filed with the relevant authorities, and a notice of dissolution should be published to inform all stakeholders that RZA LLC has been officially wound up.

**Appointment of the Trustee (Liquidator):**

* **Eligibility and Qualifications:**
  + The liquidator must be a licensed insolvency practitioner, recognized under the legal framework governing insolvency in Dubai. They should possess the necessary qualifications, experience, and integrity to handle the liquidation process effectively.
* **Selection Process:**
  + In a voluntary liquidation, the company’s shareholders can nominate and appoint the liquidator. In a compulsory liquidation, the court appoints the liquidator, often based on recommendations from creditors or insolvency firms.
* **Role and Responsibilities:**
  + The liquidator’s primary role is to manage the liquidation process impartially, protecting the interests of all creditors. They are responsible for asset management, creditor communication, verification of claims, and fair distribution of proceeds. The liquidator must act in accordance with legal and regulatory requirements to ensure a fair and transparent process.

**Conclusion:**

The liquidation of RZA LLC involves a structured legal process starting with the decision to liquidate and culminating in the dissolution of the company. The appointment of a competent liquidator is crucial for managing the process efficiently and in compliance with legal requirements. The liquidator will take control of the company’s assets, oversee the sale of these assets, verify creditors' claims, and distribute the proceeds in accordance with legal priorities, ensuring that all stakeholders' rights are respected throughout the liquidation process.

Question 4.3 [maximum 5 marks]

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.

Answer:

**Liquidation Process for RZA LLC:**

1. **Initiation of Liquidation:**
   * **Decision by Shareholders or Creditors:** Shareholders can vote for voluntary liquidation, or creditors can file a petition for compulsory liquidation due to unpaid debts.
   * **Implication:** Liquidation is initiated to address insolvency and provide a structured method for asset distribution.
2. **Appointment of a Liquidator:**
   * **Selection Process:** Shareholders appoint a liquidator in voluntary liquidation, whereas the court appoints one in compulsory liquidation.
   * **Qualifications:** The liquidator must be a licensed insolvency practitioner with the necessary experience and qualifications.
3. **Formal Notification and Compliance:**
   * **Communication:** The appointment of the liquidator is formally documented and communicated to creditors, employees, and regulatory bodies.
   * **Transparency:** Ensures all stakeholders are informed and the process adheres to legal standards.
4. **Asset Control and Management:**
   * **Assumption of Control:** The liquidator assumes control of all company assets, including financial records and accounts.
   * **Security:** Prevents unauthorized transactions and secures the company’s remaining value.
5. **Evaluation and Appraisal of Assets:**
   * **Comprehensive Assessment:** The liquidator conducts a detailed evaluation of all company assets, including the restaurant site under development.
   * **Accuracy:** Accurate valuation is essential for fair distribution to creditors.
6. **Creditor Communication and Claim Solicitation:**
   * **Notification to Creditors:** Creditors are notified about the liquidation and invited to submit claims.
   * **Claim Collection:** A systematic process is followed to collect and document creditor claims.
7. **Claim Verification:**
   * **Validation Process:** The liquidator verifies the legitimacy of all submitted claims.
   * **Fraud Prevention:** Ensures only legitimate claims are honored and prevents fraudulent claims.
8. **Liquidation of Assets:**
   * **Sale of Assets:** The liquidator sells the company’s assets, including the restaurant site.
   * **Value Maximization:** The liquidator may decide to complete the development to increase the asset's value before sale.
9. **Proceeds Distribution:**
   * **Prioritization:** Proceeds are distributed based on the legal order of priority, with secured creditors, such as the mortgage-holding shareholder, being paid first.
   * **Equitable Distribution:** Ensures fair and legal distribution of funds to all creditors.
10. **Final Reporting and Company Dissolution:**
    * **Preparation of Final Report:** The liquidator prepares a comprehensive report detailing the liquidation process and disbursement of funds.
    * **Formal Dissolution:** The company is formally dissolved, and a notice of dissolution is published.

**Appointment of the Liquidator:**

* **Eligibility and Selection:**
  + **Criteria:** The liquidator must be a licensed insolvency practitioner.
  + **Appointment:** In voluntary liquidation, appointed by shareholders; in compulsory liquidation, appointed by the court.
* **Responsibilities and Duties:**
  + **Management:** The liquidator manages the entire process, from securing assets to distributing proceeds.
  + **Impartiality:** Acts impartially to protect the interests of all creditors.

**Specific Considerations for RZA LLC:**

* **Partially Developed Site:**
  + **Decision:** The liquidator must decide whether to sell the site as-is or complete its development.
  + **Impact:** The decision affects the total proceeds available for creditors.
* **Secured Mortgage by Shareholder:**
  + **Priority:** The shareholder with the mortgage is a secured creditor and will be prioritized in the distribution.
  + **Legal Rights:** Ensures secured creditors are paid from the proceeds of the secured asset.
* **Unpaid Employee Wages:**
  + **Preferential Treatment:** Employees with unpaid wages are treated as preferential creditors.
  + **Priority Payment:** Ensures employees receive owed wages before general unsecured creditors.

**Conclusion:**

The liquidation of RZA LLC requires a structured legal process to ensure equitable distribution of assets. Appointing a qualified liquidator is critical for managing this process effectively. The liquidator’s role involves asset valuation, sale, and distribution, adhering to legal priorities and ensuring fairness. Given the unique aspects of RZA LLC’s assets and creditor claims, the liquidator’s decisions will significantly impact the outcomes for all stakeholders.

**\* End of Assessment \***