



**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: **[studentnumber.assessment7E]**. An example would be something along the following lines: 202021IFU-314.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 “studentnumber” 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 2021**. The assessment submission portal will close at **23:00 (11 pm) BST (GMT +1) on 31 July 2021**. No submissions can be made after the portal has closed and no further uploading of documents will be allowed, no matter the circumstances.
7. Prior to being populated with your answers, this assessment consists of **8 pages**.

## ANSWER ALL THE QUESTIONS

Commented [DB1]: 37 out of 50

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

Commented [DB2]: 9 out of 10

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

The **most significant barrier**, historically, to the development of a culture of distressed business rescue in the UAE has been:

- (a) The failure of the responsible authorities to enact laws which would encourage a business rescue culture.
- (b) The low rate of business failure in the UAE.
- (c) The owners of failed businesses are liable as a matter of criminal law for the failure of their business.
- (d) 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)?

- (a) 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.
- (b) 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".
- (c) The Bankruptcy Law drew on the experiences of a number of jurisdictions, while the insolvency laws of the financial centres are based on the insolvency laws of one other country.
- (d) 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 elsewhere in the UAE?

- (a) The judgments and orders of the Courts of the DIFC are not enforceable outside of the DIFC.

(b) The judgments and orders of the Courts of the DIFC are enforceable elsewhere in Dubai only through the Dubai Courts.

(c) 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.

(d) 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**?

(a) True.

(b) 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?

(a) The law regulating security interests in land and personal property in the DIFC is based on Australian law.

(b) A mortgagee of land in the DIFC requires a court order to allow it to repossess land subject to a mortgage.

(c) The regulating security interests in land and personal property in the DIFC is based on English common law.

(d) 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?

(a) All legal claims and proceedings and any judicial enforcement procedures against the debtor are suspended, unless otherwise decided by the Court.

(b) 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.

(c) Creditors may not bring or pursue claims against persons jointly liable with the debtor or any guarantors of the debtor's debts.

(d) 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?

- (a) Interest on debts owed by the debtor stops accruing on the date of commencement of Preventive Composition.
- (b) The debtor can borrow further money during the period of preventive composition, with the Court's permission.
- (c) The debtor is not allowed to change its ownership in any way.
- (d) 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?

- (a) If a secured creditor, having security over all or substantially all of the assets of a debtor, takes steps to enforce its security.
- (b) 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.
- (c) Following the annulment or rescission of Preventive Composition by the Court.
- (d) If a debtor is in default of its payment obligations for 30 consecutive business days.

### Question 1.9

Rehabilitation is a new 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**?

- (a) 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.
- (b) A moratorium comes into effect for an initial 180 days, preventing creditors from commencing or continuing legal action against the company.
- (c) The moratorium disappplies contractual provisions that would otherwise enable a contract to be terminated upon insolvency.
- (d) 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 **not** correct?

- (a) 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).
- (b) The DIFC Courts will enforce judgments and awards from other countries if there is a memorandum of understanding with the Courts of that country which enable the DIFC Courts to do so.
- (c) The DIFC Courts will enforce arbitration awards from other countries in accordance with the New York Convention for the Recognition and Enforcement of Foreign Arbitration Awards.
- (d) 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]

Commented [DB3]: 8 out of 10

#### 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

The key point of distinction concerning the registration of real property interest including mortgages in the different emirates of the UAE is that each emirate has its own land registration system. It should also be noted that the registration and enforcement of mortgages is subject to slightly different laws and procedure in each emirate. However, the substance of the law is similar.

The key difference between the sale of mortgaged real property following a debtor default is that real property is in a financial free zone and if the real property is in "mainland" UAE is that in the financial zones right of sale does not have to be enforced through the courts. The creditor can sell and apply the proceeds of sale in satisfaction of the mortgaged debt. In the UAE any such creditor will have to enforce the right of sale through the court.

Good answer. 2 marks

#### 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. For all of the processes, which actor is responsible for each of the following:

- (a) A decision on any application to commence an insolvency process;
- (b) A primary determination as to whether a debtor's proposal should be adopted;

- (c) Confirmation of the primary determination as to whether a debtor's proposal should be adopted;
- (d) For supervising the implementation of the insolvency process by the debtor.

Answer

- (a) – The Court.
- (b) - Majority creditors holding two thirds of the debtor's debt whose debt have been admitted including those whose debt have been admitted temporarily.
- (c) The Court
- (d) The Trustee.

**4 marks**

**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

The circumstances that could give rise to a debtor commencing preventative composition is that under which the debtor is obliged to apply to initiate bankruptcy proceedings. The conditions are the debtor should not be subject to liquidation proceedings, the debtor should provide all information or funding required, the debtor should not have acted in bad faith or abused the court procedure for making an application and there has not been a judgement for dishonesty against the debtor. In the case of bankruptcy proceedings the debtor should have been unable to meet its payment obligations for a period of 30 consecutive business days.

**1 mark**

**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

The key difference for a creditor regarding the commencement of Preventative Composition or Bankruptcy of a debtor is that in the case of Preventative Composition the debtor will need to apply to the court but in the case of Bankruptcy the creditor is able to apply to commence the process.

**1 mark**

Under the UAE Bankruptcy Law, a creditor has no right to compel a debtor to enter Preventive Composition, but a creditor, or group of creditors collectively, who are owed more than AED 100,000 (USD 27,229), may also apply to the Court to initiate bankruptcy procedures if the creditor has given notice to the debtor requiring the debtor to settle the debt and the debtor has failed to discharge the debt within 30 business days of any such notification.

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

Commented [DB4]: 7 out of 15

**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.

Commented [DB5]: You did not address this?

Answer

The Bankruptcy Law applies to the following entities:

- Companies governed by the Commercial Companies Law.
- Companies set up under other legislation who are subject the Bankruptcy law voluntarily or by law.
- Free zone companies and establishments excluding those in the financial free zones i.e. Dubai and Abu Dhabi.
- Traders
- Licensed civil companies of a professional nature.
- State owned companies that have opted into the application of the Bankruptcy Law.

In terms of how the Bankruptcy Law have been received in the UAE very few applications have been dealt with under it. However, it can be said that it has made negotiations between debtors and creditors to take place with more degree of certainty.

**2 marks**

**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.

Commented [DB6]: Only answer the question as asked.

Answer

The Court in the UAE is required to actively engage in restructuring in bankruptcy proceedings in several respects. It should be noted that Bankruptcy is covered by the Bankruptcy Act of 2016 as amended. Restructuring is one of the two possible outcomes to an application by a debtor for the start of bankruptcy proceedings under Article 67 of the Bankruptcy Act, the other being liquidation once bankruptcy has been declared. It should be noted that restructuring is an alternative to liquidation and can be initiated by either a debtor or creditor.

The debtor can file for bankruptcy proceedings if the debtor has failed to meet its payment obligations for 30 consecutive business days. The debtor is obliged to give 15 day notice to a "competent controlling body" if this applies. It should be noted that under the Federal Decree Law 21 of 2020 there is a suspension of such applications by the debtor between the 1<sup>st</sup> of April 2020 to the 31<sup>st</sup> of July 2021. This is aimed at the provision of some relief to debtors if such financial distress is as a result of the COVID pandemic.

The UAE courts are empowered on an application by a debtor to grant the debtor a 40 day grace period to negotiate a settlement of its debts with its creditors under Article 170 of the 2020 Bankruptcy Law Amendment. This is a relatively short period of time to positively influence the outcome of such negotiations.

Upon the making of an application for bankruptcy, the Court is obliged to appoint an expert to assess the financial situation of debtor under Article 76. Under the Court's mandate the expert



is obliged to report on the debtor's financial situation and give an opinion on the possibility of the debtor's successful restructuring.

There is an automatic moratorium on the commencement of legal actions against the debtor once bankruptcy has commenced until the approval of a restructuring plan or 10 months following the court's decision to open bankruptcy proceedings. Under Article 162 the court acting in consultation with the trustee can extend this period for a further 4 months.

It is also important to note that the commencement of restructuring procedures suspends any criminal action concerning dishonoured cheques including against the signatory of the cheque.

Secure creditors are required to obtain the court's permission to enable them to enforce their security provided the conditions for the court granting such an order are met. The right of secure creditors to enforce their security is not automatic.

Following the submission of the trustee's report to the Court, it should be noted that the Court will consider the option of restructuring as opposed to liquidation unless it considers liquidation to be appropriate. The reverse is not the case.

The Court's decision concerning the restructuring of a company following application or bankruptcy is final under Article 108. It should be noted that there are guidelines that the Court is obliged to following in the making of such determination. The rights of the secure creditor is not affected by the implementation of the restructuring scheme. However, the debtor is able to offer alternate security to such a secured creditor which the secure creditor can accept or reject. If rejected the Court can compel the secure creditor to accept it if it considers the alternate security is of equal value to the existing security and such a decision would not prejudice the creditor.

All of the above demonstrate how the court is obliged to engage in restructuring upon the application for bankruptcy by a debtor.

**4 marks. Answer incomplete**

**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 (100-150 words) whether you consider that the level of Court involvement in approving a restructuring to be appropriate. Provide reasons for your answer.

Answer

The UAE insolvency system involves the forced compromise of individual creditor claims, it is true that the courts involvement is to ensure that the rights of all parties including the individual creditors are protected one of the mechanisms for achieving this is the emphasis on the court's involvement in such proceedings. There are a number of examples of such court involvement. The decision as to whether restructuring is appropriate is made by the court upon the preparation of the scheme by the trustee under Article 103. Any variation of the scheme is done by a majority of creditors but also needs to be approved by the court. The implementation of the scheme is dependent on the court's approval.

Although the level of involvement by the court seems burdensome, such scrutiny by the court is necessary to ensure that the process and rules are correctly applied and the aim of restructuring is achieved and to avoid any abuse of the system.

**What about cost? 1 mark**

The level of Court involvement in restructuring is excessive. Ultimately, the question of whether a debtor-entity should engage in a restructuring should be a matter for the entity's creditors. However, even for a restructuring which all of the creditors support, the process of assessing the viability of restructuring requires an initial report to the Court by the expert, the submission of a restructuring scheme to the Court by the trustee before a creditors' meeting, and a final approval after that meeting by the Court. There is inevitably cost to that process, the funds for which would be better used in paying creditors.

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

Commented [DB7]: 13 out of 15

VGK LLC operates a restaurant chain in various locations in Dubai. It was a thriving and successful business but had to cease operations temporarily due to the effects of COVID-19. It has exhausted all available funds and has no cash to pay creditors. VGK 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 VGK LLC's shareholders and was transferred to VGK LLC on the basis that payment for the site would be made by VGK 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 the questions that follow:**

**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

The ten necessary steps are

1. The making of an application for Preventive Composition by the debtor.
2. Appointment and preparation of a report by the expert appointed by the court within 20 days from the instruction of the expert to do so.
3. Court decides on the Preventative Composition application within 5 business days of receipt or within 5 business days of the expert's report.
4. Appointment of a trustee who should publish the court's decision to commence Preventative Composition within 5 business days of his/her appointment.
5. Creditors have 20 business days within which to file their claims from the date of the giving of notice directly or by publication in a newspaper by the trustee.
6. At the end of the period for filing claims the trustee must prepare and lodge a list of claimants with the court within 10 business.

7. The Preventative Composition scheme must be presented to the court within 45 days from the date of publication/notice under (4) above.

8. The court must review the draft within 10 business days of its submission to the court by the trustee.

9. If satisfied the court directs the issuance of invitations to a meeting to discuss the scheme to the creditors within 5 business days.

10. Creditors meeting to be within 15 working days of the date of the invitation.

11. Presentation of the draft scheme if approved to the court by the trustee within 3 business days

12. Registration and publication of the scheme within 7 business days of its approval by the court.

**Good answer – 5 marks**

#### **Question 4.2 [maximum 5 marks]**

VGK 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

The process that will be followed as part of any liquidation is as follows:

- (a) The debtor in this case VGK LLC is automatically subject to bankruptcy proceedings following an annulment or rescission of a preventative composition scheme under Article 64.
- (b) The creditors should apply to the court for a termination of the preventative composition scheme on grounds that the implementation of the scheme is impossible and that the termination of the procedure would result in VGK LLC being unable to pay its debts for more than 30 business days under Article 65.
- (c) The court is required to make an order for the debtor's bankruptcy and the liquidation of VGK LLC's assets. The most applicable circumstance in this case is the termination of a preventative composition as provided for under the bankruptcy law.
- (d) If the court orders liquidation, the court then appoints a trustee to undertake the liquidation or under Article 126 the court can order that the previously appointed trustee in the preventative composition measures should continue in office.
- (e) The appointed trustee is required to advertise his or her appointment within three business days of his or her appointment under Article 128.
- (f) The trustee should do a monthly report to the court.
- (g) Creditors have 10 working days from the date of judgement to make their claims with the trustee and these must be considered by the trustee except if VGK LLC's assets are insufficient to pay legal fees and secure creditors. We have not been given sufficient information as to whether the shareholders loan was secured in relation to the restaurant site.
- (h) The trustee is then able to liquidate the debtor's assets by public auction under the court's supervision
- (i) VGK LLC may be allowed to sell its asset if it is in the creditor's interest to do so.
- (j) The trustee then distributes the proceeds of sale
- (k) The court then makes an order confirming the conclusion of the liquidation which is then advertised
- (l) The debtor is deemed to be rehabilitated after five years of earlier if the debtor is able to discharge its debt before then.

Commented [DB8]: More detail?

Satisfactory answer covering most of the points. 4 marks

**Question 4.3 [maximum 5 marks]**

VGK LLC incorporated and registered a fully-owned subsidiary company in the DIFC to operate a restaurant in the DIFC. The subsidiary is called VGK Limited and it is incorporated as a DIFC company. VGK Limited is also unable to pay its debts. What actions can VGK Limited's creditors take if they wish to see VGK Limited liquidated in the DIFC? In particular, who can take such actions and what steps would have to be taken? If the VGK 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?

Answer

The action that the VGK's creditors can take if they wish to have VGK Limited liquidated in DIFC are as follows:

- VGK was incorporated and registered in DIFC and can therefore be wound up under the insolvency law of the DIFC. Winding up can either be done voluntarily by a resolution of the company's shareholders or compulsorily under an order made by the DIFC's court under Article 51. As we have been told that VGK is unable to pay its debt (insolvent) the creditors can commence voluntary winding up.
- Under Article 56 the winding up is deemed to start at the time of the passing of the resolution to wind up the company. The company though it continues to exist and still have its legal personality during the winding up must cease to carry on business from the date of the passing of the resolution for its winding up. The directors retain control of the company until a liquidator is appointed. At the passing of the resolution the company may nominate a liquidator to be appointed this should be the one nominated by the creditors if there is no such nomination then under Article 68 one nominated by the company.
- The creditors also have the power to appoint a liquidation committee to carry out the functions prescribed under Art 69 at the creditors meeting.

Compulsory winding up can also be used as we have been advised that the company is unable to pay its debt. Such an application to the court can be made by the company, its directors or any creditor. In this case the most likely applicant is going to be the creditors. The creditors must however be able to show that they are owed more than \$2,000 by the company.

An order by the court for the winding up of the company must identify the liquidator. The liquidator is responsible for gathering, realising and distributing the company's asset as is set out in schedule 3 of the Act. These include the selling of the company's assets, carrying on the business of the company if considered to be beneficial to the winding up.

The creditors are obliged to submit their claims in writing. The liquidator may ask for the claims to be proved following which the liquidator may admit or reject the claim. There is an opportunity to appeal the rejection of any such claim within 21 days.

The liquidator is then obliged to pay the creditors of the company. This is followed by the calling of a creditors meeting and the dissolution of the company.

**4 marks**

**\* End of Assessment \***

**Commented [DB9]:** Read the question! Voluntary winding-up is not something creditors can do!

**Commented [DB10]:** Not relevant