



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).
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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]: 37.5 out of 50 = 75%. Good!

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 disapples 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]: 7 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?

[The key point relating to registration of real property interests in different Emirates of the UAE is that each Emirate maintains its own land registry and system therefor. While there is an overall UAE law for creation of mortgages, there are slight differences in registering these in individual Emirates depending on specific Emirati law.

In respect of a sale of mortgaged real property in the event of debtor default, key difference in carrying this out in Mainland UAE and in Financial Free Zone such as DIFC is as follows:

Mainland UAE, The sale requires court intervention and can be accomplished only through the Court.

DIFC A creditor can give 60 days' notice and if default persists, can enter into possession of the mortgaged real property, and collect rents or sell the property to realise dues. There is no need for Court intervention.]

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.

[**(a) Decision on any application to commence an insolvency process**

Preventive Composition The Court will decide on the application filed by the Debtor for commencing preventive composition.

Restructuring u/UAE Bankruptcy Law The Court will decide on the application for initiating bankruptcy filed by debtor/creditor/controlling body/public prosecutor

(b) Primary Determination on adoption of a Debtor's proposal

Preventive Composition (PC) The Court receiving the Debtor's application for PC will appoint an expert from the Panel of the Financial Reorganisation Committee (FRC Panel) and the Expert will report on whether the application meets the criteria for filing for PC and also on financial condition of the debtor. The Expert's report, makes the primary determination on adoption of the Debtor's application for PC

Restructuring u/UAE Bankruptcy Law Court, on receipt of bankruptcy application appoints an expert from FRC Panel and the Expert, inter alia, delivers his opinion on possibility of successful restructuring..

(c) Confirmation of the primary determination on adoption of debtor's proposal

PC: Upon deciding to admit the application for PC, the Court will proceed to appoint a Trustee who, inter alia is required to submit, following some prerequisite steps, to the Court a draft PC Plan (PCP). At that stage, the Court examines the draft PCP to, inter alia, ensure that it takes care of the interests of all stakeholders. This is the confirmation of the primary determination, in the case of PC.

Restructuring u/UAE Bankruptcy law (R_u/BL)

U/Art 96 of the Bankruptcy Law, the Trustee appointed by the Court on accepting application for bankruptcy and commencing the process, will submit a report on possibility of restructuring. This is a confirmatory step in regard to restructuring u/BankruptcyLaw.

(d) For supervising the implementation of the insolvency process by the debtor

PC:
The Trustee appointed by the Court supervises the insolvency process u/PC in terms of Art 9(1)(f) of BL.

R_u/BL

The Trustee appointed by the Court, u/Art 83 and discharging functions as envisaged u/Art 73(1)(E), supervises the insolvency process in this case.

2 marks

The answer is simply:

- (a) The Court.
- (b) The debtor's unsecured creditors.
- (c) The Court.
- (d) The trustee.

Question 2.3 [maximum 2 marks]

Under the UAE Bankruptcy Law, for a debtor, what is the key difference between the circumstances which could give rise to an application to commence Preventive Composition or an application to commence Bankruptcy (whether leading to Restructuring or Liquidation)?

[The key difference is as follows :

An application for Preventive Composition is available as an option only to the debtor and only if the debtor is not already in default on any obligations for 30 or more business days and if the liabilities do not exceed the value of assets. The debtor, it is envisaged, however, faces financial hardship and needs assistance to reach a settlement with creditors.

A debtor, on the other hand, is required (not optional) to file an application for bankruptcy if the debtor is in default for over 30 business days on any obligations. Also, if there is such default, a creditor may also give notice for payment of dues and if it remains unmet for over 30 business days, the creditor, too can file the application for bankruptcy of the debtor.]

2 marks

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?

Commented [DB4]: Just answer the question.

[The key difference for a creditor as between Commencement of Preventive Composition (PC) and Commencement of Bankruptcy (B^{cy}) is as follows:

In both PC and in B^{cy}, secured creditors' rights remain unaffected though there is suspension of enforcement of security during the insolvency process except with permission of the court.

PC is a debtor-led procedure and specifically allows the debtor, by its design, to secure Court orders for composition scheme to be considered. By contrast, B^{cy}, while it does have an avenue for restructuring, requires the Trustee to apply for this restructuring option. PC is at an earlier stage, where the debtor is not yet insolvent and there is greater comfort for the creditor at this stage than in the equivalent B^{cy} stage. The time period for a PC Plan is envisaged as 3 years, less than the 5 years envisaged under B^{cy} restructuring route. Creditors can, therefore, expect to be paid more quickly in PC than in B^{cy}.]

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 [DB5]: 10 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 [DB6]: Read the question carefully

[UAE economy began as a “one-sector economy” driven exclusively by oil and gas in the region. The Commercial Transactions Law of 1993 had terse and brief provisions to cover bankruptcy , and large element of criminal law remained which would be drawn into bankruptcy situations.

The economy diversified beyond oil and gas after 1993 , notably into property sector, builders , financial sector, which revealed their potential for volatility and illiquidity in the global financial crisis of 2008-09. Dubai , an Emirate within the UAE ran into crisis with Dubai World (DW) , a govt-owned entity verging on default on \$ 26 billion of debt in Nov 2009. (A special decree no 57 of 2010 was issued for a Special Tribunal for dues of DW, but DW succeeded in negotiating by early 2010 a restructuring with international lenders for its \$ 26 billion debt . DW was also supported by a \$ 10 billion funding by Abu Dhabi. That restructuring was further renegotiated in 2014 and extended till 2022 , but DW has now, by 2020, fully repaid this debt.)

These experiences made it desirable and urgent to have in place an Insolvency Law . In 2016, Federal Law no 9 , brought into force, the Bankruptcy Law (BL). BL applies to the following :

- (i) All cos. Governed by the Commercial Cos. Law (the equivalent of Companies Act in Commonwealth countries)
- (ii) Any Cos. Established u/other legislation who , by law or their own volition, submit to the BL.
- (iii) Free Zone Cos. And establishments not subject to other insolvency provisions
- (iv) Any person who is a trader
- (v) Licensed civil cos. Of a professional character.

The reception in the market to the BL notification has been positive , with investors seeing a greater degree of certainty and transparency in outcomes if a credit exposure runs into trouble. There have not been many applications under the BL, as , presumably, defaults are few in the UAE at present. There is one reported instance of a contracting firm in Abu Dhabi being rescued under the Restructuring provisions of BL. Not many details are available in that report.]

3 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.

[In terms of Art 96, the Trustee will submit a report to the Court, inter alia , on the financial condition of the Debtor and prospects for restructuring the dues successfully as well as prospects for sale as a “going concern”. U/Art 97, the Court shall review the Report of the Trustee and and Art 98 envisages that,if the Court does not consider liquidation as appropriate, after its review, it may direct the Trustee to proceed with preparing a Restructuring Plan (RestrucPlan) , provided it also appears to the Court that the business can regain profitable footing in reasonable time and the debtor expresses willingness to continue the business.

Within 3 months, the Trustee (vide Art 99), will submit a draft RestrucPlan , whose necessary contents are spelt out in Articles 101 and 102.The Court will review the draft RestrucPlan u/art 103, and the Trustee will then, under Court direction, hold meetings of creditors to secure approval with requisite majority for the draft RestrucPlan as reviewed by the Court. U/Art 108, the Trustee will then present to the Court , the creditor-approved RestrucPlan for final Court approval.]

6 marks

- The bankruptcy procedure is preceded by an application to the Court, by either a debtor or a creditor, for an order initiating bankruptcy proceedings. 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 expert is required to report on the debtor’s financial condition and to give an opinion on the possibility of the debtor successfully restructuring. 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.
- 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. Upon making an appointment, the Court is required to provide any information which it holds about the debtor to the trustee. The Court shall determine the trustee’s fees and shall authorise payment from the funds deposited by the debtor when making the application.
- The Court may also appoint one or more supervisors. The procedure to be adopted for the appointment of supervisors is to be the same as is adopted for supervisors of preventive composition. Essentially, supervisors are representatives of the creditors.
- The Court must determine any application regarding whether a creditor should or should not be included in the list of creditors. 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.
- The Court should direct the trustee to prepare a restructuring scheme, but may not do so unless the debtor confirms its willingness to continue to carry on business and unless it appears that the proposed restructuring is viable.
- Once the trustee submits the proposed restructuring to the Court, the Court is required to review the proposed scheme and can request the trustee to vary the scheme if it does not properly observe all parties’ interests and to re-submit the proposed scheme.
- Following that review, the Court must direct a meeting of the debtor’s creditors to review the 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.
- If the scheme is approved by creditors at the creditors’ meeting, the trustee is required to put the scheme before the Court, for the Court either to approve or reject the scheme.

Any creditor who voted against the scheme may object to the proposed scheme, with such an objection being determined by the Court.

- The Court is required to give its decision approving the scheme, 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.
- Upon the conclusion of a successful implementation of a restructuring, the Court is required 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 (100-150 words) whether you consider that the level of Court involvement in approving a restructuring to be appropriate. Provide reasons for your answer.

[Court involvement is essential since Restructuring u/Bankruptcy Law (R_u/B^oL^w) allows for imposing a scheme on minority creditors, if the majority of senior creditors vote and assent to the scheme. Art 103 of the Bankruptcy Law (BL) envisages that the draft restructuring plan (RestructPlan) will be reviewed by the Court to, inter alia, ensure that the RestructPlan takes care of the interests of all stakeholders. This is the first line of defence provided by the Court to minority creditors. Art 108 deals with the approval process by the Court after the requisite majority of creditors has accorded approval for the RestructPlan and the Trustee has submitted it for Court approval. This article also provides an opportunity to the affected minority creditor to raise objection to the RestructPlan in the Court which the Court will hear and decide on. The final protection available is that the Court requires that each affected creditor obtains at least the Liquidation Value that would be available to him/her as on voting day. This provision is a guardrail against the minority creditors falling off entirely. However, it falls short of what may be a fair value since if the debtor is only financially stressed and not economically unviable, then the true valuation should be "going concern" value and not only the Liquidation Value. Overall, the extent of Court involvement is appropriate but effectiveness hinges on the availability of good valuation capabilities and access thereto for the Courts.]

1 mark. Well-motivated, but in terms of international standards 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]

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

Commented [DB7]: 11.5 out of 15

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.

[The schedule and steps are tabulated below:

Step No	Particulars	No.of Business Days following application filed
1	Application filed for preventive composition (PC) (on date T , say) and Court appoints expert & notifies expert of his appointment	T+1
2	Expert submits report	T+21
3	Court accepts Application for Preventive Composition (PC) and appoints Trustee and notifies Trustee of his appointment	T+27
4	Trustee advertises and invites claims with deadline of T+52	T+32
5	Trustee lodges with Court , the List of Claims	T+62
6	Trustee submits to court the Draft Preventive Composition Scheme	T+77
7	Court reviews Draft Scheme and, on direction of Court , Trustee invites Creditors for a meeting to consider the Draft PC Scheme	T+92
8	Creditors meet and vote on draft PC scheme	T+107
9	Trustee places for Court approval , the PC Scheme as approved by Creditors with requisite majority	T+110
10	Court decides on Preventive Composition Plan (PCP) and Trustee makes necessary entries in the company's governmental corporate register	T+117

The maximum period from application date to reach point of commencement of implementation is 117 business days.]

While innovative, it is not entirely clear from your matrix the number of days that are required for each step. 3.5 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.

[VGK LLC has been unable to service dues to employees and creditors for 4 months , during which Preventive Composition was abortively attempted. Now, VGK LLC has defaulted to these employees and creditors for over 30 Business Days. Thus, u/Art 68, VGK LLC is obliged to file for bankruptcy in Court.

Court will appoint an Expert to examine the financial condition of VGK LLC. Since VGK LLC has already decided that restructuring is not possible, the Expert's report can only record this infeasibility of restructuring option and it only remains for the expert to record an opinion on the feasibility of sale as a going concern in lieu of a piece-wise asset sale. After considering the Expert Report, the Court will find that the very application submissions of VGK LLC as well as the Expert's Report manifestly indicate that restructuring is impossible. Squarely, in terms of Art 124 (3) the Court will pronounce a judgment declaring VGK LLC as bankrupt and ordering for its liquidation by sale of assets.

Simultaneously with this order of liquidation, u/Art 162, a stay comes into force on all legal proceedings for recovery as well as for enforcement of security. There is an exception under which secured creditors can, with Court approval, enforce security for "debts that are due". VGK LLC has mortgaged the site-under-construction to a shareholder-creditor (Sh^r-Cr^r) who is thus a secured creditor. However, the amount is contractually due only in 2024 , and is thus not a debt due as on the date of commencement of bankruptcy. As such, Sh^r-Cr^r cannot foreclose on that security.

U/Art 126 , the Court will appoint a Trustee . In terms of Art 84, **the following cannot be Trustees :**

- Creditors of VGK LLC
- Related parties of VGK LLC
- Convicts of certain offences
- Persons who in 2 years preceding have been commercially associated with VGK LLC

The Trustee , u/Art 128 issues an advertisement as public notice of the Court decision on liquidation of VGK LLC. Also, u/Art 129, Trustee invites final claims being claims not previously submitted by the VGK LLC creditors. U/ART 130, the Trustee will also undertake a final audit of all claims received .Art 131 envisages that , on Trustee's request , Court can allow VGK LLC to continue the business for some time if that will facilitate selling the business. Conjointly with this. u/Art 161 , the Trustee can direct VGK LLC to perform outstanding contracts if necessary to preserve the interests of businesses run by the company.

U/Art 134, any proposals received by VGK LLC for all or some of VGK LLC's businesses as going concern will be forwarded to the Court through the Trustee. If such going concern sale does not materialise, the Trustee is left with only the option of sale of assets individually. The Trustee can secure Court approval u/Art 132 for sale of identified assets of VGK LLC. The Court can order for sale by auction and also , by means other than auction. Sale proceeds will be used to pay claims received. In this connection, it may be noted that Sh^r-Cr^r has an amount due only in 2024. This is a deferred debt, and u/Art 135, the Court may deduct from the amount due, legal interest for the period from commencement of bankruptcy to the due date.

Distribution of proceeds is as per priority laid out in Art 137/Sec 6 of Chapter 5 (incl Art 189).

The order of priority would be :

1. Court fees/costs/expenses, Trustee expenses etc
2. Employee dues including gratuity/wages and salaries.
3. Govt dues
4. Post-commencement expenses incurred for goods supplied or services rendered.
5. Secured Creditor Dues
6. Unsecured Creditor dues.

Commented [DB8]: How much? For how long?

Upon completion of distribution, u/Art 138, Court will order for closure, which decision will also be published and notified.

Answer could have been stated more clearly! 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?

[VGK LTD's Creditors (individually Cr_f_VGKL) can individually as well as collectively take certain actions given the default of VGK Ltd. Cr_f_VGKL must first issue demand notice for amount due exceeding USD 2000/- to VGK Ltd. After a lapse of 3 weeks , if the amount remains unpaid, Cr_f_VGKL can file an application in the DIFC Court seeking Compulsory Winding Up (W/U) u/Art 81 (c) of DIFC Insolvency Law. Cr_f_VGKL can also nominate a qualified Insolvency Professional to act as Liquidator.

The Court may appoint u/Art 90(1) ,this nominee of creditors or another qualified professional to act as Liquidator. U/Art 94, the property of VGK Ltd now vests in the Liquidator. The Winding Up is deemed to have commenced from the date of filing of application by Cr_f_VGKL. The functions of the Liquidator is to ensure that the assets of the Company are got in or otherwise secured, realised and distributed to the Company's creditors and, if there is a surplus, to the persons entitled to it. Schedule 3 to DIFC Insolvency Law , inter alia , empowers the Liquidator with "Power to do all such other things as may be necessary for winding up the Company's affairs and distributing its assets". This broad power allows Liquidator , to, inter alia, invite claims , ask creditors to prove their claims, sell assets , and distribute proceeds to secured and unsecured creditors.]

Reasonable answer. What about dissolution? 4 marks

* End of Assessment *