



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

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

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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]

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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 of distinction regarding the registration of real property interests (such as mortgages) in the different emirates of the UAE is that each respective emirate has its own separate charge/interest registration system. Additionally, the process of mortgage-creation and mortgage-enforcement is subject to varied laws and procedures as per each respective emirate. However, the security creation and security enforcement laws are substantively the same across all emirates.

Below are the positions regarding the sale of the mortgaged real property following a default by the debtor in the UAE:

- Mainland UAE- The right to liquidate mortgaged property post-default can only be exercised through a court in Mainland UAE. The established position of law is that a mortgagee can move the court seeking an order for sale of the mortgaged land without the need of first securing a judgment for the debt. Once the court is pleased to grant an order for sale to the mortgagee, the court's execution department then conducts a sale of the mortgaged property.
- Financial Free Zones- In the financial free zones, the mortgagee can take possession of the mortgaged land by first providing a 60 days' notice to certain relevant parties. The mortgagee can then sell either whole or part of the mortgaged land without first obtaining a court order to that effect. Further, a mortgagee can receive rents and profits from the mortgaged land, and apply the proceeds from the sale of the mortgaged land towards debt repayment. Mortgagees are also entitled to move courts in the financial free zones for an order of forfeiture.

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- The debtor;
 - A primary determination as to whether a debtor's proposal should be adopted- A court-appointed expert;
 - Confirmation of the primary determination as to whether a debtor's proposal should be adopted- **The court**;
 - For supervising the implementation of the insolvency process by the debtor- **Trustee**(s).

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 between the circumstances which could give rise to an application to either commence Preventive Composition or Bankruptcy is the voluntariness of the debtor. A Preventive Composition can only be initiated by the debtor, whereas Bankruptcy can be initiated without the debtor's consent.

To provide further context, a debtor can file for Preventive Composition (along with the requisite documents and information), as and when it deems it fit. Whereas, a debtor is automatically subjected Bankruptcy following the annulment or rescission of the Preventive Composition by the court.

The court may terminate the Preventive Composition, and initiate Bankruptcy on its own accord if: (i) a creditor makes an application to that effect; (ii) if the debtor commits an act of bankruptcy (i.e., the debtor has defaulted for a period extending 30 days before filing the application for Preventive Composition; (iii) if the implementation of the Preventive Composition scheme has become impossible, and the termination of the Preventive Composition procedure will result into the debtor being unable to pay its debts for a period exceeding 30 days; (iv) if the court orders termination of the Preventive Composition following a conviction of the debtor for a crime involving dishonesty.

Lastly, the Bankruptcy Law also casts an obligation on the debtor to initiate Bankruptcy if the debtor has defaulted on its repayment obligations to its creditors for a period of 30 consecutive business days.

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?

The key difference for a creditor regarding the commencement of the Preventive Composition and Bankruptcy is that that a Preventive Composition can only be commenced by the debtor, whereas a Bankruptcy proceeding can be creditor-initiated.

1 mark

QUESTION 3 (essay-type questions) [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.

Insolvency laws in Mainland UAE were largely undeveloped until 2016. The only operative statute governing commercial insolvency in Mainland UAE was *Law No. 18 of 1993 on Commercial Transactions* ("**Commercial Transactions Law**"). The Commercial Transactions Law governed trader bankruptcies, and it provided a basic mechanism for commercial traders. The legislative machinery under the Commercial Transactions Law was to be executed through the courts; however, it was rarely used.

However, the shortcomings and limitations in the Commercial Transactions Law became evident in 2009, when prospective payment-defaults were looming over Dubai World, an investment corporation owned and promoted by the Dubai Government. Had the defaults actually occurred, they would have had world-wide ramifications and caused severe embarrassment to the Dubai Government. While ultimately, Dubai World was able to address its issues, this instance of Dubai World's financial distress finally gave the impetus to the Dubai Government to revamp its insolvency framework.

Subsequently thereafter, the Federal Decree Law (No.9) of 2016 relating to bankruptcy ("**Bankruptcy Law**") was adopted, which nullified the provisions governing bankruptcy under the Bankruptcy Law. The Bankruptcy Law housed a regime for addressing commercial insolvencies in the UAE.

The Bankruptcy Law applies to:

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- All companies/entities to whom the “Commercial Companies Law” (which is the principal corporate legislation in force in Mainland UAE) applies;
- All companies/entities incorporated under any other law, who, either by the operation of law or on their own accord (i.e., voluntarily), have accepted being governed by the provisions of the Bankruptcy Law;
- All companies/entities in the “free zones” to whom other insolvency/bankruptcy laws don’t apply;
- Traders;
- Civil professionally-run companies that are duly licensed.

Although the Bankruptcy Law has been in force since 2016; however, only a handful adjudications have happened under the Bankruptcy Law so far. Hence, the Bankruptcy Law is largely untested. Hence, any conclusion regarding its friendliness either towards debtors or creditors will be premature. Nonetheless, the Bankruptcy Law certainly provides an environment with greater legal certainty within which complex debtor-creditor negotiations can occur; something which was absent in the era preceding the enactment of the Bankruptcy Law.

Good answer – 5 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.

- **Art. 82-** Post-acceptance of the bankruptcy-commencement application, the court is required to appoint a trustee from the Financial Restructuring Committee. Any creditor objections to the appointment of a trustee are required to be filed with the court with a period of 5 business days, and the court is required to adjudicate upon the same within a period of 5 business days thereafter.
- **Art. 83-** Upon request, the court may provide additional assistance to the trustee, including appointing and delegating duties to an expert from the panel of experts.
- **Art. 86-** The court may replace and substitute a trustee or an expert, either on its own accord, or upon an application made to that effect by the debtor, if substantial evidence is placed on the record that proves that the continuity of either the trustee or the expert would prove detrimental to the interests of the creditors.
- **Art. 85-** The court may relieve the trustee of their duties, upon request by the trustee. Further, the court caps the maximum professional fee payable to the trustee, and authorises any payment of the professional fee payable to the trustee from the funds deposited by the debtor at the time of making the application to the court. The court is required to adjudicate on any objections to the quantum of the trustee’s professional fees within a period of 5 business days of such an objection being raised. Additionally, in the event the application funds deposited prior to the commencement of the bankruptcy process are insufficient, then the trustee can move the court for making a payment of their professional fees from the Court Treasury.

- **Art. 87-** Upon application, or on its own accord, the court may appoint supervisor(s) that'll act as representatives of the creditors.
- **Art.88-** Post-appointment, the court is required to share all the information regarding the debtor that it has in its possession with the trustee.
- **Arts.93, 94-** The trustee is first required to file the list of creditors with the court, and within 3 business days thereafter, publish the list. The court is required to adjudicate any post-publication objections to the list of creditors within a period of 10 business days of such objection(s) being filed. However, the court finally closes the list of creditors.
- **Art. 108-** Within a period of 3 business days post-approval of the scheme by the creditors, the trustee files the scheme in the court for its approval. Objections, if any, to the scheme are required to be filed within a period of 3 business days post-filing of the scheme in the court. Further, the court is required to adjudicate on the objection within a period of 5 business days thereafter. The court's adjudication regarding any objection to the scheme is final and binding.
- **Art. 108-** The court is required to adjudicate on the scheme on an urgent footing, subject to all the relevant statutory conditions being satisfied. The court has to be satisfied that all the affected creditors are receiving a distribution proportionate to what they'd have received, if the debtor were to be liquidated on the date of voting on the scheme. Further, the court, in all likelihood, will not approve a scheme that affects the priority of any secured creditors' rights.
- **Art. 109-** In the event the court rejects a scheme, then it returns the scheme to the trustee within a period of 10 business days for carrying out an amendment to scheme. Thereafter, post-amendment, the trustee re-files the scheme with the court for its approval/rejection. If at this stage, the court rejects the scheme, then the liquidation process is initiated against the debtor.
- **Art.114-** Post-approval of the scheme, the trustee takes charge to implement the scheme, and thereafter reports any anomalies/difficulties in implementing the scheme to the court. Further, the trustee reports the status of the implementation of the scheme to the court every 3 months.
- **Art. 112-** The court may direct the trustee not to sell/liquidate any assets that are critical to the operation of the debtor, without the court's permission, for a court-prescribed period of time during the implementation of the scheme.
- **Art.181-** The court, during the course of the restructuring, may permit the debtor to obtain super-priority financing that is collateralized against the unencumbered/unburdened assets of the debtor.
- **Art.111-** If during the restructuring, the debtor offers an alternative security to a secured creditor, and if the creditor rejects the alternative security, then the court can compel the secured creditor to accept the alternative security, provided the court determines that the value of the alternative security is equivalent to the value of the existing security, and that accepting the alternative security will not prejudice the secured creditor in any manner.

- **Art. 115-** Post-completion and implementation of the scheme, the court passes an order confirming the completion and implementation of the scheme, which the trustee advertises.
- **Art. 123-** The court has the power to terminate the restructuring process, and thereafter initiate a liquidation of the debtor. The court can do so either on its own accord, or subsequent to an application by the creditor, or if the scheme's implementation becomes impossible.

Comprehensive answer – 8 marks

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.

In my view, the high degree of involvement of the UAE courts in the restructuring process is perfectly appropriate. The principal idea behind any restructuring is to preserve and protect the economic value for all the stakeholders involved. However, due consideration must be given to the fact that all the stakeholders, in any restructuring, will act purely out of their respective self-interests, which can often lead to conflicts, holdups, and undesirable delays. It's at this stage that the court plays the balancing act and ensures that all the stakeholders are treated fairly and equitably.

Further, the court also acts as a watchdog/regulator in relation to the restructuring. Unfortunately, a restructuring often comes with undesirable by-products such as frauds, avoidance transactions, fraudulent transactions, etc. At this stage, the court steps in and rectifies/reverses any wrongful or malicious actions which can be unfairly detrimental to the interests of the other stakeholders involved.

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]

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.

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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.

- **Step 1-** The debtor needs to make an application to the court for the appointment of a composition trustee along with the requisite information such as the debtor's financial position, the name of the proposed composition trustee, and the debtor's proposal for Preventive Composition. If the application for the initiation of the preventive composition meets all the criteria, then the court is required to adjudicate on the preventive composition application within a period of 5 business days from the date of filing of the application or from the date of the expert's report. If the court accepts the application, then the preventive composition procedure begins.
- **Step 2-** Post-acceptance of the preventive composition application, the Court appoints a trustee, who can either be a person that is nominated by the debtor, or a person from the panel of experts appointed by the Financial Restructuring Committee. Creditor objections to the appointment of the trustee (if any) are required to be filed with the court within a period of 5 business days post-publication of the appointment of the trustee. The court conclusively adjudicates on the objection within a further period of 5 business days from the date of filing of the objection with the court. Post-appointment, the trustee is required to file the following reports with the court: (i) a report on all the assets of the debtor; (ii) a report on the debtor's creditors.
- **Step 3-** The debtor remains obligated to operate its business undertaking for the duration of the preventive composition, subject to the oversight and supervision of the trustee. Additionally, at the behest of the trustee, the debtor might be required to take further actions to protect the interests of the debtor during the course of the preventive composition.
- **Step 4-** Post-commencement of the preventive composition, the debtor is not required to pay any pre-petition claims, or dispose of any of its assets or borrow any monies, except as otherwise prescribed under the Bankruptcy Law. Additionally, the commencement of the preventive composition results in an automatic stay/moratorium on legal proceedings against the debtor (including criminal proceedings pertaining to cheque dishonour against the cheque's signatory). However, secured creditors can enforce their securities, provided they've the requisite court permission.
- **Step 5-** Within a period of 5 business days post-appointment, the trustee is required to publish a notice of the court's decision approving the commencement of the preventive composition in an English and an Arabic daily newspaper with wide circulation. The notice must invite all the creditors of the debtor to file their claims (along with supporting evidence/documentation) with the trustee within a period of 20

business days from the date of the publication of the notice. Additionally, the trustee is required to notify all the known creditors of the debtor regarding the commencement of the preventive composition within the same 20-business day time period.

- **Step 6-** Within a period of 10 business days from the closure of the time period to submit the claims, the trustee files with the court, a list of claimants, which contains the details of the debt, and the supporting information that establishes the debt. Additionally, the trustee is also required to submit to the court, their recommendation as to whether or not to accept the claims along with the list of claims. However, the court finally determines the list of creditors.
- **Step 7-** The trustee is required to submit the draft preventive composition scheme to the court within a period of 45 business days from the date of publication of the court's decision approving the initiation of the preventive composition. Additionally, the court may extend this time period by an additional 20 business days on the request of either the debtor or the trustee.
- **Step 8-** After being satisfied with the contents of the draft preventive composition scheme, the court will direct the trustee to issue invitations to the creditors within a period of 5 business days to attend a meeting to discuss and prospectively approve the proposed preventive composition scheme. The trustee is required to organize this meeting within a period of 15 business days from the date of direction of the court to hold a meeting of the creditors. The statutorily-mandated majority for approving the draft preventive composition scheme is a majority of the creditors that are holding 2/3rd of the value of the debtor's debt (including the creditors that are temporarily admitted).
- **Step 9-** Post-approval of the scheme by the creditors, the trustee is required to submit the draft preventive composition scheme to the court for its prospective approval within a period of 3 business days.
- **Step 10-** Within a period of 7 business days from the date of approval of the preventive composition scheme by the court, the trustee is required to register the court's approval of the preventive composition scheme in the debtor's "governmental corporate register," and also publish a summary of the preventive composition scheme.

Well answered. 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.

Creditors not approving the restructuring is one of the prospective grounds for a court to order the liquidation of a debtor. Once the court passes a liquidation order, it is required to appoint a liquidation trustee to undertake the liquidation procedure in respect of the debtor. The court also has the option of ordering the previously appointed expert/trustee to continue as the liquidation trustee for the debtor.

Within 3 business days of the liquidation order getting passed, the liquidation trustee must advertise their appointment as a liquidation trustee. The liquidation trustee is required to report the status of the liquidation to the court on a monthly basis.

Further, within 10 business days of the liquidation order getting passed, the creditors are required to file their claims with the trustee. The trustee is statutorily-bound to consider all the claims made against the debtor, unless the bankruptcy estate is insufficient to honor legal fees and the dues of the secured creditors.

All debts owed by the debtor become due and payable once the liquidation order is passed against the debtor. Also, the future debts payable can be adjusted for an equivalent interest component, and all the foreign debt is converted into UAE currency as per the foreign exchange rate that is prevailing as of that particular date. The court may also suspend any interest and other non-payment penalties payable by the debtor, at the request of the trustee (and after adequate notice being given to the concerned creditor).

After the court enters the liquidation order against the debtor, the trustee is required to sell the debtor's assets by means of a public auction, subject to the supervision of the court. The trustee is required to apprise the court, the supervisors (if any), and the debtor of all the offers received by the trustee for the purchase of the debtor's assets and business.

The trustee distributes the proceeds from the liquidation of the debtor's assets. The trustee is bound to pay the proceeds in terms of the statutorily-mandated priorities, subject to court-approval authorizing the distribution, and the approval for payment as per the priorities. Further, unadmitted claims are held by the court till such point they're not adjudicated upon by the court.

The proceeds that come from the sale of any assets that are subject to a prior security interest will be set-off against the quantum of the secured debt in relation to that secured asset. Further, the costs incurred by the trustee in the sale of the secured asset are also deducted from the proceeds. Any surplus that remains thereafter, is required to be remitted to the debtor.

So far as the other assets of the debtor are concerned, the statutorily-mandated priority of payment is: (i) payment of the court costs and trustee's costs; (ii) unpaid wages and salaries for a maximum period of 3 months; (iii) alimony debts pursuant to a judgment; (iv) government dues; (v) costs relating to the supply of goods and services to the debtor post-commencement of liquidation.

Post-closure of the sale of the debtor's assets, the court enters an order confirming the conclusion of the liquidation procedure. The court also confirms the final list of creditors and the unpaid amounts. The liquidation trustee is required to advertise this decision of the court. Post-closure of the liquidation, a creditor has the option to enforce any portion of the unpaid debt that has been admitted during the bankruptcy proceedings against the remainder of the assets of the debtor.

Good answer! 5 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 (both prospective as well as contingent creditors) can file for its compulsory winding up. Under DIFC's insolvency law, inability to pay debts as they fall due is a ground for initiating compulsory winding up proceedings against that particular company. The only pre-condition for a creditor's compulsory winding up application is that that particular creditor must be owed a minimum of \$2000.

DIFC's Insolvency Law also prescribes a separate procedure called creditors' voluntary winding up for insolvent companies. In the case of creditors' voluntary winding up, a resolution must be passed to wind up the company. Post-passage of the resolution, the company ceases to run as a going concern, so that the winding up procedure can be initiated in respect of that company. However, the company continues to be a separate legal entity for the duration of the winding up procedure. Also, the company, in consultation with its creditors, nominates a liquidator. In the event the creditors don't participate in the nomination process of the liquidator, then the company can also nominate a liquidator. The powers of the board of directors of the company cease post-appointment of the liquidator. Further, the creditors can also appoint a liquidation committee at the meeting of the Committee of Creditors. The liquidation committee exercises the powers and functions that are conferred upon it pursuant to DIFC's Insolvency Law.

Commented [DB7]: This is not a creditor-initiated procedure!

Once the court enters an order for liquidating the company, the court must appoint a liquidator in its order to liquidate and wind up the company. The liquidator so appointed may either elect to continue to function as a liquidator or call a meeting of the creditors/contributories to select a new liquidator.

A creditor desirous of recovering money from a debtor-in-liquidation must make written representation to the liquidator detailing their claim along with supporting documents/evidence. This document is referred to as "proof of debt." If the creditor is not able to readily ascertain the quantum of the debt, then the liquidator has the power to estimate the quantum of the debt. The creditor is required to account for any set-off that might have occurred in between the creditor and the company in their proof of debt. Further, the creditor may accrue interest up to the date of commencement of winding up proceedings against the company in their proof of debt. Additionally, as per DIFC Law No.2 of 2014, all netting agreements are enforceable notwithstanding the insolvency of a party to a netting agreement.

Post-receipt of the proof of debt, the liquidator may call upon the claimant creditor to provide further information in order to further assess the veracity of the creditor's claim. The liquidator then has the power to subsequently either admit or reject the creditor's claim, either in whole or in part.

If a creditor is not satisfied with the decision of the liquidator regarding their claim, then they have an option to appeal the liquidator's decision to the court within a period of 21 days of receiving the decision of the liquidator.

Not complete! 3 marks

*** End of Assessment ***