



**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]: 28 out of 50 = 56%

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

Commented [DB2]: 6 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. P-14

(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.

**Commented [DB3]:** You can only select one answer. (d) is the correct answer.

**Question 1.7**

Which of the following **is not** a consequence or possible outcome of the commencement of Preventive Composition? P 20

- (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 [DB4]: 4 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 civil code of UAE provides for various types of tenure and registrations, including:

- a. freehold – the right to use, enjoy and occupy land or property permanently;
- b. musataha – the right to build on land for a specified duration not exceeding 50 years. The holder of a musataha right is deemed to own all buildings on the land during the specified term; and
- c. usufruct – the right to use, enjoy and occupy land or property belonging to another person for a fixed term not exceeding 99 years. Usufruct is similar to the concept of leasehold under English law

This is not the correct answer.

**What is the key difference between the sale of mortgaged real property following a debtor default**

The law provides for the right of a mortgagee to sell the mortgaged property following the debtor's default, however this right must be exercised through the Courts. A mortgagee can petition the Court for an order for sale without first obtaining judgment for the debt. Once an order for sale is obtained, the Court's execution department will conduct the sale of the mortgaged property.

The law a provision for new security registry and registering a security interest before the conclusion of the underlying security agreement

The sale of secured assets passing to a purchaser free from any security interests provided that the purchaser was unaware of such interests over the assets at the time the underlying sale agreement was entered into.

In relation to real and personal property security, the secured creditor's rights are not substantially affected by any formal insolvency process; the secured creditor can generally enforce its rights notwithstanding the debtor's insolvency and sell off the property. The only significant exception to that is that a secured creditor must obtain the permission of the Court to do so.

You did not draw a distinction? 1 mark

- Each Emirate maintains its own land registration system.

- In “mainland” UAE, a mortgagee can petition the Court for an order for sale, and the Court’s execution department will conduct the sale of the mortgaged property. In the financial free zones, a mortgagee can enter into possession of the land and sell the land without the need for a court order.

**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;**

The Court

**1 mark**

- (b) A primary determination as to whether a debtor’s proposal should be adopted;**

The Court

**0 marks the debtor’s unsecured creditors**

- (c) Confirmation of the primary determination as to whether a debtor’s proposal should be adopted;**

The Expert

**0 marks – the Court**

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

The Trustee

**1 mark**



**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 following are the circumstances which give rise to application to commence Preventive Composition. Or Commence Bankruptcy

Preventive Composition	Corporate bankruptcy (Liquidation or Restructuring)
Preventive composition is the main mechanisms in the Law that attempts to prevent bankruptcy and resorting to formal court proceedings. In essence, it allows the debtor to reach a settlement with its creditors on past dues with the supervision of the court through both appointing a trustee as well as approving the final settlement. At the same time, it grants the debtor autonomy to run its business without many interventions	the failure of the company to pay its debts due to financial difficulty  The legal representative of the company may file for bankruptcy upon obtaining the approval of the majority of shareholders or partners. Additionally, the creditor of a company may file for bankruptcy even if the creditor is a partner in said company. However, a partner who is not a creditor may not file for bankruptcy on behalf of the company without obtaining the approval of the majority.
	<b>Risks on Partners and Board Members</b>
The process for requesting preventive composition procedure includes making an application with the court and submitting documentation regarding the financial position of the company and its creditors, assets, debtors and employees; its constitutional documents, license and resolutions AND various other documents.  The appointed trustee will then take inventory of the company's assets, compile a list of creditors and corresponding obligations and draft a preventive composition plan together with the company, which should be submitted to the court within 45 days from the date of acceptance of the application	<ol style="list-style-type: none"> <li>1. A declaration of corporate bankruptcy in partnership entails that all the partners are personally declared bankrupt, as well as any partner that has left the partnership after it has become insolvent in the event that the partner has exited the partnership before the bankruptcy application was made by a period of one year. However, each partner's bankruptcy shall be independent of the other;</li> <li>2. The court may decide to deprive board members of certain political and economic rights as stated in article 111 of the Law in case they have committed gross faults that led to the company's financial difficulty;</li> <li>3. In case the assets of the company do not cover at least 20% of its debts, then the court may decide to order payment from all or some of the board members or managers; and</li> </ol>

The draft plan requires approval by a majority of the company's creditors entitled to vote, provided that the majority holds at least two thirds of the total debt by value. If the proposed plan is approved by the majority of creditors, it is then submitted to the court for ratification; and if ratified, the plan will be binding upon all unsecured creditors.

4. In case the shareholders are yet to subscribe fully to the capital of the company, the bankruptcy trustee may order the shareholders to pay the remainder of their contribution to the capital of the company in order to pay the company's debts.

IN case the court reject the plan, it may either request that the trustee submit an amended plan or otherwise directly commence bankruptcy proceedings under the Bankruptcy Law. an application to commence Bankruptcy

- (a) on the termination of a preventive composition as provided for under the Bankruptcy Law;
- (b) if the debtor has applied for preventive composition in bad faith;
- (c) if the restructuring procedures are inappropriate for the debtor;
- (d) if the expert's or trustee's report concludes that restructuring in bankruptcy is impossible;
- (e) if the creditors do not approve the restructuring;
- (f) if the Court rejects it or if the restructuring is rescinded or annulled.<sup>165</sup>

**You missed the point of this question. 1 mark. The answer is:**

**Under the UAE Bankruptcy Law, a debtor has an option and is free to choose whether it wishes to commence Preventive Restructuring; while a debtor must initiate Bankruptcy Procedures if in default of its payment obligations for 30 consecutive business days.**

**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 [DB5]: Read the question!

**The key differences of commencement of Preventive Composition and Bankruptcy of Debtor is given below**

	commencement of Preventive Composition		Bankruptcy of a debtor
1	the Court is required to direct the trustee to issue invitations, for the purpose of attending a creditors' meeting to discuss the proposed scheme	1	A Debtor or creditor applies for bankruptcy . Courts Admits the application to initiate the Bankruptcy of the Debtor
2	The trustee is required to provide the creditors with a copy of the proposed scheme.		ON the day of judgement no other insolvency or liquidation steps may be taken against a company, except for those provided for in the Bankruptcy Law.94
3	The Court may make further directions about the proposed meeting		The court would appoint a Trustee
4	The Court may also direct the formation of classes of creditors		No Such Committee
5	At the creditors' meeting, the trustee and the debtor are required to explain the proposed preventive composition scheme.		The court may appoint one or more supervisors.
6	Only creditors whose debts have been admitted may vote on the scheme; Secured creditors may not vote on the scheme, unless they have surrendered their securities		Secured creditors may enforce their securities provided they have obtained Court permission to do so
7	The requisite majority for approval of the draft scheme is a majority of creditors holding two-thirds of the debtor's debt		No Such approval , Trustee must work to get the best of the available assets and distribute to the creditors who have made their claims.

**0 marks.** The answer was simply: 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]**

**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.**

The history of Bankruptcy Law in UAE is as new as the creation of the Federation of UAE itself. A brief about the creation of UAE and the birth of Bankruptcy law is detailed in the following paragraphs.

The United Arab Emirates (the UAE) is a federation of seven emirates in the North-East of the Arabian peninsula. The UAE came into existence on 2 December 1971 as a federal union of six emirates: Abu Dhabi, Ajman, Dubai, Fujairah, Sharjah and Umm al Quwain. The Emirate of Ras al Khaimah joined the Union in 1972.

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

The DIFC and the ADGM are common law legal systems and draw primarily from the laws of England and Wales. These are predominantly applicable in the free zones.

The DIFC and the ADGM financial free zones each have their own civil and commercial laws, based on common law models; and also has its own separate judiciary. The DIFC Courts and the ADGM Courts, the judges of which are separate from those of the rest of the UAE court system.

The final Courts of Appeal for both the DIFC Courts and the ADGM Courts are the DIFC Courts Court of Appeal and the ADGM Courts Court of Appeal respectively. The orders of both the DIFC Courts and the ADGM Courts are capable of recognition and enforcement by the Courts of mainland Dubai and Abu Dhabi respectively without any re-examination of the substance of the order or the merits of the case.

The existence of parallel judicial systems in Dubai and the DIFC Courts, with recognised and reciprocal enforcement mechanisms, has been used extensively by creative litigants to obtain outcomes that might not have been possible if there was only one court system.

The issues arising from having the separate jurisdictions was addressed by the creation of the Joint Judicial Committee by Dubai in an attempt to create some over-arching body to determine issues relating to the existence of two separate jurisdictions in Dubai.

The ADGM is a newer creation, where in they are exploring the possibility of parallel jurisdictions.

Commented [DB6]: 9 out of 15

Commented [DB7]: Read the question carefully. You have not answered the question.

Commented [DB8]: You did not answer this part?

The shortcomings in the UAE insolvency regime were highlighted in 2009, when Dubai World, an investment company owned by the Dubai Government, faced the possibility of defaulting on its debt and a special tribunal was created to address claims relating to Dubai World.

The legal positions changed in 2016, with the adoption of Federal Decree Law (No 9) of 2016 relating to bankruptcy, which again got amended in 2019 and 2020 and has been named since as the the "Bankruptcy Law". The Bankruptcy Law repealed the bankruptcy provisions of the Commercial Transactions Law and put in place a consolidated insolvency regime for commercial (but not consumer) insolvencies in the UAE

Further in 2019, the adoption of Federal Decree Law (No 19) of 2019 ("Personal Bankruptcy Law") put in place a consolidated insolvency regime for debtors who did not fall within the ambit of the Bankruptcy Law

Both the Bankruptcy Law and the Personal Bankruptcy Law provide for several Court-supervised processes, including "Preventive Composition" (or in the case of the Personal Bankruptcy Law, "Financial Settlement Proceedings" and "Bankruptcy"; Bankruptcy is further divided into formal restructuring (in the case of commercial debtors) and liquidation (in the case of commercial and non-commercial debtors).

Furthermore, the Bankruptcy Law creates a "Financial Restructuring Committee", appointed by the Minister of Finance, with a degree of supervisory control over insolvency practice and procedure in the UAE. .

**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 the scheme Bankruptcy process, the complete process or the scheme revolves around the court like the planets revolve round the sun.

First of all an application for a bankruptcy declaration can be made by

- a) the debtor itself; or
- b) A creditor or group of creditors,

who hold an unpaid debt of not less the 100,000 AED, if a statutory demand has been served on the debtor and has remain unpaid for at least 30 consecutive business days.

If a company is declared bankrupt in the UAE, significant legal, commercial and economic repercussions will follow; it will likely lose all of its cash and other assets, while its creditors are unlikely to get back all of their debts.

The following are the steps that would be taken from the start of Preventive Composition till the termination of Financial Settlement Proceedings Plan

Step 1 - Approach the court and file the necessary documents

Step 2 - Payment of Fees and Expenses. ...

Step 3 - Measures to preserve debtor's funds. ...

Step 4 - Court decides on the application. ...

Step 5 - Assigning an expert. ...

Step 6 - Creditors submit their documents.

Step 7 - Expert completes his report

Step 8 - Court audits the report

Step 9 - Preparing the repayment plan

Step 10 - Implementation of the financial settlement plan

In every step the courts role is very evident and we will discuss the same.

The Federal Decree-Law No. 19 of 2019 on Insolvency protects the debtors from legal prosecution, decriminalizes the financial obligations of the insolvent person and gives them an opportunity to work, be productive and provide for their families

The courts in UAE are pro debtor and gives debtor ample opportunity to come back to a normal life. A debtor need not offer everything to the creditors. A few of the exclusions include

- a) Child maintenance arrears, if the arrangement was set by the CSA or Child Maintenance Service.

- b) Criminal fines, compensation orders and victim surcharges from a magistrates' court or crown court.
- c) Debts you take out after the date of your bankruptcy order.

A trustee upon his appointment is required to produce a report on the debtor's business and to submit the report to the Court

The Court is required to review the report to confirm that the report takes account of all creditor claims. The trustee is required to provide all creditors with a copy of the report following the review by the Court.

Further the Court is to direct the trustee to convene a meeting of creditors, by way of notice and advertisement. Unless the Court considers that liquidation is appropriate, the Court should direct the trustee to prepare a restructuring scheme.

The Court may not approve a proposed restructuring unless the debtor confirms its willingness to continue to carry on business and unless it appears that the proposed restructuring is viable

If the Court decides that the debtor should be restructured, the trustee is required to prepare and develop a scheme within three months of the trustee's appointment

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

Following that review, the Court must request the trustee to issue an invitation to the creditors, within five business days, to a meeting of the debtor's creditors to review the scheme.

The 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

A creditor may propose amendments to the scheme at the meeting, and the Court may direct further meetings to consider the proposed amendments.

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

Court approval following creditors' approval of the scheme

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

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

#### **Implementation of the scheme**

The trustee is required to monitor progress and inform the Court of any failure of implementation and to report to the Court every three months in any event.

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

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

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

If the secured creditor rejects the security, the Court may compel the creditor to accept it if the Court finds that the proposed alternative security is of equal value to the existing security and it would not prejudice the creditor to accept the alternative.

#### **Completion and termination of the restructuring**

Upon discharge of obligations as per the scheme, the Court is to make an order confirming the complete implementation of the scheme, which is to be advertised

If criminal proceedings for certain specified dishonesty crimes are commenced against the debtor, the Court may take measures for the seizure of the debtor's property, notwithstanding that a scheme is being proposed or implemented

The Court may also terminate a restructuring and commence liquidation of the debtor's assets, on its own initiative or on the application of a creditor, or if the scheme's implementation is impossible

**You included a lot of irrelevant stuff here. Your answer is way too long, although you did mention some aspects which are correct. 6 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 a scheme a debtor may offer a secured creditor alternative security. If the secured creditor rejects the security, the Court may compel the creditor to accept it if the Court finds that the proposed alternative security is of equal value to the existing security and it would not prejudice the creditor to accept the alternative. This would be the role of a court vis a vis a secured creditors right to enforce security.

Further a trustee will have to submit a report to the court about the possibility of restructuring and it is the court which has to address the possibility of the restructuring of debtors business as a going concern. Court reviews the report to confirm that the report takes into account the creditors claims. Court will also direct the Trustee to convene a meeting of creditors by advertisement within 10 days of Trustee submitting report to the creditors. Again it is the courts decision whether the Debtor must be liquidated or it has to be restructured. If it has to restructured, Trustee shall develop a scheme and give to the court. Further the court will not approve the scheme unless the debtor confirms that he is willing to continue the business and the restructuring is viable.

With the above deliberation, one can see the whole of scheme and restructuring revolves rounds the courts judgment and pragmatic approach. Every step and every level and each time the Court is involved. This can be concluded as a high degree of Court Involvement in the whole of the restructuring process.

**0 marks**

**Commented [DB9]:** This was the question, which you did not really answer.

**Commented [DB10]:** And you were asked to provide an opinion on whether this is appropriate?

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

Commented [DB11]: 9 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.*

The following are the few steps that would be taken from the start of Preventive Composition till the termination of Financial Settlement Proceedings Plan

- Step 1 - Approach the court and file the necessary documents
- Step 2 - Payment of Fees and Expenses. ...
- Step 3 - Measures to preserve debtor's funds. ...
- Step 4 - Court decides on the application. ...
- Step 5 - Assigning an expert. ...
- Step 6 - Creditors submit their documents.
- Step 7 - Expert completes his report
- Step 8 - Court audits the report
- Step 9 - Preparing the repayment plan
- Step 10 - Implementation of the financial settlement plan
- Step 11 - Termination, Expiry and Nullity of the Financial Settlement Proceedings Plan

Various Timelines starting from the commencement till the closure are deliberated below.

Step 1 - Approach the court and file the necessary documents	Day 1 of a Business Day
Step 2 - Payment of Fees and Expenses. ...	Day 1 of a Business Day
Step 3 - Measures to preserve debtor's funds. ...	Day 1 of a Business Day
Step 4 - Court decides on the application. ...	Five Days from application or Five days from Experts Report
Step 5 - Assigning an expert. ...	
Step 6 - Creditors submit their documents.	
Step 7 - Expert completes his report	20 days from the date of his appointment
(i) appoints Trustee	Court Appoints
(ii) Creditor Objects for Trustee or even fee	5 Business Days
(iii) Court to decide on objection	5 Business Days
(iv) Court to decide on secured creditors application for securing	10 Business Days
(v) Trustee to publish summary of courts decision	5 Business Days
(vi) Claims to be received from date of publication	20 Business Days
(vii) Trustee to lodge list with the court	10 Business from date of lodging claim
(viii) Debtor or Creditor to challenge the list with court	7 Business Days of lodging list with court
(ix) Court to decide on above application	10 Business Days
(x) scheme must be submitted to the Court from the date of publication of the decision initiating the preventive composition procedure	45 Business days
(xi) Further Extension by court	20 Business Days
Step 8 - Court audits the report	
(i) Review the Scheme and confirm that it takes interest of all parties	10 Business Days
(ii) Trustee to invite creditors within the direction to invite creditors	15 Business Days
(iii) Trustee to give the draft plan to the court for approval	3 Business days of approval
(iv) Objecting creditor to object within	3 Business days
(v) Court to settle the objecting creditor within	5 Business Days
Step 9 - Preparing the repayment plan	
Step 10 - Implementation of the financial settlement plan	
trustee is required to register the Court's decision confirming the approval in the debtor's governmental corporate register and publish a summary of the scheme	7 Business Days
Step 11 - Termination, Expiry and Nullity of the Financial Settlement Proceedings Plan	The scheme has to be completed maximum period of 5 years and additional 3 years if 2/3 of creditors approve.

This could have been presented in a far more succinct manner than this! But you have covered the main points and marks awarded accordingly. **4 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.**

Following any annulment or rescission of preventive composition, may be for various reasons including the creditors rejecting the Scheme, the debtor is then automatically subjected to bankruptcy procedures provided for under the Bankruptcy Law.

The Court also may terminate the preventive composition and commence bankruptcy procedures on its own initiative, or on the application of a creditor, if the debtor has evidently committed the act of bankruptcy, namely if the debtor has been in default for more than 30 days before the making of the preventive composition procedure, or if the scheme's implementation is impossible and the termination of the procedure will result in the debtor being unable to pay its debts for more than 30 business days.

Following the initiation of any bankruptcy procedures, the appointment of the trustee for the preventive composition terminates (unless the trustee is appointed as the bankruptcy trustee); the Court continues to act as the Court implementing the procedures for declaring bankruptcy and liquidation of the debtor's assets under the Bankruptcy Law.

Further to look at who must be appointed as Trustee the Court is required to appoint a trustee, being either a person nominated by the debtor or a person enrolled in the table of experts appointed by the Financial Restructuring Committee. The trustee can be a natural or legal person, and up to three trustees may be appointed to act jointly at any one time. Any creditor may object to the appointment of a trustee within five business days of the date of publication of the appointment; the objection is by way of application to the Court, which is required to determine any objection within a further five business days, on a final basis. The preventive composition procedure will continue during the period of any such objection and determination.

The answer was simply:

- VGK LLC would have to make an application to commence bankruptcy. The Court would be required to make an order for the bankruptcy of VGK LLC and the liquidation of its assets, because the restructuring procedures would be inappropriate for the debtor, and it is likely that the expert's report would conclude that restructuring in bankruptcy is impossible. The trustee of the proposed Preventive Composition scheme can continue as a trustee for the liquidation.
- Creditors are required to make their claims with the trustee within ten business days from the date of the judgment requiring liquidation. All of VGK LLC's debts would fall due upon the order for bankruptcy, including the full amount of the amount payable to the shareholder.
- The trustee would be required to liquidate all of the debtor's property by public auction, under the supervision of the Court. The trustee may ask the Court to permit the debtor to undertake the sale of the debtor's business and assets over a period of up to six months (which can be extended by up to two months), if it would be in the public interest or interest of creditors to do so. It might be that it is appropriate to defer the sale of the restaurant site under development until completion of the development in seven months.

- The proceeds of sale of the liquidation of the debtor's assets would be distributed by the trustee to creditors. The proceeds of sale of the property subject to a mortgage would be applied in payment of the debt owed to the mortgagee, less the trustee's costs of sale.
- The trustee must pay claims in the order provided for in the law, subject to Court approval for the distribution and approval of payment of priorities. Accordingly, the trustee must pay the employees' unpaid salaries, for up to three months, from the proceeds of sale.

**1 mark**

**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?

**What actions can VGK Limited's creditors take if they wish to see VGK Limited liquidated in the DIFC**

Insolvency in the DIFC is governed by the DIFC Insolvency Law; the Insolvency Law is applied to companies and other commercial entities registered in the DIFC, including branches of foreign companies. The Insolvency Law and the regulations made under it, govern all aspects of the insolvency process.

In this case VJK's creditors' may apply for voluntary winding up. When passing the resolution to commence the winding up, the company may nominate a liquidator to be appointed, but the liquidator shall be the person nominated by the VJK's creditors (or in absence of any nomination, the person nominated by the company). Upon the appointment of the liquidator, the directors' powers cease. The VJK's creditors may also appoint a liquidation committee at the meeting of creditors, to exercise the functions conferred on the committee under the DIFC Insolvency Law.

**Commented [DB12]:** No, they cannot. Only the members of the company may pass a resolution for winding up.

**0 marks**

**In particular, who can take such actions and what steps would have to be taken?**

An application to the court for the winding up of a company may be brought by the company, its directors, or any creditor (including any prospective or contingent creditor), or by the DIFC Authority where it considers the winding-up to be in the best interests of the DIFC and the DIFC Court is of the opinion that it is just and equitable for the company to be wound up. If the VJK's creditor with a debt of at least US \$2,000 may apply to the Court for an order winding up the company, even if voluntary winding up has already commenced. **1 mark**

A company can be wound by voluntary winding up ie members winding up or creditors winding up or a courts winding up.

Usually the common ground for the commencement of a compulsory winding up is that the company is not able to pay its debts.

Before passing the necessary orders the Court would look into the fact that if the company is presumed to be unable to pay its debts if

(a) The VJK's Creditor has made demand for payment of a debt which is for a sum of more than USD 2,000, and that demand has been unsatisfied for a period of more than three weeks; or **mark for this already awarded – repetition.**

(b) any execution process is returned unsatisfied; or

(c) it is proved that a company is unable to pay its debts as they fall due; or

(d) it is proved that the value of the company's assets exceeds the value of the company's liabilities, including any prospective and contingent liabilities.

**If the VJK was to be wound up, who would be responsible for it ?**

If an order is made for the winding up of VJK by the Court, the Court would be responsible to make the necessary orders and appoint a liquidator to the company. The liquidator so appointed may then elect whether to continue as liquidator or to summon a meeting of creditors and contributories for the purpose of choosing a liquidator. If the creditors and contributories choose different people, the liquidator shall be the person chosen at the creditors' meeting.

**1 mark**

**What process would be adopted for addressing creditor claims in the winding up?**

The process for addressing the creditors claims starts with the liquidator calling for claims by creditors and ask them to prove, rank and pay all the creditors' and balance if any to the claims made by the shareholders.

A creditor wishing to make a claim to the liquidator must submit his claim for the amount in writing along with proof of debt after accounting any set-off and further taking into account the accrued interest till date of winding up.

Upon receipt of a proof of debt, the liquidator may require the creditor to provide such further information as may be necessary to evaluate the claim. The liquidator may then admit or reject (in whole or in part) any proofs of debt for the purposes of determining whether to make a payment to the creditor, along with other creditors.

In case the debt cannot be ascertained, the liquidator may estimate its quantum.

A secured creditor may only prove for the balance owing, or which is estimated would be owing, following realisation of any security interest

If a creditor is dissatisfied with the liquidator's decision regarding a proof, the creditor

may then appeal against that decision within 21 days of receiving notice of that decision, by application to the Court; a member of the company or another creditor may also appeal against any such decision by the liquidator.

**1 mark**

**\* End of Assessment \***