



SUMMATIVE (FORMAL) ASSESSMENT: MODULE 7E

UNITED ARAB EMIRATES

This is the **summative (formal) assessment** for **Module 7E** of this course and must be submitted by all candidates who **selected this module as one of their elective modules**.

The mark awarded for this assessment will determine your final mark for Module 7E. In order to pass this module, you need to obtain a mark of 50% or more for this assessment.

INSTRUCTIONS FOR COMPLETION AND SUBMISSION OF ASSESSMENT

Please read the following instructions very carefully before submitting / uploading your assessment on the Foundation Certificate web pages.

1. You must use this document for the answering of the assessment for this module. The answers to each question must be completed using this document with the answers populated under each question.
2. All assessments must be submitted electronically in **Microsoft Word format**, using a standard A4 size page and an 11-point Arial font. This document has been set up with these parameters – **please do not change the document settings in any way. DO NOT** submit your assessment in PDF format as it will be returned to you unmarked.
3. No limit has been set for the length of your answers to the questions. However, please be guided by the mark allocation for each question. More often than not, one fact / statement will earn one mark (unless it is obvious from the question that this is not the case).
4. You must save this document using the following format: **[studentnumber.assessment7E]**. An example would be something along the following lines: 202021IFU-314.assessment7E. **Please also include the filename as a footer to each page of the assessment** (this has been pre-populated for you, merely replace the words “studentnumber” with the student number allocated to you). Do not include your name or any other identifying words in your file name. **Assessments that do not comply with this instruction will be returned to candidates unmarked.**
5. Before you will be allowed to upload / submit your assessment via the portal on the Foundation Certificate web pages, you will be required to confirm / certify that you are the person who completed the assessment and that the work submitted is your own, original work. Please see the part of the Course Handbook that deals with plagiarism and dishonesty in the submission of assessments. **Please note that copying and pasting from the Guidance Text into your answer is prohibited and constitutes plagiarism. You must write the answers to the questions in your own words.**
6. The final submission date for this assessment is **31 July 2021**. The assessment submission portal will close at **23:00 (11 pm) BST (GMT +1) on 31 July 2021**. No submissions can be made after the portal has closed and no further uploading of documents will be allowed, no matter the circumstances.
7. Prior to being populated with your answers, this assessment consists of **8 pages**.

ANSWER ALL THE QUESTIONS

Commented [DB1]: 37 out of 50 = 74%. Good result.

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]: 8 out of 10

Question 2.1 [maximum 2 marks]

What is the key point of distinction regarding the registration of real property interests, including mortgages, in the different emirates of the UAE? What is the key difference between the sale of mortgaged real property following a debtor default if that real property is in a financial free zone or if the real property is in "mainland" UAE?

The key point of distinction in the registration of real property interests across the UAE is that each emirate operates its own system in registering land. This then results in different laws and procedures for registration of real property interests although the laws may all share a number of similarities.

The key difference between the sale of mortgaged real property following a debtor default in a financial free zone versus mainland UAE is that in the financial free zone, a creditor can take possession of the property through 60 days' notice and sell the property (or take rent or profits) without a court order. While in mainland UAE the sale of mortgaged property requires a court order and the sale is conducted by the Court's execution department.

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) Court.

(b) Trustee. **No – unsecured creditors**

(c) Court.

(d) Trustee.

3 marks

Question 2.3 [maximum 2 marks]

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

An application to commence preventive composition under Article 6 of the UAE Bankruptcy Law is by way of the debtor only applying to Court to appoint a composition trustee, based on the debtor setting out its position, its proposal for preventive composition and the name of the proposed trustee.

In contrast the bankruptcy procedure is based on an application to the Court by either a debtor or a creditor and is initiated when the debtor is in default of a payment obligation for 30 consecutive business days (subject to certain recent relaxations) or a creditor (or group of creditors) are owed more than AED 100,000 and which has not been paid within 30 business days of the debtor being notified to make payment.

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?

A creditor can commence bankruptcy of a debtor, arising from a payment default of a debtor, while in the context of preventive composition, a creditor does not have standing to apply.

You could have elaborated here. 1 mark

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

Commented [DB4]: 9 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.

The historical need to introduce comprehensive insolvency legislation in the UAE, culminating in the UAE Bankruptcy Law, were the defaults by Dubai World which would have

led to the largest insolvency in UAE's history with numerous implications for the UAE economy.

While Dubai World's defaults were resolved with its creditors through a special tribunal, it was sufficient impetus for UAE legislators to promulgate the Bankruptcy Law (for commercial insolvencies) and Personal Bankruptcy Law (in relation to those who did not fall within the Bankruptcy Law).

The UAE Bankruptcy Law applies to commercial enterprises consisting of companies under the Commercial Companies Law, state owned entities who have opted into the Bankruptcy Law, all free zone companies (with the exception of DIFC and ADGM), professional firms and traders.

The Bankruptcy Law was well received in the UAE since it addressed a previously under developed area of law however there have only been limited number of cases where the law has been applied.

Not complete – 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.

Following the commencement of a bankruptcy proceeding under Article 67 of the UAE Bankruptcy Law, the Court is regularly involved at various points continuously throughout the restructuring in a bankruptcy process. For example, once the bankruptcy application is made, a Court looks to appoint an expert from a panel to determine the debtor's financial position pursuant to Article 77.

Other points when a Court is required to be actively engaged include determining whether to commence bankruptcy based on the experts report (Article 78), whether to replace an expert if their appointment is against the interests of creditors (Article 86), whether or not to appoint supervisors (Article 87), providing information on the debtor to trustees (Article 88), determining the final list of creditors (Article 94), deciding whether to suspend interest payments on a default (Article 163), rescind contracts, leases or employment contracts (Articles 165, 166 and 167), or deal with a creditors' objection to a scheme placed before the Court (Article 108).

Aside from these, the Court can form committees of creditors, divided into categories, and direct such committees on their conduct when meeting (Article 104) and will also continue to receive information from the trustee (in the performance of their duty) thereby monitoring the bankruptcy process intricately (Articles 113 and 114). The Courts powers can impact the restructuring directly, for example by restricting the sale of certain assets without its permission (Article 112) or ultimately terminate a restructuring which triggers liquidation of the debtor (Article 123).

Could have been more complete – 5 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.

Commented [DB5]: You did not provide your opinion?

The high degree of Court involvement in the UAE Bankruptcy Law would appear to reflect an environment that is not familiar with insolvency (owing to the minimal development of insolvency law prior to the Bankruptcy Law) and therefore requiring greater supervision and involvement of the Court, not least to ensure that all parties' rights are protected.

This view is reinforced by Article 86 (the power to replace an expert if the expert acts contrary to the interests of creditors, Article 87 (using supervisors to monitor the process), Articles 113 and 114 (receiving updates on the restructuring process at regular intervals) or Article 112 (limiting which assets can be sold). Notwithstanding these Articles, the Court retains the final power under Article 123 which is to determine the success of the restructuring, or whether liquidation is preferred.

1 mark. Well-articulated answer but the answer (in terms of international best practice):

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

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

Commented [DB6]: 11 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.

After making an application, the Court's appointed expert is to provide a report within 20 business days (outlining whether the debtor is eligible for preventive composition) and upon which the Court will make its decision within another 5 business days.

At this point, a trustee is appointed and who is required to issue a notice of the Court's decision to proceed within preventive composition within 5 business days. The notice contains a period of 20 business days for creditors to lodge claims against the debtor. A list of creditors compiled by the trustee is then lodged with Court within 10 business days of the 20 business day period given in the notice.

45 business days from the date of the notice being published by the trustee, the preventive composition scheme needs to be submitted in Court. The Court then decides within 10 business days if the scheme is acceptable and protects the interests of all parties. If the scheme is acceptable, a period of 5 business days is given to convene a creditors meeting, and which is held within 15 business days of the notice to convene.

The trustee then places an approved scheme before the Court within 3 business days to be adopted or rejected. After this, the trustee registers the scheme on the corporate register, and publishes a summary, within 7 business days.

Good answer, if a bit short! 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 would proceed to liquidation, after the failed preventive composition scheme making restructuring impossible, through an appointed trustee, which may be the same trustee that worked on the preventive composition under Article 126 of the UAE Bankruptcy Law.

After the trustee's continuation (or fresh appointment, if a different trustee is involved), the trustee reports to the Court on a monthly basis on the liquidation of the debtor's assets. Meanwhile creditors are required to lodge their claims with the trustee within 10 business days of the Court's order for VGK LLC's liquidation.

Based on the facts of VGK LLC, the restaurant site being developed would be liquidated through a public auction and any proposed purchasers reported to the Court. Once the site has been sold, the proceeds would be distributed to the shareholder as a secured creditor (to the extent of his mortgage for the unpaid purchase price), followed by the Court and trustee's costs, and then unpaid staff (up to 3 months' salary).

If any other amounts remain to be distributed, the shareholder may be entitled to receive further funds, towards what he is owed up to 2024, but up to an amount that would be legally payable today.

Answer does not cover all the points. 3 marks

Answer:

- 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.

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?

Neither the UAE Bankruptcy Law nor the DIFC Insolvency Law provide for insolvencies of groups of companies. However, under the protocol for enforcement between the DIFC Courts and the Dubai Courts, the winding up VGK Limited can be enforced in the Dubai Courts, such that the assets of VGK LLC would be reduced to the extent of the assets held within its fully owned subsidiary, VGK Limited.

Given that VGK Limited is a DIFC incorporated company, the creditors of VGK Limited (with debts of at least US\$ 2,000) can pursue an application for winding up of the company under Article 83 of the DIFC Insolvency Law. The application to wind up the company can also be made by the directors and or the company itself.

Following this, the Court appoints a liquidator who would be responsible for VGK Limited until the final winding up order, to preserve asset values while also collating assets that would realise liquidity for distribution to creditors. The liquidator would then also call for creditors to submit their claims in writing (with supporting evidence), which he would then

Commented [DB7]: Not relevant

rank and pay according to their claim priorities. **3 marks** Answer does not cover all the aspects.

*** End of Assessment ***