



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]: 35.5 out of 50 = 71%

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

Commented [DB2]: 8 out of 10

Questions 1.1. – 1.10. are multiple-choice questions designed to assess your ability to think critically about the subject. Please read each question carefully before reading the answer options. Be aware that some questions may seem to have more than one right answer, but you are to look for the one that makes the most sense and is the most correct. When you have a clear idea of the question, find your answer and **mark your selection on the answer sheet by highlighting the relevant paragraph in yellow**. Select only **ONE** answer. Candidates who select more than one answer will receive no mark for that specific question.

Question 1.1

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

- (a) The failure of the responsible authorities to enact laws which would encourage a business rescue culture.
- (b) The low rate of business failure in the UAE.
- (c) The owners of failed businesses are liable as a matter of criminal law for the failure of their business.
- (d) **There could be criminal law consequences for business owners arising from the security agreements which a business might have with its creditors.**

Question 1.2

What is the **principal difference** between the “mainland” UAE Bankruptcy Law and the insolvency laws of the two financial centres (the DIFC and the ADGM)?

- (a) The insolvency laws of the financial centres govern the insolvency of financial service businesses only, while the Bankruptcy Law governs the insolvency all other businesses.
- (b) The insolvency laws of the financial centres have no application and cannot be enforced in the UAE “mainland” (that is, outside of the financial centres), while the Bankruptcy Law is the only applicable law governing insolvency in the UAE “mainland”.
- (c) **The Bankruptcy Law drew on the experiences of a number of jurisdictions, while the insolvency laws of the financial centres are based on the insolvency laws of one other country.**
- (d) The Bankruptcy Law incorporates substantial elements of Islamic law, while the insolvency laws of the financial centres are based on the common law.

Question 1.3

Which statement **correctly describes** the relationship between the Courts of the DIFC and the Courts elsewhere in the UAE?

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

- (b) The judgments and orders of the Courts of the DIFC are enforceable elsewhere in Dubai only through the Dubai Courts.
- (c) The judgments and orders of the Courts of the DIFC are enforceable elsewhere in Dubai only after recognition for enforcement by the Joint Judicial Committee.
- (d) The judgments and orders of the Courts of the DIFC are not capable of enforcement outside of Dubai.

Question 1.4

As regards security in Mainland UAE a secured creditor's rights, both in relation to real and personal property security, are not substantially affected by any formal insolvency process; the secured creditor can generally enforce its rights notwithstanding the debtor's insolvency. Is this statement **True or False**?

(a) True.

(b) False.

Question 1.5

Which statement is **correct** in relation to the operation of security interests for both real and personal property in the DIFC?

- (a) The law regulating security interests in land and personal property in the DIFC is based on Australian law.
- (b) A mortgagee of land in the DIFC requires a court order to allow it to repossess land subject to a mortgage.
- (c) The regulating security interests in land and personal property in the DIFC is based on English common law.
- (d) There are separate registers in which security interests in both land and personal property in the DIFC can be registered.

Question 1.6

Which of the following statements is **incorrect** in relation to creditor rights following the Court's decision to commence preventive composition under the UAE Bankruptcy Law up until the approval of the scheme?

- (a) All legal claims and proceedings and any judicial enforcement procedures against the debtor are suspended, unless otherwise decided by the Court.
- (b) The commencement of preventive composition procedures will also suspend any criminal proceedings brought in relation to a dishonoured cheque, including against the signatory of the cheque.
- (c) Creditors may not bring or pursue claims against persons jointly liable with the debtor or any guarantors of the debtor's debts.
- (d) Secured creditors may enforce their securities provided they have obtained Court permission to do so.

Question 1.7

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

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

Question 1.8

Which of the following **is not** a basis for an application to the Court for the commencement of bankruptcy proceedings under the UAE Bankruptcy Law?

- (a) If a secured creditor, having security over all or substantially all of the assets of a debtor, takes steps to enforce its security.
- (b) If a creditor (or a group of creditors) has given notice to a debtor requiring the debtor to pay a debt of AED 100,000, and the debtor has failed to discharge the debt within 30 business days of that notification.
- (c) Following the annulment or rescission of Preventive Composition by the Court.
- (d) If a debtor is in default of its payment obligations for 30 consecutive business days.

Question 1.9

Rehabilitation is a new DIFC insolvency procedure introduced by the 2019 law, which allows companies unable to pay their debts but able to reach agreement with its shareholders and creditors to agree to a plan referred to as a Rehabilitation Plan to achieve a court sanctioned plan that binds creditors. In regard to the rehabilitation procedure, which of the following statements is **incorrect**?

- (a) In order to initiate the rehabilitation process the company is required to make an application to court submitting the rehabilitation plan and nominating the proposed rehabilitation nominee.
- (b) A moratorium comes into effect for an initial 180 days, preventing creditors from commencing or continuing legal action against the company.
- (c) The moratorium disappplies contractual provisions that would otherwise enable a contract to be terminated upon insolvency.
- (d) Any creditor materially prejudiced by the moratorium may apply to court seeking the disapplication of the moratorium in relation to a particular contract.

Question 1.10

Which of the following statements is **not** correct?

- (a) The DIFC Courts will enforce judgments and arbitration awards from other countries in accordance with the Riyadh Convention (Riyadh Arab Agreement for Judicial Co-operation).
- (b) The DIFC Courts will enforce judgments and awards from other countries if there is a memorandum of understanding with the Courts of that country which enable the DIFC Courts to do so.
- (c) The DIFC Courts will enforce arbitration awards from other countries in accordance with the New York Convention for the Recognition and Enforcement of Foreign Arbitration Awards.
- (d) The DIFC Courts will enforce judgments and arbitration awards from other countries, even if the debtor has no presence of any type in the DIFC.

QUESTION 2 (direct questions) [10 marks]

Commented [DB3]: 6.5 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?

[UAE Mainland – Federal Law 4 of 2020 on guaranteeing Rights related to Movables - Each emirate maintains their own land system. Right to sell mortgaged property must be through the courts. One must get judgment for mortgage debt before proceeding for sale but general practice seems otherwise.

DIFC Law 10 of 2018-Creditor can enter into possession of land, sell, receive rents etc with 60 day's notice to the relevant parties. No need for court order.]

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. Preventive composition – debtor.
Restructuring – Debtor (is in default for more than 30 days) or creditor (owed 100,000 AED and gave notice to debtor) or controlling body or prosecutor.
- b. Court appoints an expert to give views on whether to accept the application (art. 6 of Preventive Composition scheme) and in bankruptcy. And then the Court accepts and commences proceeding.
Preventive composition - Debtor should assist trustee in making preventive composition scheme. Court can review and ask trustee to publish the scheme to be decided in the creditor's meeting.
Bankruptcy – Trustee will suggest restructuring is possible.
- c. Preventive composition - Creditors in the creditor's meeting will confirm if the debtor's proposal should be adopted. Then once approved by creditors holding two thirds majority of debtor's debt, trustee presents it to court and court approves or rejects and declares for bankruptcy.
Bankruptcy – Court will determine if restructuring or liquidation is possible and ask trustee to draft a scheme depending on which route the court takes after considering the proposal of trustee and what is decided in creditor's meeting (same two thirds approval by the creditor's is needed as is in preventive composition)
- d. Trustee is responsible for supervision and implementation of the scheme in both preventive composition and bankruptcy.]

1 mark. The answer was 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)?

[Preventive composition – Debtor can seek preventive composition as an option while restructuring is alternative to liquidation **either by debtor or creditor initiation**. Art 5 and 6 of UAE law states the preventive composition is to assist the debtor to reach settlements under supervision of court and appointment of trustee. This is open to all companies, persons who engage in trade and professional firms but not consumer debt. If the debtor is subject to control of competent controlling body, debtor can apply for preventive composition.

If preventive composition fails, is annulled or recession of the scheme takes place, debtor is automatically subjected to bankruptcy proceedings. If debtor is in default of payment obligations for 30 business consecutive days, debtor is required to initiate bankruptcy. This also applies in the case of corporate bankruptcy.]

1.5 marks

Commented [DB4]: ??

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?

[Art. 6 preventive composition – Only debtor can file an application. Court then appoints an expert to give a report on his views and check the credentials (within 20 business days) of the application. Once that is done, court accepts or rejects the application and commences proceeding if accepted.]

The biggest difference is creditor can also apply for commencement of bankruptcy. Creditors who owe more than AED 100,000 provided creditor has given notice to debtor to clear the debt and debtor failed to discharge the debt within 30 days from notice. Further a controlling body or public prosecutor can also initiate proceedings against debtor for bankruptcy.]

2 marks

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

Commented [DB5]: 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.

Commented [DB6]: Read the question carefully.

[UAE is a federation of seven emirates. UAE came into existence on 2nd dec 1971. UAE is a federal state and each emirate retains authority over the matters not reserved to federal government under the Constitution. Constitution provides for Federal Supreme Council and Federal National Council. Laws need to be approved by both these entities and also approved by the President (President and Vice President are members of the Federal Supreme Council). Under amendment made to Constitution in 2004, Federation has exclusive rights to establish free trade zones in Dubai and Abu Dhabi. Financial free trade zones are Dubai International Financial Centre (DIFC) and Abu Dhabi Global Market. Both DIFC and ADGM have their own legislations for civil and criminal matters. Remainder are all considered mainland UAE.]

Existence of parallel justice systems, being courts of mainland Dubai and DIFC courts have been extensively used by creative litigants to get outcomes not possible to be achieved through any one court. Issues which arise will be settled by the Joint Judicial Committee. Debts can be enforced both civil and criminal. There was law no 18 of 1993, the commercial transactions law which got repealed by Federal Decree law no.9 of 2016, applicable to mainland UAE and Insolvency Law DIFC Law No 1 of 2019 is applicable to DIFC zones.]

You did not really answer the questions posed. **2 marks**

Question 3.2 [maximum 8 marks]

If a debtor company seeks to enter bankruptcy, describe the ways in which the Court is required to be actively engaged in the Restructuring in Bankruptcy Process (assume that a restructuring is possible, that there are no unusual features to the bankruptcy, there are no secured creditors and there has been no criminal conduct by any person involved in the debtor). Your answer should provide references to the legislation.

[Debtor is to initiate bankruptcy if it's in default of payment obligations for 30 consecutive business days. Federal Decree law 21 of 2020 is applicable for covid till 31 July 2021.]

Bankruptcy Law (Federal decree Law No.9 of 2016, amended in 2019 and 2020) and Personal Bankruptcy Law are applicable. Court is required to appoint expert to assess financial condition of debtor. Court is required to determine application for commencement of proceedings. Court can impose restrictions on debtor's sale of assets or payment of claims and safeguard interests of creditors. Court appoints trustee, provides for suggestions for restructuring scheme. Court also gives publication of the scheme, takes objections from creditors and amends the restructuring scheme. Court advises trustees and debtor can raise extra finances or creditor can sell and enforce his security interest only with the permission of the court.

Court also appoints one or more experts to help trustee, appoints supervisors from the creditors. Court is also required to provide any information it has on the debtor. The trustee also provides initial assessment report to court and also lodges the creditors list with the court. Court can also provide for condonation of delay to any of the deadlines during the restructuring process. Court may suspend interest and penalties in case of non-payment. Court on request by trustee rescind contracts, leases and employment contracts.

Court has to review creditor's claims and advertise for objections and finally approves the restructuring scheme and appoints trustee to oversee implementation.]

A bit brief, but covers some of the main points. 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.

[Court involvement is required in restructuring. The experts and trustee appointed by the court decide if restructuring is possible, verify debtors or creditors application and report back to court. If court meditation is not there, there won't be transparency in the process. Further, the court also appoints the trustee to give the report on the debtor's assets. Trustee can also maintain debtor's business under Court's order. There are exclusive safeguards to make sure the creditor's get back their money, thus the debtor cannot pay claims or dispose of his assets during bankruptcy proceedings and it also suspends legal including criminal proceedings against debtor, secured creditors may enforce their securities if they have the Court's permission. All this ensures there is no duplicity in the proceedings. The court does not exercise arbitrariness because the court publishes the list of claims, assets and restructuring scheme proposed and also invites objections.]

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

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

Commented [DB7]: 12 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.

[Debtor sends application for preventive composition – Court appoints expert to prepare a report on debtor finance – report to be submitted within 20 business days – Court should accept application within 5 business days from receiving the report.

Court appoints trustee – objections to this is received within 5 business days. Trustee to publish court's decision within 5 business days. Trustee to invite claims from creditors within 20 business days. Trustee will lodge this list within 10 business days. Court will determine creditor list within 10 business days.

Preventive composition scheme to be submitted to court within 45 business days (20 business days extension). Within 10 business days from the date of submission, the court is to review the draft and ask trustee to send it to creditors. Once creditors meeting is done, trustee will send the scheme to court in 3 business days - court is required to finalise within 5 business days. If objections are made, then court can make amendments within 7 business days and trustee has to implement the scheme. The whole procedure cannot take more than 3 years.]

Covers the main points – 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.

[Liquidation can be on following grounds: Termination of preventive composition, debtor applied for preventive composition in bad faith, trustee or expert states restructuring is impossible or restructuring procedures are inappropriate, court or creditors do not approve restructuring.]

Court will appoint a trustee; the trustee must advertise bankruptcy. The trustee should also report to the court monthly on the progress of liquidation. Trustee should advertise claims, collect claims from creditors and is required to liquidate all debtor's property by public auction and pay creditor's claims. Trustee cannot be a creditor, relative or spouse of debtor, person who has been convicted of certain dishonest offences and any person who has had prescribed commercial relationship with the debtor in the previous two years.]

Not complete. 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?

[There is compulsory and **voluntary winding up**. In case of creditor's voluntary winding up, creditors will nominate liquidator, upon appointment of liquidator, director's powers cease. Creditors may also appoint liquidation committee to exercise functions of DIFC law. An application can be sought to DIFC court if this is in the interests of DIFC and is just and

Commented [DB8]: Read the question. Creditors cannot initiate a voluntary winding up.

equitable. Creditor with at least debt of \$2000 may apply to court. Court will identify liquidator who will see assets, claims etc during liquidation process.

Creditor must submit claim with amount in writing to liquidator and provide supporting information as proof of debt. Proof of debt must account for set offs and accrued interests. Creditor may prove for future debt, debt in foreign currency. Secured creditor may prove for balance owing following realization of security asset. Liquidator may ask for further information and creditor can also object and appeal against liquidator's decision on proof of debt within 21 days.

Preferential Creditor's claims are governed by preferential creditor regulations 2008- preferential creditor's claims should be paid in priority over unsecured and secured claims over all assets of the company. Company must pay interest on creditor's claims.

Under DIFC Insolvency insurers regulations 2008, policyholders are treated as creditors.]

Dissolution?

4 marks.

*** End of Assessment ***