



**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]: 38.5 out of 50 = 77%. Good result.

### 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.

(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]: 9 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?

In the UAE, the UAE laws have general provisions for granting of mortgages. However, each Emirate has its own lang registration system. In each Emirate it can be observed that the registration of real property and enforcement of the real property are slightly different with respect of legal regime in terms of substantive and procedural nature. Although the substance of the law is generally the same.

In the DIFC and ADGM, a creditor holding a mortgage over the debtor's property can enter into possession by providing 60 days' notice to relevant parties. It is important to note here that there is no requirement of a court order prior to selling the property of the debtor. While, in the mainland UAE, court's approval is required by the creditor before proceeding for sale of the debtor's property.

**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.

S.no	Responsibility	Preventive Composition	Restructuring
1	A decision on any application to commence an insolvency process;	The Court	The Court
2	A primary determination as to whether a debtor's proposal should be adopted	Expert	Trustee
3	Confirmation of the primary determination as to whether a debtor's proposal should be adopted	court	court
4	For supervising the implementation of the insolvency process by the debtor	Trustee	Trustee

**3 marks.** 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)?

S.no	Preventive Composition	Bankruptcy
1	Can only be initiated by the debtor or ordered by the court. The procedure will not be available where the debtor has already entered into such a procedure within the past year, or the debtor has already entered bankruptcy proceedings.	An application for a bankruptcy declaration can be made by the debtor, the public prosecutor; a court; or a creditor or group of creditor. ,
2	Debtor is in financial difficulties but not yet insolvent or has been insolvent for a period of less than 30 consecutive business days.	Debtor who has unpaid debts of not less than 100,000 AED, if a statutory demand has been served on the debtor and has remain unpaid for at least 30 consecutive business days.  A debtor is required to file for bankruptcy if it has ceased payment of due debts for over 30 consecutive business days due to financial difficulties or where the debtor's assets are insufficient to cover due liabilities at any time.

**Long answer for 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?

S.no	Preventive Composition	Bankruptcy
1	creditors can apply to the court to have a debtor declared bankrupt where debtor had not paid its debts for more than 30 days, regardless of the amount owed	Debtor who has unpaid debts of not less than 100,000 AED, if a statutory demand has been served on the debtor and has remain unpaid for at least 30 consecutive business days.

**2 marks**

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

Commented [DB4]: 12.5 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.

Introduction:

The UAE Bankruptcy Law came into force on 29 December 2016, aiming to modernise and streamline the bankruptcy procedures that are available onshore for UAE companies in line with international best practice. The law aims to provide businesses with financial difficulties the means to engage with their creditors whilst ensuring accountability for directors of failed enterprises. Until this law came into force, the UAE had no single source of law governing bankruptcy procedures. The insolvency regime was spread across multiple sources, was rarely used, and did not reflect the growing trends toward restructuring. Since the financial crisis of 2008-2009, the previous fragmented law had come under greater scrutiny and was criticised for being impractical and outdated. There were calls to make the regime more user-friendly and to promote restructuring.

Entities covered under Bankruptcy Law:

The UAE Bankruptcy Law applies to corporate entities and individuals trading for profit but does not apply to government bodies or companies trading in free zones (such as the DIFC and Abu Dhabi Global Market (ADGM), which have their own insolvency laws). A Financial Restructuring Committee has been established by the UAE Bankruptcy Law that is responsible for monitoring the implementation of the law. The committee is designed to ensure that the approach taken to restructuring under the new law is commercial, modern, and industry-focussed and responding to specific criticisms of the previous regime.

Application of Bankruptcy Law:

The regime offers two court procedures:

- First, a court-based distressed company-led process which can be used by a company that is in financial difficulties but is not yet technically insolvent (known as a protective composition)
- Second, a formal bankruptcy that is split into a rescue process (similar to the protective composition) or liquidation.



The Protective Composition Procedure (PCP) allows a company in financial difficulties to reach a binding agreement with its creditors as an alternative to filing for bankruptcy, hopefully a positive change that enables companies and directors to deal with declining financial performance as early as possible. The formal bankruptcy includes a rescue process that is similar to a protective composition and liquidation, i.e., the sale of the assets of the companies to meet the debts due.

Conclusion- How the Bankruptcy law has been received

Given the previous regime on insolvency, troubled companies and their debtors typically had few options other than to negotiate a consensual settlement or reorganisation to avoid a stalemate. The UAE Bankruptcy Law tries to establish a more modern framework based on international best practice, however, it is widely acknowledged that the law requires transparent and comprehensive policies regarding its implementation together with appropriate industry expertise being used by the courts to date the UAE Bankruptcy Law has only experienced a few cases and remains relatively untested by significant sized restructurings. Until the business community is satisfied the new law is to be implemented in a transparent and consistent manner, creditors may continue to seek consensual out of court restructurings before turning to formal legal mechanisms.

**5 marks**

**Question 3.2 [maximum 8 marks]**

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

Introduction:

Bankruptcy may be applied for by the debtor through the protective or through a formal insolvency mechanism and once it is applied for, the court has a very important and proactive function to play. Briefly explaining the procedure of the bankruptcy along with the role of the court in accordance to The Bankruptcy Law 2016.

1. The Court appoints an expert to assess the financial condition of the debtor and ascertain whether the conditions for bankruptcy have been met on an application filed by the debtor or the creditor. (Article 4)
2. If the court accepts the application, a moratorium on creditor action immediately applies (albeit, again, the moratorium does not prevent the enforcement of secured claims which can still occur with the court's permission). (Article 14)
3. The debtor is placed under the control of one or more court appointed officeholders.(article 16)
4. The bankruptcy process is then made public and creditors are invited to submit proofs of claim to enable voting on any restructuring plans. (article 35)
5. The officeholder takes over the management of the company with wide powers to preserve assets and manage the business of the company. The officeholder prepares a report confirming whether there is a reasonable prospect of restructuring the debtor, preparing a restructuring plan and detailing whether a sale of all or part of the business as a going concern could be likely if the debtor goes into liquidation. (article 26)
6. Once the court is satisfied with the report it is provided to the creditors for comment.
7. A hearing is then scheduled where the court will determine whether a restructuring plan should be prepared or whether the debtor should be subject to a formal liquidation.

If the court orders a restructuring plan to be prepared, the process above for PCP largely applies, i.e., the plan is then put to a creditor vote approval from a majority representing at least two-thirds in value of each class of creditor is required dissenting creditors are still bound by the plan if the requisite majority approves the plan.

**Court order to confirm implementation? Could have expanded on some of the points for 8 marks. 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.

Yes, I think the involvement of the courts in approving the restructuring is appropriate because the insolvency law is a new legislation. An insolvency procedure demands speed and adjudication of certain important questions of law. A court's stamp on the insolvency documentation of the insolvency companies gives confidence to the stakeholders involved. The procedure is transparent. The court acts as a supervisory role as when a restructuring plan is proposed it first gets a nod from the Trustee which is an individual appointed by the Court. The only concern in the Courts of UAE are that unlike in the common law jurisdiction the precedents are binding however this is not the case with UAE courts.

**1.5 marks.** Well-motivated answer although the answer that was required was as follows:

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 [DB5]: 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.

Following are the steps involved in a successful process of Preventive Composition:

1. Debtor applied to the Court to commence the Protective Composition Procedure within 30 days where it is experiencing financial hardship and requires assistance to reach settlements with its creditors.
2. The Court accepts the application for Protective Composition if the Debtor is not in a state of Cessation of Payment for more than (30) thirty consecutive Business Days as a result of the disorder of the Debtor's financial condition, and if the Debtor is not Over-indebted.
3. The Court may appoint an expert from among the experts listed in the Panel of Experts.
4. The appointed expert shall prepare a report on the financial position of the Debtor, including an assessment as to whether the conditions required to accept the Application for Protective Composition are met and whether the Debtor's Assets are sufficient or insufficient to implement the Protective Composition Procedure. **20 days?**
5. Appointment of a trustee to provide assistance to the debtor and the Court. The trustee shall carry out an inventory of the Debtor's Assets in the presence of the Debtor and file any application before the Court. Upon appointment, the Court shall provide the trustee with all the information available to it about the Debtor. The trustee shall prepare a register of all the known creditors of the Debtor, and shall provide a copy of such register, having up-to-date entries, to the Court. Within five (5) Business Days Business Days of the date of receiving a notice of appointment, the trustee shall do the following:
  - a. Publish a summary of the decision to commence the Protective Composition Procedure in two widely distributed daily newspapers, one in Arabic and the other in English.
  - b. Notify all the creditors with known addresses to provide the trustee with their claims and supporting documents, no later than twenty (20) Business Days from the date of publication of the decision to commence the Protective Composition Procedure.
6. The Debtor shall assist the trustee to prepare the draft Protective Composition Plan for submission to the Court within forty-five (45) Business Days from the date of publication of the commencement order.
7. The Court shall, within ten (10) Business Days from the date of submission of the draft Protective Composition Plan, review it to ensure that it takes into consideration the interests of all parties. If the Court finds the draft plan satisfactory, it shall instruct the trustee to invite the creditors, to a meeting to discuss and vote on the draft Protective Composition Plan, within five (5) Business Days. The trustee shall provide a copy of the draft Protective Composition Plan to the creditors whose debts have been accepted. The meeting shall be held within fifteen (15) Business Days from the date of publication of the invitation or as determined by the Court in its discretion, provided the decision is in the interest of the Protective Composition.
8. The draft Protective Composition Plan shall be approved by the majority vote of the creditors whose debts are finally accepted, or provisionally accepted and permitted to vote, provided that such majority holds in the aggregate at least two thirds of the accepted value of the total ordinary debts.
9. The trustee shall, within three (3) Business Days Business Days from the date at which the Protective Composition Plan is approved by the required majority of votes, present the draft Plan to the Court, for an order approving or rejecting the Plan.

10. The Court shall determine the objection within five (5) Business Days Business Days from the date the objection is filed. The Court's decision shall be final.

**Good answer. 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.

If the Court terminates the Protective Composition Procedure and declares the Debtor bankrupt and liquidates the Debtor's Assets following is the procedure that needs to be adhered:

The Court shall appoint in its judgment a trustee who shall undertake the bankruptcy and liquidation of the Debtor's Assets. In appointing the trustee, the Court may order the continuation of the work of any trustee or controller previously appointed in the process of the Protective Composition.

Who could be appointed as a Trustee:

1. A natural or a juridical person
2. Trustees shall not be any of the following persons:
  - A. creditor of the Debtor.
  - B. Spouse, in-law or kin up to the fourth degree of the Debtor.
  - C. Any person against whom a final judgment is issued for a criminal offence, or for a misdemeanor of theft, embezzlement, deceit in commercial transactions, breach of trust, fraud, forgery, perjury bribery or any misdemeanor that affects the national economy, or any of the crimes provided for in this Law, even if such person has been rehabilitated.
  - D. Any person who has been a partner, employee, auditor or agent of the Debtor in the two years preceding the commencement of the Protective Composition Procedure.

Process of Liquidation:

1. The trustee shall, within three (3) Business Days from the date of issuance of the judgment declaring the bankruptcy of the Debtor and the liquidation of the Debtor's Assets, publish the judgment in two widely distributed local daily newspapers, one in Arabic and the other in English.
2. The trustee shall instruct the creditors to submit any final claims which have not been previously submitted, provided that such claims shall be submitted within ten (10) Business Days from the date of publication of the judgment.
3. The trustee shall make a final audit of the creditors' claims but shall not make or complete such audit if the trustee finds that the proceeds of the sale of the Debtor's Assets will be all spent for legal fees or for payment of the secured debts.
4. The Trustee shall liquidate all of the Debtor's Assets with the exception of the Assets that may be kept pursuant to the provisions of this Law.
5. The trustee shall notify the Court and the Debtor on a monthly basis of the progress of the bankruptcy and liquidation.
6. The trustee shall distribute the proceeds of the liquidation following every sale transaction or following collection of the funds resulting from all of the sale transactions.

7. Upon liquidation and the settlement of all the Debtor's Debts and liabilities, the Trustee shall reimburse to the Debtor any surplus.
8. Upon the completion of the final distribution of the Debtor's Assets to the creditors, the Court shall issue a decision to close all of the procedures including the list of the creditors whose debts are accepted and the amounts thereof and the debts which were not settled, and shall instruct the trustee to publish that decision in two widely distributed local daily newspapers, one in Arabic and the other in English.
9. Upon completion of the procedures and performance of the trustee's duties, the trustee shall return to the Debtor all the documents in the trustee's 's custody.

Employees? Otherwise a satisfactory answer. 4 marks

**Question 4.3 [maximum 5 marks]**

VGK LLC incorporated and registered a fully-owned subsidiary company in the DIFC to operate a restaurant in the DIFC, The subsidiary is called VGK Limited and it is incorporated as a DIFC company. VGK Limited is also unable to pay its debts. What actions can VGK Limited's creditors take if they wish to see VGK Limited liquidated in the DIFC? In particular, who can take such actions and what steps would have to be taken? If the VGK was to be wound up, who would be responsible for it and what process would be adopted for addressing creditor claims in the winding up?

The creditors (**threshold?**) can apply for liquidation which is a winding-up proceeding in DIFC. A compulsory winding-up is instigated by the Court. The Court will appoint a liquidator whose objective is to ensure that the assets of the Company are collected or otherwise secured, realised and distributed to the Company's creditors. The liquidator has the power to do all things that are necessary for the winding up of the Company and distributing its assets, and is entitled to access the Company's accounts, books and records.

The creditors can initiate the liquidation proceedings by filing a written demand served on a Company under Article 82(1)(a) of the Law is known in winding up proceedings as "the statutory demand". The statutory demand must be dated, and be signed either by the creditor himself or by a person stating himself to be authorised to make the demand on the creditor's behalf. The statutory demand must state the amount of the Debt and the way in which it arises and include an explanation of the purpose of the demand, and the fact that, if the demand is not complied with, proceedings may be instituted for the winding up of the Company. The statutory demand must provide information as to how the Debt may be paid, and give information as to the identity of a person whom the Company can contact. When a winding up order has been made, the Court shall immediately give notice of the fact to the Company, the petitioner, the DFSA (in the case of an Authorised Person) and any other person represented at the hearing of the petition, and cause the fact that the order has been made to be advertised in an Appointed Publication.

Creditors are required to prove their debts in a compulsory winding-up in writing to the liquidator. Secured creditors must also provide details of their security interest. At any creditors' meeting the chairman has power to admit or reject a creditor's Proof for the purpose of his entitlement to vote, and the power is exercisable with respect to the whole or any part of the Proof.

A creditor may only participate in the winding-up if it has lodged a proof of debt and the claim has been admitted, and its debt is liquidated and ascertained (unless an exemption is applied and an estimated value is submitted). Secured creditors may only participate in the winding-up in respect of the balance due to them from the Company after deducting the value of the

security held, and failure to disclose the security interest results in the secured creditor being required to surrender his security interest (unless the Court permits otherwise). If a secured creditor realises his security interest, he may prove for the balance of his debt or he may prove for the whole if he surrenders his security interest for the benefit of the creditors.

**3 marks.** Full answer required:

- As a DIFC-incorporated company, a creditor of VGK Limited could seek the compulsory winding up of VGK Limited by the DIFC Courts if it is unable to pay its debts.
- The most common means of establishing that a company is unable to pay its debts is for a creditor 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.
- If satisfied that VGK Limited should be wound up, the DIFC Courts would appoint a liquidator to wind up the affairs of the company and to gather, realise and distribute the company's assets.
- Creditors wishing to claim in the liquidation of VGK Limited would have to lodge a proof of debt. Whenever the liquidator has sufficient funds, he or she must declare a dividend and distribute that dividend among the company's creditors. All debts of an insolvent company rank equally in any distribution, unless they are preferential debts as provided for by regulation.
- When the liquidator has done everything necessary to wind up the affairs of the company, by realising all assets and distributing the proceeds, the liquidator may seek to have the company dissolved – whereby the company's legal existence is brought to an end.

**\* End of Assessment \***