



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

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

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.

Commented [DJ1]: TOTAL: 43 OUT OF 50
Well Done!

Commented [DJ2]: 7 out of 10

Commented [DJ3]: d

Commented [DJ4]: c

(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.

Commented [DJ5]: b

QUESTION 2 (direct questions) [10 marks]

Commented [DJ6]: 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?

- 1 The key difference between the sale of mortgaged real property following a debtor default if the real property is in a financial free zone or if the real property is in "mainland" UAE is as follows:-
 - 1.1 although, in "mainland" UAE, the law provides for the right of a mortgagee to sell the mortgaged property following a debtor's default, the sale must be exercised through the courts. That means a mortgagee would have to apply to court for an order authorising the sale. In several emirates some cases sought to determine whether a mortgagee would first have to obtain judgment for the mortgaged debt before proceeding with the sale – but the general approach seems to be that a mortgagee can apply to court for an order authorising the sale without first obtaining judgment for the debt. Once an order for sale has been granted, the courts execution department will conduct the sale of the mortgaged property;
 - 1.2 whereas the legal position in a financial free zone is that should the debtor default, a mortgagee creditor can take possession of the land by providing 60 days notice to certain relevant parties and without the need for a court order, the creditor can sell the whole or part of the land, receive rents and profits from the land and apply the proceeds of such sale of the mortgaged debt. The mortgagee creditor may also apply to the DIFC court for an order for forfeiture.
- 2 The key point of distinction regarding the registration of real property interests, including mortgages in different emirates of the UAE is that each emirate maintains

its own land registration system and the registration and enforcement of mortgages can be subject to slightly different laws and procedures in each emirate.

Commented [DJ7]: 2

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.

For Preventive Composition and Restructuring:-

- 1 the court is responsible for a decision on any application to commence the insolvency process;
- 2 creditors are responsible for a primary determination as to whether a debtor's proposal should be adopted;
- 3 the court is responsible for the confirmation of the primary determination as to whether a debtor's proposal should be adopted; and
- 4 a trustee is responsible for the supervision of the implementation of the insolvency process by the debtor.

Commented [DJ8]: 4

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)?

- 1 In relation to Preventive Composition, it is a debtor led corporate rescue which can be made by a debtor under article 6 and has the effect of terminating what would otherwise be a debtor's obligation to apply to initiate Bankruptcy proceedings.
- 2 Whereas in relation to an application to commence Bankruptcy:-
 - 2.1 a debtor is required to initiate Bankruptcy procedures if the debtor is in default of its payment obligations for 30 consecutive business days; and
 - 2.2 additionally the creditor, or a group of creditors collectively, who are owed more than AED 1000 (USD 27 226), may also apply to court to initiate Bankruptcy procedures if the creditor has given notice to the debtor requiring

the debtor to settle the debt, and the debtor has failed to discharge the debt within 30 business days of any such notification.

Commented [DJ9]: 2

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?

Same as in 2.3 above

Commented [DJ10]: 0
This question needed to be answered from the Creditors perspective.

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

Commented [DJ11]: 13 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.

Historical background to the introduction of the Bankruptcy Law

- 1 Before the introduction of the Bankruptcy Law in the UAE in 2016, the insolvency law was under-developed. There were provisions in Law No. 18 of 1993 relating to commercial transactions governing a bankruptcy by traders. It provided for a basic mechanism for insolvency for those engaged in commerce, which was a process to be pursued through the courts, but these procedures were hardly ever used.
- 2 The problems in the UAE insolvency regime were exposed in 2009, when Dubai World (an investment company owned by the Dubai government) faced a possibility of defaulting on its debts. Such default would have been the largest government default since 2001. Hence the risk or possibility of such default was a cause for international disquiet. It is said that whilst Dubai World was ultimately able to resolve its issues with the creditors, the experience led to the establishment of a properly functioning insolvency dispensation.
- 3 The previous dispensation changed in 2016 with the adoption of the Federal Decree Law (No. 9) of 2016 relating to bankruptcy, which has since been amended in 2019 and 2020 ("*the Bankruptcy Law*"). It bears mentioning that the Bankruptcy Law repealed the bankruptcy provisions of the Commercial Transactions Law and established a consolidated insolvency dispensation for commercial (but not consumer) insolvencies in the UAE. It also bears flagging that the Bankruptcy Law draws on experiences from a number of jurisdictions.

Entities to which the Bankruptcy Law applies

- 4 The Bankruptcy Law applies to:-
 - 4.1 all companies governed by the Commercial Companies Law;
 - 4.2 any companies established under other legislation who by law or voluntarily have submitted to the provisions of the Bankruptcy Law;

- 4.3 free zone companies and establishments not governed by other insolvency procedures – that is to say all free zone companies and establishments except those in the financial free zones;
- 4.4 any person who is a “trader” (engaged in commercial activities in a personal capacity); and
- 4.5 licensed several companies of a professional character (i.e. professional partnerships and the like).
- 5 Therefore the Bankruptcy Law is available to essentially all commercial entities and individuals carrying on commercial activities, except for state owned companies, unless they have opted into the application of the law.

How Bankruptcy Law has been received and applied in the UAE

- 6 Although Bankruptcy Law has been in effect since 2016, it would appear that there have been a few applications decided under it, with the result that it is too soon to express a view as to whether it is considered to be debtor or creditor orientated. But what can be said is that its introduction has ensured that any negotiations and engagements between debtors and creditors regarding payment difficulties have occurred in a context providing more legal certainty than the position which prevailed prior to 2016.

Commented [DJ12]: 5

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.

Court's involvement in the commencement of Bankruptcy Process

- 1 The Court has to decide on an application either by a debtor or a creditor to commence bankruptcy proceedings.

Order for commencement of bankruptcy procedure and appointment of trustee

- 2 When a bankruptcy application is made, the Court is required to appoint an expert from the panel of experts to analyse the financial position of the debtor.¹ The Court may reject the application if the required information is not provided.² In determining the application, the Court may require a person to furnish additional information³, it can also join other parties to the proceedings and it can make interim orders in respect of the debtor's property.⁴ The expert fulfils a very critical role in that he is required to report to Court on the debtor's financial position and give an opinion on the possibility of the debtor being restructured successfully. If the Court is satisfied that all the necessary requirements have been fulfilled, it will make an order commencing bankruptcy.

¹ Bankruptcy Law, article 105

² *Idem*, article 79

³ *Idem*, article 80

⁴ *Idem*, article 81

- 3 Once the Court has granted an order commencing bankruptcy, it is required to appoint a trustee, who can either be nominated by the debtor or the person enrolled in the table of experts appointed by the Financial Restructuring Committee. The Court may substitute the trustee or an expert, either *mero motu* or upon the debtor's application.⁵ The Court is also required to determine the trustee's fees and shall authorise payment from the funds deposited by the debtor when making the application. If however the funds lodged are inadequate to pay the trustee's fees, the trustee or expert may apply to Court for payment of the fees from the Court treasury, with the result that any funds paid from the treasury will be repaid in priority over all creditors upon the first realisation of additional assets.⁶
- 4 The Court may also appoint one or more supervisors.⁷ The supervisors represent the creditors.

Role of the trustee in bankruptcy

- 5 Upon making an appointment, the Court is required to furnish the trustee with information it has in relation to the debtor.⁸ After the expiry of the period for creditors to lodge their claims, the trustee is required to prepare a list of creditors, including particulars of the claims and supporting information, the trustee's views as to whether to accept or reject the claims and any proposal regarding payment. Such list must be lodged with the Court within 10 business days from the date of the period for lodging of claims.
- 6 If a debtor or creditor objects to the list by application to Court within 7 business days from date of publication of the list⁹, the Court must determine such an application within 10 business days of the application. The Court may admit the debt on a preliminary basis, bearing in mind that no debt may be admitted if the creditor has brought a criminal claim in respect thereof. The Court must finally determine the list of creditors.¹⁰

Trustee's report on possible restructuring

- 7 Once appointed, the trustee is required to produce a report on the debtor's business and file it at Court within the time prescribed by the Court. Whereafter, the Court is required to review the report to confirm that it takes account of all creditor claims.
- 8 Once the trustee's report has been submitted to the Court, the Court is required to direct the trustee to hold a creditors meeting by way of notice and advertisement. Unless the Court is of the view that liquidation it is required to direct the trustee to prepare a restructuring scheme. It is important to note that the Court may not sanction a proposed restructuring unless the debtor confirms that it is amenable to continue trading and provided it appears that the proposed restructuring is plausible.¹¹

⁵ *Idem*, article 86

⁶ *Idem*, article 85

⁷ *Idem*, article 87

⁸ *Idem*, article 88

⁹ *Idem*, article 94

¹⁰ *Idem*, article 94

¹¹ *Idem*, article 98

9 Should the Court decide that the debtor should be restructured, the trustee is required to prepare and develop a scheme within 3 months of his appointment.¹² The trustee is required to submit the scheme to the Court, which in turn is required to review the proposed scheme within 10 business days of submission. The Court can request the trustee to amend the scheme if it does not properly address all the parties' interests and to resubmit it within a further 5 business day period.¹³

10 After the review, the Court must request the trustee to invite creditors, within 5 business days, to a meeting to review the scheme. The Court may also direct that committees representing different classes of creditors be formed and may give directions about the appointment or conduct of any representatives of those classes at the meeting of creditors.¹⁴

Creditors meeting and Court approval

11 The Court may direct further meetings to consider any amendments which may be proposed by creditors at the meeting.

12 Although creditors whose debts have been admitted may vote on the scheme, the Court may direct that creditors whose debts have been admitted on an interim basis may vote, if proposed by the trustee, subject to any terms and conditions which may be imposed by the Court.

Court approval following creditors approval of the scheme

13 Should the scheme be approved by the creditors at their meeting, the trustee is required to put the scheme before the Court within 3 business days for the Court's approval or rejection.

14 The Court is required to approve the scheme urgently provided all the necessary requirements have been met. Moreover the Court has to be satisfied that all the affected creditors will receive at least as much as the creditors would have received if the debtor's assets had been liquidated on the date of voting on the scheme. The Court may direct the acceleration of payment dates of longer terms if that would be in the interests of the success of the scheme.

Implementation of the scheme

15 It is incumbent upon the trustee to supervise the implementation of the scheme. The trustee is also required to monitor progress and inform the Court of any failure of implementation and to report to the Court every 3 months in any event.¹⁵

16 Should the trustee require amendments to be made to the scheme which would affect any party's rights, the Court's approval to that effect is required. If such an application is made for approval, the Court is required to notify all creditors who voted on the scheme and any other creditor the Court considers should be notified, to make any application in relation to the proposed amendments within 10 business days of the notification. Whereafter, the Court may approve, partly or entirely, or reject the proposed amendment.¹⁶ If certain assets are regarded as critical to the operation of

¹² *Idem*, article 99

¹³ *Idem*, article 103

¹⁴ *Idem*, article 104

¹⁵ *Idem*, article 114

¹⁶ *Idem*, article 114

the debtor's business, the Court may direct that such assets not be sold, without the Court's permission, for any specified period during the implementation of the scheme.¹⁷

Completion and termination of the restructuring

- 17 The restructuring is completed once the obligations contained in the scheme have been discharged, whereafter the Court is required to make an order confirming the complete implementation of the scheme, which must be advertised.¹⁸
- 18 Finally, the Court may also terminate a restructuring and commence liquidation proceedings *mero motu* or on application of a creditor or if the scheme's implementation is impossible.¹⁹

Commented [DJ13]: 8

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.

[Type your answer here]

Commented [DJ14]: 0

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

Commented [DJ15]: 15 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).

¹⁷ *Idem*, article 112

¹⁸ *Idem*, article 115

¹⁹ *Idem*, article 123

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.

- 1 Application to Court by debtor for Preventive Composition. The Court is required to decide on the Preventive Composition application within 5 business days of the application (if the application meets all the necessary requirements) or from the date of the expert's report referred to more fully herein below.
- 2 Upon receipt of the Preventive Composition application, the Court is required to appoint an expert to prepare a report on the financial position of the debtor, which report must be delivered no later than 20 business days from the date of the expert being instructed to prepare it.
- 3 If the Court decides to accept the Preventive Composition, the Court is required to appoint a trustee. Any creditor may object to the appointment of a trustee within 5 business days of the date of publication of the appointment, the objection is by way of application to Court, which is required to be determined within 5 business days on a final basis. Any interested party may object to the trustee's fees and the Court is required to determine any objection within 5 business days of such an application being made.
- 4 Upon making the appointment of a trustee, the Court is required to provide all information that it holds about the debtor to the trustee. The debtor is also required to provide all the information and details related to the proposed procedure within the time frame requested by the trustee.
- 5 Upon being appointed, the trustee is required to take an inventory of the debtor's assets and produce a report of the assets to the Court. The trustee is also required to produce a report on the debtor's creditors and submit it to the Court.
- 6 The debtor is required to continue to operate the debtor's business during the period of any Preventive Composition, under the supervision of the trustee.
- 7 The Court may also appoint one or more supervisors from the body of creditors.
- 8 Within 5 business days of the trustee's appointment, the trustee is required to publish a summary of the Court's decision to commence the Preventive Composition procedure (all advertisements and publications of notifications by the trustee require the trustee to publish any such notification in two widely read newspapers, one in English and the other in Arabic). The notice given by the trustee must also invite creditors to file claims within 20 business days from date of publication. The trustee is also required to notify all known creditors with known addresses within the same time period. The creditors are required to provide any documents verifying their claims to the trustee, along with the details thereof, within the period stated.
- 9 After the expiry of the period for lodging claims, the trustee is required to prepare a list of claimants, including details of the debts and supporting information in relation thereto, the trustee's views as to whether to accept or reject the claims and any proposal regarding repayment. The trustee is required to lodge the list concerned with the Court within 10 business days from date of the period of lodging of claims.

- 10 The Court is responsible for finally determining the list of creditors. The debtor and creditor, whether the creditor has been accepted or not, may object to the list by way of application to the Court within 7 business days from publication of the list. The Court is required to determine any application within 10 business days of the application.
- 11 The Preventive Composition scheme must be submitted to the Court within 45 business days from date of publication of the decision initiating the Preventive Composition procedure. The debtor is required to assist the trustee to prepare a Preventive Composition scheme. At the request of the debtor or trustee, the Court may extend this period for periods of up to 20 business days.
- 12 Within 10 business days from the date of submission of the scheme, the Court is required to review the draft to confirm that it takes account of all interested parties. If the Court is satisfied with the terms of the proposed scheme, it is required to direct the trustee to issue invitations (by way of public advertisements, as well as any means directed by the Court) within 5 business days, to be given to the debtor's creditors for purposes of attending the creditors meeting to discuss the proposed scheme. The trustee is required to provide the creditors with a copy of the proposed scheme. The meeting is to be held within 15 working days of the date of direction to invite the creditors.
- 13 At the creditors meeting, the trustee and the debtor are required to explain the proposed Preventive Composition scheme.
- 14 Only creditors whose votes have been admitted may vote on the scheme, except that the Court may direct that the creditors whose debts have been admitted on an interim basis, if proposed by the trustee, may vote subject to any terms and conditions imposed by the Court. Secured creditors may not vote on the scheme, unless they have surrendered their securities.
- 15 The requisite majority for approval of the draft scheme is a majority of creditors holding two thirds of the debtor's debt (including those temporarily admitted).
- 16 Once the scheme has been approved, the trustee is required to put the draft scheme before the Court within 3 business days, for the Court's approval or rejection. Any creditor who voted against the scheme may object to the proposed scheme within a further 3 business days and the Court is required to make a determination within 5 business days from the date of submitting the objection. The Court's determination is final on this score.
- 17 The Court is required to give any decision approving or rejecting the scheme urgently. The Court must be satisfied that all affected creditors will receive at least as much as the creditors would have received if the debtor's assets had been liquidated on the date of voting on the scheme.
- 18 Within 7 business days of the date of approval of the scheme by the Court, the trustee is required to register the Court's decision confirming the approval in the debtor's governmental corporate register and publish a summary of the scheme.

Commented [DJ16]: 5

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.

- 1 The Court is required to make an order for the bankruptcy and the liquidation of VGK LLC's assets on the basis that the creditors do not approve the restructuring.
- 2 If the court makes a liquidation order, the court is required to appoint a trustee to undertake the liquidation, although it can order that the trustee previously appointed in relation to the failed Preventive Composition should continue in office.
- 3 After the liquidation order has been granted, the appointed trustee must advertise his appointment within 3 days. VGK LLC's correspondence must state that it is subject to bankruptcy. The trustee is required to report to the court monthly on the progress of the liquidation of the debtor's assets and in relation to the bankruptcy.
- 4 Creditors including staff and the shareholder who is owed the purchase price for the restaurant must lodge their claims with the trustee within 10 business days from date of judgment. The trust must consider the claims made, unless the debtors assets are insufficient to pay legal fees and secured creditors.
- 5 Following bankruptcy, the trustee is required to liquidate all of the assets of VGK LLC by public auction, under the court's supervision.
- 6 The trustee is required to notify the court, any supervisors and the debtor of the substance of any proposal received for the purchase of the debtor's business. The court may determine any objection which may be raised by an interested party in relation to the proposed sale. The debtor and certain related parties are precluded from purchasing the debtors assets from the trustee.
- 7 The liquidation sale proceeds must be distributed by the trustee to the creditors in order of preference stipulated in law, subject to the court approval for the distribution and approval of payment priorities. Claims for debts which have not been admitted are to be held by court the pending determination of the claims. The proceeds of the assets sold subject to security interest are to be applied to pay the secured creditor concerned. Thus the sale proceeds of the restaurant site will be paid to the shareholder who is owed the purchase price for the restaurant site over which he has a mortgage, less the trustees fees. Any surplus after the sale of the assets must be paid to VGK LLC.
- 8 In relation to the other assets, the order of priority is the payment of court costs and the trustees costs, unpaid wages and salary up to a maximum of 3 months salary (this would thus apply VGK LLC's unpaid staff), alimony debts under a judgment against the debtor, amounts due to governmental bodies and the costs incurred in supplying the debtor with goods and services following the commencement of the bankruptcy.
- 9 Following the liquidation of the debtor's assets the court must make an order confirming the conclusion of the liquidation procedure, including the final list of creditors and the amounts remaining unpaid. The decision must be advertised. The trustee must return all the documents to the debtor after the completion of the liquidation and any creditor may enforce any debt remaining unpaid (as admitted in bankruptcy) against the remaining assets of the debtor.

- 10 VGK LLC can ask the court to terminate the bankruptcy if the grounds for bankruptcy no longer exist.

Commented [DJ17]: 5

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?

- 1 *Inter alia*, the creditors (with a debt of \$2,000) can apply to court for the compulsory winding up of VGK.
- 2 The court can order a compulsory winding up as VGK is unable to pay its debts.
- 3 An appointed liquidator would be responsible for the winding up and he will step into the directors' shoes.
- 4 Creditors who want to recover monies owing to them must submit in writing claims for the amounts owing, with supporting documentation to enable the liquidator to verify accordingly.
- 5 A secured creditor can only prove a claim for the balance owing or estimated would be remain owing following the realisation of any secured interest.
- 6 The liquidator may admit or reject claims.

Commented [DJ18]: 5

*** End of Assessment ***