



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: **[studentID.assessment7E]**. An example would be something along the following lines: 202122-336.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 "studentID" 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 2022**. The assessment submission portal will close at **23:00 (11 pm) BST (GMT +1) on 31 July 2022**. 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.

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- (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]

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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?

- [(a) Each emirate has a land registration system. Together with the land registration system comes separate laws and procedures to administer the system.
- (b) With respect to the financial free zone of DIFC, the DIFC also has its own land registration system, which is based on the Torrens system in Australia. Under the Torrens system, registration is the only way to recognise interest in land in terms of ownership and interest in land (which means where land is provided as security for financing, the creation of interest in that land is required to be registered for it to be recognised and enforceable against the land owner.
- (c) With respect to the financial free zone of ADGM, it has its own land registration system. The applicable legislation is called the ADGM Real Property Regulations 2015.
- (d) With respect to the sale of mortgaged real property following a debtor default:
 - (i) if the property is in a financial free zone such as the DIFC, the creditor may sell the land without a court order if there is non-payment or some other default on the part of the debtor. The creditor (who is holding land as security) may enter the property (after giving 60 days' notice to relevant parties and without the need to obtain a court order to do so), sell the whole or part of the land, receive rent and profits from the land and apply these proceeds towards repayment of the outstanding debt. Another option available to the creditor is to apply to a DIFC court for an order of forfeiture.

- (ii) if the property is in a financial free zone such as the ADGM, the ADGM has a procedural and administrative regime for real property that is largely similar to the DIFC in terms of land registration system and recognition of mortgages.
- (iii) if the property is in mainland UAE, the mortgagee has the right to sell mortgaged property if the debtor is in default. This right to sell mortgaged property must be exercised by the courts. An order for sale can be obtained without the need to firstly obtain a judgment for the [debt].

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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.

[With respect to (a):

- (i) In the case of Preventive Composition, the actor responsible is the debtor.
- (ii) In the case of Restructuring, the actor responsible may be the debtor or the creditor. Unlike the process for preventive composition which can only be initiated by the debtor, for restructuring, it can be initiated by the debtor or the creditor. A debtor is required to initiate bankruptcy proceedings if its payment obligations are outstanding for 30 consecutive business days. In the case of a creditor or a group of creditors, if they are owed more than AED100,000, the creditor (or creditors) may initiate bankruptcy proceedings.

With respect to (b):

- (i) In the case of Preventive Composition the actor responsible is the expert required to be appointed by the court
- (ii) In the case of Restructuring the actor responsible is the trustee

With respect to (c):

- (i) In the case of Preventive Composition the actor responsible is the court
- (ii) In the case of Restructuring the actor responsible is the court

With respect to (d):

- (i) In the case of Preventive Composition the actor responsible is the trustee
- (ii) In the case of Restructuring the actor responsible is the trustee

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a) The court
b) The debtor's unsecured creditors

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 is initiated by the debtor by way of an application to the court.

Bankruptcy proceedings may be initiated by either the debtor or the creditor, however bankruptcy proceedings is framed in the legislation as an obligation on the part of a debtor to initiate bankruptcy proceedings if it is in default of its payment obligations for 30 consecutive business days.

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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?

[The creditor is not eligible to commence Preventive Composition.

Only a debtor is eligible to commence Preventive Composition. A creditor may commence bankruptcy proceedings by making an application to the court. This can only be done by a creditor (or a group of creditors) who are owed more than AED100,000 and where the creditor has given notice to the debtor to demand payment, the debtor does not repay the debt within 30 business days of written demand.

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

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Question 3.1 [maximum 5 marks]

Briefly explain the historical background to the introduction of the Bankruptcy Law. Describe which entities the Bankruptcy Law applies to and how it has been received and applied in the UAE.

[The Bankruptcy Law was introduced in 2016 in the form of Federal Decree Law (No. 9) of 2016, which specifically relates to corporate bankruptcy.

Prior to 2016, some elements of addressing bankruptcy were found in legislation relating to commercial transaction (Law No. 18 of 1993). The available legislation at that time addressed bankruptcy of traders.

The manner in which in an inability to settle debts should be addressed or treated came into sharper focus in 2009 when Dubai World, an investment company owned by the Dubai Government, announced that it was unable to pay its debts (which were in the tens of billions) and the negative reaction by international financial markets in response to the situation. It was in the course of its rescue, in the form of financial assistance and restructuring

of its debts that paved the way for the establishment of an insolvency regime and recognition of restructuring efforts for commercial entities and individuals carrying out commercial activities.

It is stated in Article (2) of the Bankruptcy Law that the said legislation applies to the following circumstances:

- (a) Companies governed by the Commercial Companies Law.
- (b) Companies not established under the Commercial Companies Law and which are wholly or partly owned by the federal or local government, and which have enabling legislation, or memoranda or articles of association stipulating that this Law applies.
- (c) Companies and Establishments in the Free Zones that are subject to the provisions of Federal Law No. (8) of 2004 on Financial Free Zones which are not governed by particular provisions regulating protective composition procedures, financial restructuring and/or bankruptcy.
- (d) Any individual who is a "trader" as defined under the Commercial Transactions Law.
- (e) Licensed Civil Companies carrying out professional activities.

For insolvency circumstances that are not governed by the Bankruptcy Act, a subsequent legislation called the Personal Bankruptcy Law was enacted to address these other types of insolvency situations.

The introduction and enactment of the 2 pieces of bankruptcy legislation were welcomed . there isn't sufficient information on its utilization or application to cast a light its real effect in application and whether its contributions to the insolvency practice are significant or [meaningful.]

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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.

- [(a) The court will be actively engaged in the process of bankruptcy from the very first steps.
- (b) A debtor is required to apply to the court to commence bankruptcy proceedings if the debtor is not able to pay its debts for more than 30 successive business from its due date (Article 68(1)).
- (c) Apart from the debtor, where there is a debt of not less than AED100,000 owed by a debtor to a creditor (or a group of creditors) and the debt is not paid within 30 successive business days from the date of written notice, the creditor(s) may apply to court to commence bankruptcy proceedings against the debtor (Article 69(1)).
- (d) In response to an application for commencement of bankruptcy proceedings, the court is required:

- (i) to appoint an expert to assess the financial condition of the debtor (Article 77)
- (ii) to determine the outcome of the bankruptcy application within 5 business days (Article 78)
- (iii) to appoint a trustee (Article 82)]
- (iv) to accept debts provisionally recognised and to approve the list of creditors prepared by the trustee (Article 94)
- (v) review the restructuring report prepared by the trustee to verify that it contains all claims (Article 97). The court has 10 business days to complete the review.
- (vi) Direct the trustee to convene a meeting of creditors (Article 98)
- (vii) Direct the trustee to prepare the restructuring plan (Article 98)
- (viii) Approve the restructuring plan (Article 108). The court has a duty to ensure that all creditors affected by the restructuring plan shall not receive less than the amount they would have received if the debtor's assets had been liquidated.]

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.

- [(a) On the face of it, court involvement represents an authority figure that holds all parties accountable to the proceedings.
- (b) The high degree of involvement seems quite an excessive demand on the workload of the court.
- (c) Seeing as a large part of the process is quite administrative, this role may develop to be quite a burden on the court if there is a high volume of restructuring cases.
- (d) It may also become quite difficult for parties to adhere to the statutory time-frames if the courts experience a high volume caseload.
- (e) Eventually it may be necessary to consider expanding the number of judges and the number of courts that are tasked with the handling insolvency cases.]

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

BNE 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. BNE LLC owns a restaurant site which is under development, but the development is not expected to be completed for several months. The site had been purchased by one of BNE LLC's shareholders and was transferred to BNE LLC on the basis that payment for the site would be

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made by BNC LLC to the shareholder in full in 2025. In the meantime, the shareholder holds a mortgage over the property for the unpaid purchase price.

Answer the questions that follow:

Question 4.1 [maximum 5 marks]

The process of Preventive Composition requires adherence to a number of time-frames. Briefly outline the necessary steps and 10 specific steps that will determine the maximum time taken between making an application (the first step) and the registration of the scheme following final approval (the tenth and final step before its implementation).

Assume that: an expert's report is required by the Court; there are no disputes about whether a creditor is accepted or not; there are no amendments to the proposed scheme by the Court; the scheme is accepted by the creditors without the requirement for any adjournment of the creditors' meeting; the scheme is approved by the Court following the meeting; and there are no other extensions.

[The necessary steps to be taken are as follows:

- (1) BNE LLC must submit an application to the court to commence Preventive Composition. If the Debtor is regulated by a Competent Supervisory Authority, the Debtor may apply for Protective Composition, provided that the Debtor informs such Supervisory Authority in writing within (10) ten working days prior to the date of filing the application.
- (2) The application to the court must specify reasons for the application and include supporting documents:
 - a. Memorandum including a brief summary of the economic and financial position of the Debtor together with information about the Debtor's Assets and detailed statements of the Debtor's employees.
 - b. Certified copy of the commercial, industrial or professional license and the commercial or professional register of the Debtor issued by the competent licensing authority in the Emirate.
 - c. Copy of the accounting books or financial statements relating to the Debtor's Business for the financial year preceding the filing of the application.
 - d. A report including the following:
 - 1) The cash flow, profit and loss projections of the Debtor for the (12) twelve months following the filing of the application.
 - 2) A statement of the names and addresses of the known creditors and debtors and the amounts of their respective entitlements or debts and any securities provided.
 - 3) Detailed statement of the Debtor's Assets - movable and immovable, and the approximate value of each as at the date of filing the application, along with a statement of any securities or rights of third parties against them.
 - e. Proposals for the Protective Composition Procedure and the security for the implementation thereof.
 - f. Nomination by the Debtor of a trustee to undertake the procedures pursuant to the provisions of this Law.
 - g. If the applicant is a company, the application shall be accompanied by a copy of the resolution of the company's competent authority approving the application for Protective Composition, and copies of the incorporation

- documents, and any amendments thereto, as filed with the competent licensing authority in the Emirate.
- h. A report issued by the competent Credit Bureau Authority in the State.
 - i. Any other documents in support of the application.

The maximum amount of time based on the given context appears to be 104 business days. A summary of the steps are set out below.

First Step (article 13):

The first step refers to filing the application to the court.
The time period for appointment of an expert is **20 business days**

Second Step (Article 14):

The court has **5 business days** to decide on the application for protective composition.

Third Step (Article 17):

When the court approves the application, it is required to appoint a trustee. The notification to the trustee must be done within **1 business day**.

Fourth Step (Article 35):

The trustee is required to publish the decision of the court (that protective composition has been approved and commenced). This must be done within **5 business days**. There is a criteria to adhere to with respect to the publication (i.e., language, daily newspaper). In the publication, creditors are notified that they have **20 business days** to submit their claims. Trustee also has to notify known creditors that they have **20 business days** to submit their claims. The time period of 20 business days for both types of creditors run concurrently as assumes that both types of creditors are notified at the same time and not at different times.

Debtor has **45 business days** to prepare and submit its draft Protective Compensation Plan to the court. This time period runs parallel with the other events.

Fifth Step (Article 37):

Trustee is required to submit a list of creditors to the court (at the end of the 20 business days period referred to in the fourth step above. Trustee has **10 business days** to submit the list. No extension necessary.

Sixth Step (Article 37):

Once the list is submitted, the trustee has to publish the list of debts within **3 business days** thereafter. There is a criteria to adhere to with respect to the publication (i.e., language, daily newspaper).

Seventh Step (Article 45):

Upon submission of the draft Protective Composition Plan, the court has **10 business days** to review the draft Protective Composition Plan.

Eight Step (Article 42)

Once the court approves the plan, the trustee will be instructed by the court to issue a meeting notice to the creditors. The meeting notice must be issued within **5 business days** of the court approving the draft plan. The meeting of the creditors must be held within **15 business days** of the meeting notice.

Ninth Step Article 49):

At the creditors meeting, the trustee shall present the draft plan to the creditors for their approval. Once approval is obtained, from the creditors (majority that holds in aggregate at least 2/3 of the accepted value of the total ordinary debt), the trustee shall present the approved draft plan to the court. This must be done within **3 business days** from the date of the creditors meeting.

Tenth Step (Article 54):

Within **7 business days** of court's approval of the protective compensation plan, trustee shall register the court's approval in the commercial or professional register and shall publish the decision in 2 widely circulated local newspapers, one in Arabic and the other in **English**.

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Question 4.2 [maximum 5 marks]

BNE 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.

- [(a) If the creditors reject the preventive composition scheme, the court continues with bankruptcy proceedings. The procedures for declaring bankruptcy and liquidation will be triggered.
- (b) The trustee appointed for the preventive composition will be terminated (unless the same trustee is appointed as the trustee for bankruptcy).
- (c) The court will be required to appoint a trustee for the bankruptcy proceedings. The candidate to be appointed as trustee can be nominated by BNE LLC or any person listed in the table of exports appointed by the Financial Restructuring Committee.
- (d) If BNE LLC elects to nominate a candidate to be trustee for the bankruptcy, the candidate nominated by BNE LLC must adhere to the following criteria (as set out in article 84):
 - (i) A creditor of the Debtor.
 - (ii) The spouse, in-law or kin up to the fourth degree of the Debtor.
 - (iii) Any person against whom a final judgment is issued in a felony or in a misdemeanor of theft, embezzlement, deceit in commercial transaction, breach of trust, fraud, forgery, perjury, bribery or any misdemeanor which adversely

affects the national economy or any of the crimes provided for in this Law, even if the person has been rehabilitated.

- (iv) Any person who was, during the two (2) years preceding the commencement of the procedures, a partner, employee, auditor or agent of the **Debtor.**

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Question 4.3 [maximum 5 marks]

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

[(a) Creditors of BNE Limited can take the following action if they wish to see BNE Limited Liquidated in DIFC:

- (i) initiate a compulsory winding-up process, by filing a winding-up petition at the court.
- (ii) Initiate a creditors' winding-up.

The above options assumes that BNE Limited does not have any specific provisions in the constitution requiring it to be wound-up. BNE Limited is not obligated to initiate a winding-up process and the directors of BNE Limited are not obligated to initiate a winding-up process.

(b) Who can take such action:

- (i) In the case of a compulsory winding-up process, creditor can petition the court to wind-up BNE Limited. This assumes that the debt meets the threshold. There is no information about the amount of the debt.
- (ii) In the case of a creditors' winding-up, it can only be initiated by BNE Limited.

(c) What steps would have to be taken:

- (i) In the case of a compulsory winding-up, this is where a winding-up order is issued by a court.

A creditor who seeks to initiate compulsory winding-up would have to rely on one of the various grounds or presumptions, in this case, that there is a debt of more than USD2000 that has not been satisfied for more than 3 weeks from the date of a demand.

The court may order BNE Limited to be wound up if BNE Limited has passed a resolution (that it is unable to pay its debts). The court may also order the winding-up of BNE Limited if it is just and equitable to do so.

When the court issues an order for winding-up, the order must include name of the person who will be appointed as the liquidator of the BNE Limited.

The liquidator appointed by the court, may convene a meeting of creditors and contributories to nominate and appoint another candidate to act as the liquidator in place of the liquidator named by the court.

- (i) In the case of a creditors' voluntary winding-up, the BNE Limited has to pass a resolution to commence the winding-up process. A liquidator is then required to be appointed. BNE Limited may nominate a candidate to be liquidator, however the liquidator is required to be nominated by the creditors at a meeting of creditors. The candidate nominated by BNE Limited will be considered for appointment by creditors if there are no candidates nominated by the creditors to be the liquidator.

Once the liquidator is appointed, the directors will cease to have any authority or power with respect to the business and affairs of the BNE Limited. The creditors may also establish a liquidation committee.

- (d) If BNE Limited was to be wound up, the person responsible for it would be the liquidator (appointed by the court or otherwise).
- (e) The process for addressing creditor claims in a winding-up is as follows:
 - (i) A creditor who seeks to recover its debt is required to submit a written claim to the liquidator. This written document is known as a proof of debt.
 - (ii) When the liquidator receives the proof of debt, the liquidator is required to assess the claim and if further information is required to facilitate the assessment, request for additional information from the creditor.
 - (iii) The liquidator is empowered to accept or reject claims submitted by creditors (the proof of debt).
 - (iv) If a creditor is not satisfied with a decision of the liquidator, the creditor has 21 days to apply to court to appeal the decision. Shareholders of BNE Limited (in this case, BNE LLC) may also file an application to the court to appeal against a decision of a liquidator.]

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*** End of Assessment ***