



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.

Commented [DJ1]: TOTAL: 25 OUT OF 50

You would do well to read your questions more carefully and address that which is asked.

Commented [DJ2]: 5 out of 10

Commented [DJ3]: d

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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.

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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.

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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.

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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?

The main distinction regarding the registration of real property is that each emirate maintains its own land registration system. The registration and enforcement of mortgages can be subject to some differences in laws and procedures in each emirate.

In a financial free zone, a creditor holding a mortgage over the debtor's land can enter into possession of the land by providing 60 days' notice to certain relevant parties and without the need for a court order. A mortgage creditor can apply to the DIFC court in cases where an order for forfeiture is needed. On the other hand, in mainland UAE, the right of a mortgagee must be exercised through the courts.

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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.

The actor responsible for a decision on any application to commence an insolvency process and the primary determination as to whether a debtor's proposal should be adopted is the court.

The trustee is the actor required to confirm and register the court's primary determination as to whether a debtor's proposal should be adopted. He is also the responsible in conjunction with court, for supervising the implementation of the insolvency process by the debtor.

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b) The debtor's unsecured creditors
c) The Court

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)?

The difference is that only a debtor can apply to the court to commence a Preventive Composition. The application is made with a debtor's proposal for preventive composition and the name of the proposed appointee as trustee.

On the other hand, the commence of a Bankruptcy procedure is preceded by an application to the court, by either a debtor or a creditor.

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A debtor must initiate bankruptcy procedures when in default

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 key difference for a creditor is that, in a Preventive Composition procedure, there are no provisions governing the rights of priority creditors, other than secured creditors, in any scheme. Whilst on a Bankruptcy procedure, the trustee must follow the creditor's right regarding to the order of priority to start the payment.

Commented [DJ12]: 1
Slightly missing the point of the question. Creditors have no right to compel a debtor to enter Preventative Composition. They may apply to the court to initiate bankruptcy if owed more than AED 100,000

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

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 United Arab Emirates (UAE) is a federation of seven emirates in the North-East of the Arabian Peninsula and until 1971 the UAE were parties to treaties with the United Kingdom, which governed each emirate's foreign affairs. The UAE is a federal state, and each emirate retains authority over matters which are not reserved to the federal government under the Constitution.

The individual emirates have all created "free zones", and each of the financial free zones also has its own separate judiciary being the DIFC courts and the ADGM courts, the judges of which are separate from those of the rest of the UAE court system.

Emirates of Abu Dhabi, Dubai and Ras al Khaimah continue to operate separate judicial structures; and, except for matters specifically reserved to the Federal Courts by the

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Constitution, the final courts of appeal in both Dubai and Ras al Khaimah are the courts in those Emirates. The existence of parallel judicial systems in Dubai, being both the courts of mainland Dubai and the DIFC courts, with recognized and reciprocal enforcement mechanisms, has been used to obtain outcomes that might not have been possible if there was only one court system.

There has been a legal change in 2016, with the adoption of Federal Decree Law of 2016 relating to bankruptcy, which was amended in 2019 and 2020 (the Bankruptcy Law). It consolidated insolvency regime for commercial (but not consumer) insolvencies in the UAE.

Also, in 2019 the adoption of Federal Decree Law of 2019 (Personal Bankruptcy Law) consolidated insolvency regime for debtors who did not fall within the ambit of the Bankruptcy Law, filling a gap which had previously existed within the legislation.

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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.

Once the bankruptcy starts, the court take a lot of steps to conduct the procedure, such as: to appoint a trustee and one or more supervisors, to determine the list of creditors, to suspend interest and other penalties for non-payment, to, perhaps and at the request of the trustee, rescind contracts, to analyse the trustee's proposal and even, at the end determining the liquidation of the debtor.

All Bankruptcy proceedings are taken by the court and the trustee acts in cooperation assuming it's activities and responsibilities (from articles 40 to 123 and on).

Commented [DJ15]: This does not really qualify as a description as the court's involvement in the process.
2

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.

The court has a high degree of involvement because basically it decides the destine of the debtor. The court is required to give its decision approving the Bankruptcy scheme and it's a final decision.

If the court rejects the scheme, the scheme is returned to the trustee for amendment within 10 business days from the date of disapproval and must then be returned to the court, either for approval or for a decision to initiate the declaration of the debtor's bankruptcy and the liquidation of the debtor's assets.

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

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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 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 steps taken for a Preventive Composition after the application are related to the appointment of an expert to prepare a report on the financial position of the debtor, and a trustee.

Then after the publication of the commencement by the trustee, he will submit the composition scheme which will be presented to creditors for approval.

After that it will be the possible court scheme approval, the implementation of the preventive composition.

All of the steps have a number of deadline business days to be accomplished and the court needs to try to approve the implementation of the composition as fast as it is possible to help the debtor and creditors.

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2

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.

In general terms, considering that the company is in Dubai, the liquidation procedure will be governed by the mainland UAE Law. When the liquidation procedure starts, the court is required to appoint a trustee to undertake the liquidation, although it can order that any expert or trustee previously appointed in relation to any other procedure should continue in office.

A creditor list will be present, and the trustee is required to liquidate all of the debtor's property and assets by public auction, under the supervision of the court. The proceeds of sale of the liquidation of the debtor's assets are distributed by the trustee to creditors.

The trustee must pay claims in the order provided for in the law, subject to court approval for the distribution and approval of payment of priorities.

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 trustee will return all documents to the debtor following completion of the liquidation and the debtor can ask the court to terminate the **bankruptcy**.

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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?

On the free zones, the procedure is named as winding up, which is the process where a liquidator is appointed to realise the assets of the company and to distribute those assets as required by law. There are two methods of winding up: voluntary winding up (by resolution of the company's shareholders or requested by creditors); or compulsory winding up, pursuant to an order made by the DIFC courts.

In the case of a members' voluntary winding up, the directors are the ones who must provide a statutory declaration as to the solvency of the company. In the case of a creditors' voluntary winding up, when passing the resolution to commence the winding up, the company may nominate a liquidator to be appointed, but the liquidator shall be the person nominated by the creditors (or by the company).

An application to the court for the winding up of a company may be brought by the company, its directors, or any creditor (including any prospective or contingent creditor),²⁰⁶ or by the DIFC Authority where it considers the winding-up to be in the best interests of the DIFC and the DIFC court is of the opinion that it is just and equitable for the company to be wound up

The other steps of the winding up procedure are similar to the ones taken on a liquidation procedure, with the debtor's assets auction to pay the creditors and then, to finish the winding up **procedure**.

Commented [DJ20]: This answer does not address the question posed.
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*** End of Assessment ***