



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.

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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?

The key point of distinction regarding the registration of real property interests is that each emirate maintains its own land registration system.

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 is that in the financial free zones, the creditor does not need to apply to the court for permission to sell the property to apply the proceeds to the reduction of the debt, whereas, in 'mainland' UAE, the court must provide a sale order and the court's execution department will conduct the sale.

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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.

- A) A decision to initiate the Preventative Composition is sought by the debtor, whereas the Restructuring can be sought by either debtor or creditor, and dealt with within the bankruptcy procedure.
- B) The Court is responsible for the determination to whether a debtor's proposal should be adopted with relation to the Preventative Composition, this is achieved with the assistance of an expert who will prepare a report on the financial position of the debtor.
- C) The Court is responsible for making the primary determination to whether a debtor's proposal should be adopted in relation to the Preventative Composition. The creditors are also involved with the voting process of the scheme.
- D) The trustee is responsible for the supervision of the implementation of the preventative composition and restructuring.

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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)?

If a debtor missed payments for 30 consecutive business days, bankruptcy proceedings must be started. If a "competent controlling body" has control over the debtor, the debtor may apply for preventative composition as long as the controlling body is notified 15 days in advance of the application.

Preventative composition is a debtor-in-possession. Bankruptcy can be commenced by either debtor or creditor.

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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?

A creditor can apply to the Court for the replacement of the trustee in preventative composition (Article 21 of the Bankruptcy Law), whereas they cannot request the change of the trustee within a bankruptcy (Article 86 of the Bankruptcy Law).

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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 Bankruptcy Law in the UAE was largely underdeveloped and relied upon provisions within Law No 18 of 1993 relating to commercial transactions. This allowed and outlined the insolvency process to be followed through the courts. This was very rarely utilized in practice.

The situation in 2009 when Dubai World faced financial difficulty and faced the possibility of defaulting on its debts provided the impetus the UAE to develop the Bankruptcy Law. Dubai World's demise would have been the largest government default of debt since 2001.

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The Bankruptcy Law has generally been well welcomed in the UAE, however it should be noted that there are no official statistics which allow for accurate analysis, nor have a large number of insolvency processes been conducted under the new Law, which means that it is difficult to assess the Law's effectiveness in practice.

Bankruptcy is broken into formal restructuring which is applicable to commercial debtors and liquidation which is applicable in relation to both commercial and non-commercial debtors. It should be noted that there are 'financial free zones' in which the Bankruptcy Law will not be applicable, such as the Dubai International Financial Centre and the Abu Dhabi Global Market.

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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.

Upon application to enter bankruptcy, the Court is required to appoint an expert in order to assess the financial condition of the debtor. Should the application not contain the full specified information, the Court may reject the application.

The Court is required, within 5 days of the expert's report, to determine the application for commencement of the Restructuring. If the report provides the Court with satisfaction that the requisite conditions have been met, then the Court will grant an Order that the Restructuring proceeds. This is outlined within article 82 of The Bankruptcy Law.

The Court may be consulted by the trustee to extend the suspension of legal proceedings against the debtor from 10 months for an additional 4 months.

Should the Court proceed with the bankruptcy procedure, the Court is to appoint a trustee, who must either be a person nominated by the debtor or somebody who is enrolled in the table of experts by the Financial Restructuring Committee, pursuant to Article 82 of The Bankruptcy Law. Should there be a creditor who dissents to the appointment of a trustee, the Court has 5 days to determine the objection, with no further appeal process available. This is outlined within Article 82 (7) of The Bankruptcy Law.

The Court may have to assist the trustee in providing assistance such as appointment of experts. The Court shall have the involvement to establish the fees of the expert and also the scope of the expert, as per Article 83 of the Bankruptcy Law.

The Court has responsibility for the establishment of the trustee's fees and also provide the authorisation for the payment from the debtor's bank. If there are insufficient funds to discharge the fees of the Trustee, the payment shall be made from the account of the Court Treasury, with the Treasury then being repaid in priority to all creditors thereafter.

The court may also appoint supervisors, per article 87 of the Bankruptcy Law. The supervisors would act as representatives of the creditors.

The court must determine and adjudicate upon any appeals by creditors with relation to the rejection or partial rejection of their claim. The court must make this judgement within 10 business days of the application.

Per article 97 of the Bankruptcy Law, the court must review the trustee's report on the possible restructuring in order to ensure that all creditors claims are included therein. Upon approval, the court shall direct the trustee of the restructuring to convene a meeting of creditors within 10 business days following providing the report to the court.

Following the trustee's submission of the scheme to the court, the court has 10 business days to review the scheme per Article 103 of the bankruptcy Law. The court has the authority to instruct the trustee to amend the scheme if the scheme is not in all parties best interests.

Following the approval being granted by the creditors at the creditors meeting, the trustee shall provide the scheme to the court within 3 business days. Upon a determination being handed by the court, this is final.

Following the completion of the restructuring, the court shall make an order which provides confirmation of the implementation of the scheme. The court shall order the trustee to advertise the decision in both an Arabic and English newspaper. This is outlined with article 115 of the Bankruptcy Law.

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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.

I consider the level of Court involvement to be appropriate. I consider this on the basis that there needs to be sufficient levels of scrutiny and approval upon plans that compromise the rights of creditors in order to ensure the plan being proposed is appropriate. It is also appropriate that the Court approves any Trustee, as this acts as a further measure to avoid any possible collusion between the debtor and a certain class of creditor.

Further, the Bankruptcy Law is a very recent adoption, meaning that Court supervision and guidance to aid practitioners on how to effectively adopt the process is essential to ensure that the rights of parties are being protected in accordance with the Law.

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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 debtor must present to court the debtor's position, the debtor's proposal for preventative composition and the name of the proposed trustee to oversee the process, this is as per Article 8 of the Bankruptcy Law.

The Court is to appoint an expert who shall provide their view on whether the debtor has met the requirements to enter preventative composition. The expert's view shall be presented to the court in the form of a report, and shall be presented within 20 days of the appointment of the expert.

The court then has 5 business days to decide upon whether to accept the application for preventative composition, from the date of the expert's report, per article 14 of the Bankruptcy Law.

A creditor has five business days if they object to the appointment of a trustee, with the objection to be lodged by way of application to the court. The court then has a further five business days to make a judgment on a final basis on whether to accept the objection, or whether to continue with the preventative composition.

The court has no more than one day to notify the trustee of the appointment, following the order being issued.

Within the 5 business days following appointment, the trustee is to advertise their appointment and notify all creditors to submit any claims within 20 days. Following the expiry of the 20 day period, the trustee then has 10 business days to provide a comprehensive creditor list to the court. 3 business days thereafter, the trustee must publish the list of debts in both an Arabic and English widely distributed newspaper.

Every creditor who is listed on the list of debts, and the debtor, may object to the list within seven business days of the publication in the newspapers.

The Court has the power to determine any objections submitted with respect to the list of debts, within 10 business days of the submission of the list of debts. The decision issued by the Court may be appealed to the Court of Appeal.

The trustee has 45 days from the publication of the date which initiates the preventive composition to submit a scheme to the Court. This day can be extended by an additional 20 days as the request of either the trustee or debtor. Following the Court receiving the scheme, there is then a 10 business day period for which the Court to review the scheme in order to ensure that the interests of interested parties.

Per the assumption that the Court has no objections, the court must instruct the trustee to issue public advertisement within five business days to the creditors, and host a creditors meeting, with the meeting to be held within 15 working days of the date of direction to creditors. Following the approval of the scheme, the trustee has 3 working days to provide the scheme to the Court for the court's approval.

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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.

BNE LLC will be able to convert the scheme to a liquidation as per article 65 of the Bankruptcy Law.

The appointment of the trustee automatically terminates, save for if the same trustee that oversaw the preventative composition will also be appointed as the bankruptcy trustee. The same Court which oversaw the preventative composition shall continue to oversee the liquidation of BNE LLC's assets.

As per article 189 of the Bankruptcy Law, the payment priority is court costs, trustee costs, unpaid wages and salary up to 3 months, amounts to govt, costs of supplying debtor with goods and services following bankruptcy. As such, any cash or realisations should be payable to cover the court fees, trustee fees, only 3 months of the unpaid wages, then the creditors and the first month of the unpaid wages.

The law allows the right for the mortgage provider, the shareholder in BNE LLC, to sell the property following the default, subject to the blessing of the court, in order to satisfy the unpaid debt. Secured creditors rights are not substantially impacted by insolvency proceedings.

The Trustee for the bankruptcy proceeding can be either a natural or legal person. The trustee must not be a creditor of BNE LLC, nor be anybody who has had a commercial relationship with BNE in the prior 2 years. Further, the trustee cannot have previously been convicted of certain dishonesty offences.

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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?

BNE Limited would be wound up by the DIFC Courts on the basis that it is unable to pay its debts. The Company, its directors or any of the creditors may present a petition to the Court for a winding up order.

Through this Court-led winding up of BNE Limited, the Court is responsible to appoint a liquidator who then is the responsible party for the realising of assets, addressing creditor claims and the liquidation process. Any creditor who wishes to lodge a claim in the bankruptcy estate must do so in writing by submitted a proof of debt. The liquidator must then adjudicate upon the proof of debt and may admit, reject or partially admit/reject the claim. Should the Liquidator reject a proof of debt, either in part or in whole, then the liquidator shall provide the reasons for the rejection to the creditor. As per 6.20.2 of the DIFC Insolvency Regulations 2022, the creditor then has 21 days should they wish to appeal against the decision made by the liquidator and the appeal must be made to the Court.

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