



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 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.

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 distinction regarding the registration of real property interests in the different emirates of the UAE is that each emirate maintains its own land registration system.

The key difference between the sale of mortgaged real property following a debtor's default if that real property is in a financial free zone or in mainland UAE is that in mainland UAE, the mortgage creditor must first obtain a court order before it can dispose of the asset while in the financial free zone, the mortgage creditor only needs to provide the 60 days' notice to certain relevant parties to enter possession of the land without the need for a court order.

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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) The decision to commence any insolvency proceeding rests with the debtor.
- b) The primary determination as to whether a debtor's proposal should be adopted rests with the expert appointed by Court to prepare the financial position of the debtor and to provide his/her views on whether the debtor has met the criteria necessary to accept the application for preventive composition.
- c) The confirmation of the primary determination as to whether a debtor's proposal should be adopted rests with the Court once it accepts the debtor's application.
- d) The supervision of the implementation of the insolvency process by the debtor rests with the Trustee appointed by Court from the table of experts appointed by the Financial Restructuring Committee.

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)?

In an application to commence Preventive Composition, a debtor seeks to reach a settlement with his or her creditors under the supervision of Court and by the assistance of a composition trustee appointed according to the provisions of Section 3 of the Bankruptcy Law. In an application to commence Bankruptcy, the debtor initiates bankruptcy proceedings if he/she is in default of its payment obligations for 30 consecutive business days. Under Article 68 of the Bankruptcy Law, if the debtor is under the control of a competent control body, the debtor has the option of applying for preventive composition after giving the controlling authority 15 days' notice of the application.

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?

Regarding the commencement of Preventive Composition, creditors participate in the approval of the proposed scheme. The creditors attend the meeting called by the Trustee 15 working days of the date of the court's direction to invite the creditors and review the proposal with the Trustee being required to explain the proposed preventive composition scheme. Only creditors whose debts have been admitted may vote on the scheme. Secured creditors do not vote on the scheme unless they have surrendered their securities.

Regarding bankruptcy of the debtor, for the creditor, a creditor or group of creditors who are owed more than AED 100,000 have the option of applying to the court to initiate bankruptcy proceedings against the debtor if the creditor or the group have given the debtor notice requiring him/her to settle the debt and the debtor has failed to discharge this obligation within a period of 30 business days from the notification.

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.

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

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Historical background to the introduction of Bankruptcy Law:

The Bankruptcy Law, which created a harmonized insolvency regime in the mainland UAE, was introduced in mainland UAE in 2016 after the adoption of Federal Decree No 9 of 2016 relating to bankruptcy, which was amended in 2019 and 2020. Until 2016, most of the insolvency law was underdeveloped with the Law No. 18 of 1993 governing the insolvency of traders and providing for a basic mechanism for insolvency for those engaged in commerce. The processes provided for in this Law were largely under – utilized.

In 2009, Dubai World, a Dubai Government owned investment company faced a likelihood of default on its debts. Its default was the largest government default since 2001 and hence a cause for international concern. It was this risk that ushered the mainland UAE into an era of establishing a properly functioning insolvency regime in the mainland.

Entities to which the Bankruptcy Law applies.

The Bankruptcy Law applies to the following entities:

- a) All companies governed by the Commercial Companies Law which is the principal corporate legislation in mainland UAE.
- b) Any companies established under other legislation who be law or voluntarily have submitted to the provisions of the Bankruptcy Law.
- c) Free zone companies and establishments not governed by other insolvency procedures.
- d) Any person who is a trader, that is, a person engaged in commercial activities in a personal capacity.
- e) Licensed civil companies of a professional character such as professional partnerships.

How the Bankruptcy Law has been received and applied in the UAE.

While the Bankruptcy Law has been in force since 2016, no more than a handful of insolvency related applications have been determined under it. However, it is understood that the Bankruptcy Law created much needed certainty to insolvency processes.

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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.

To begin with, under Article 67 of the Bankruptcy Law, restructuring is one of the possible outcomes following an application by the debtor for the commencement of bankruptcy proceedings. Restructuring is an alternative to liquidation.

Under Article 77 of the Bankruptcy Law, upon the presentation of a bankruptcy application, the court is required to appoint an expert from the panel of experts to assess the financial situation of the debtor. The expert is required to report on the debtor's financial condition and give an opinion on the possibility of the debtor's successful restructure. Thereafter, under Article 78 of the Bankruptcy Law, within 5 business days of the application or the expert's

report, the court will determine the application and if all the necessary conditions are met, an order will be made commencing the insolvency proceedings.

Upon the court's order for the commencement of the bankruptcy proceedings, under Articles 157 – 159, it is shown that the legal proceedings against the debtor will be suspended until the approval of the restructuring plan or 10 months following the court's decision to open bankruptcy proceedings, whichever comes earlier.

Under Article 83, the court will appoint a trustee being a person nominated by the debtor or the expert and the court will assist the trustee in doing whatever is necessary for the trustee to carry out his/her/its duties including the appointment of one of the experts from the panel of experts.

The court also determines the fees payable to the Trustee and authorises payments to be made

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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 it appropriate. A forced compromise is likely to arise as a method of resolving the debtor's debt under a proposed scheme initiated through Preventive Composition. Court involvement is seen in Article 42 of the Bankruptcy Law.

The court should have a broad, non – invasive, administrative role in a Preventive Composition as it would be considered impartial and more authoritative in exercising objectivity when evaluating a proposal especially where it involves a compromise. In these circumstances, 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. The court's role would also be to ensure that the priority of any secured creditor rights is protected

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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 BNE 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.

1. Under Article 9 of the Bankruptcy Law, the debtor makes the application to court setting out the debtor's position, the debtor's proposal for preventive composition and the name of the proposed appointee as trustee to oversee the preventive composition.
2. Under Article 14, the court is required to determine the application for preventive composition within a period of 5 business days of the application if the application meets the criteria necessary for the composition or from the date of the expert's report. The expert's report contains his/her views on whether the debtor has met the criteria necessary to accept the preventive composition application procedure. This report should be delivered within a period of 20 business days from the date of the expert's instruction to prepare the report.
3. Under Article 17, when the court accepts the preventive composition procedure, it will appoint a trustee from the table of experts appointed by the Financial Restructuring Committee. Under Article 17(5), the Court notifies the trustee of the decision of his appointment on a date no later than the day following the issue of the decision.
4. Thereafter, within 5 business days of the trustee's appointment, the trustee publishes a summary of the court's decision to commence the preventive composition procedure in two widely – read newspapers, one newspaper publishing in English and the other publishing in Arabic. The notice given by the trustee also invites creditors to file claims within 20 business days from the date of publication. The trustee also notifies all creditors with known addresses within the same period.
5. The date on which the court accepts the preventive composition procedure is also relevant because under Article 40, the preventive composition scheme is submitted to the court within 45 business days from the date of publication of the decision initiating the preventive composition procedure. This period may be extended up to 20 business days at the request of the debtor or the trustee.
6. Under Article 42(1), the Court, within 10 business days from the date of submission of the preventive composition scheme, reviews the scheme draft to verify that the scheme observes the interest of all parties.
7. Under Article 42(2), the court directs the trustee to issue invitations by way of public advertisement, as well as any other means directed by the court within 5 business days, to be given to the debtor's creditors, for the purpose of attending the creditors' meeting to discuss the proposed scheme.
8. Under Article 42(4), the creditors' meeting is within 15 working days of the date of direction to invite the creditors and court may give directions on the formation of classes of creditors and the appointment or conduct of any representatives of those classes at the meeting of the creditors. The requisite majority required for the scheme to be approved by the creditors' meeting is most creditors holding two – thirds of the debtor's debt.

9. Under Article 49, after the scheme is approved, the trustee will present the draft scheme to the court within 3 business days for the court to approve the scheme. In determining whether the court should approve the draft scheme, under Article 49(4), 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. Secondly, under Article 49(5), the court will inquire into whether the scheme affects the priority of any secured creditor rights. If it does, then the court will not approve the scheme.
10. Under Article 54, within 7 business days of the date of approval of the scheme, the trustee is required to register the court's decision confirming the approval in the debtor's governmental corporate register and publish the summary of the scheme.

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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.

The facts given support the commencement of bankruptcy by BNE LLC. BNE LLC would be required to file an application for an order to initiate the bankruptcy proceedings which would be initiated on account of the company's default of its payment obligations for consecutive period of 30 business days. In this case, it has been 4 months since the Preventive Composition Scheme was initiated and the same was rejected. This therefore qualifies BEN LLC for the lodgement of an application for the bankruptcy order in the court.

Once the application is lodged, under Article 77 of the Bankruptcy Law, the court will then appoint an expert from the panel of experts to assess the financial situation of BNE LLC. The appointed expert will be required to report on BNE LLC's financial situation and to give an opinion on the possibility of the debtor successfully restructuring. The report of by the expert will determine the period within which the court determines the application as, pursuant to Article 78, the court is required to determine the application within a period of 5 business days of the application or 5 business days of the expert's report.

If the court, upon consideration of the application, grants the same and orders the commencement of the proceedings, the court is required to appoint a trustee, being either a person nominated by BNE LLC or a person enrolled in the table of experts appointed by the Financial Restructuring Committee. According to Article 84 of the Bankruptcy Law, the trustee may be a natural or legal person but may not be a creditor, related person of entity of BNE LLC, a person who has been convicted of certain dishonesty offences, and a person who has had prescribed commercial relationships with BNE LLC in the previous two years.

Within 5 business days after the appointment of the trustee, the trustee is required to publish a summary of the court's decision to commence bankruptcy procedures in two widely read newspapers, one newspaper publishing in English and the other publishing in Arabic. By the advert, the trustee is required to notify all creditors with known addresses within the period in accordance with Article 88 of the Bankruptcy Law. This advert will also be inviting creditors to file their claims with the trustee within a period of 20 business days from the date of publication.

After the expiry of the 20 business days mentioned above, the trustee is required to prepare a list of creditors including the details of the debts and the supporting information, 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 with the court within a period of 10 business days from the

date of the lodgement of the claims. The trustee should then advertise this list within a period of 3 business days of lodgement.

From the facts, it is understood that BNE LLC is certain that without creditor support, it will not be able to resolve its debt crisis. In the premises, the trustee's or expert's report is likely to conclude that restructuring in bankruptcy is impossible. It is also likely that the creditors will not approve the restructuring. These two would comprise the grounds on which the court would make the order for bankruptcy under Article 124 of the Bankruptcy Law.

Once the court makes the order for liquidation, the court is required to appoint a trustee to undertake the liquidation or maintain the expert or trustee previously appointed to retain his/her/its office as per Article 126. Once the liquidation order is made, the appointed trustee will advertise the appointment in 3 business days in accordance with Article 133, creditors will then be required to make their claims within 10 business days from the date of judgement in accordance with Article 129.

The trustee will then proceed with the liquidation of the assets of BNE LLC by public auction under the supervision of court in accordance with Article 133 and the proceeds of the sale will be distributed in accordance with the priorities set out under Article 189 of the Bankruptcy Law. First to be paid will be the court costs and trustees' costs, unpaid wages and salary up to a maximum amount of three months' salary for the BNE LLC employees, alimony debts under a judgement 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.

Once the liquidation and distributions are completed, the court must make an order confirming the conclusion of the liquidation procedure, including the final list of creditors and the amounts unpaid and the decision of the court is to be advertised in accordance with Article 138 of the Bankruptcy Law. BNE LLC will then be at liberty to ask court to terminate the bankruptcy and after the expiration of 5 years, BNE LLC will be deemed to be fully rehabilitated as per Article 217.

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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?

Under DIFC Law No. 7 of 2004, the creditors may voluntarily wind up the company or apply for an order to wind up the company through the court, compulsory winding up.

A creditors' voluntary winding up, is commenced by passing of a resolution by the company which shall also nominate a liquidator to be appointed. The liquidator appointed shall be a person nominated by the creditors, or, if the creditors have not nominated someone, the person nominated by the company as per Article 68(3) of the DIFC Insolvency Law.

Where the preferred mode of commencing liquidation is through court, the court has the power to order the commencement of winding up proceedings if the company is, amongst other things, unable to pay its debts under Article 81(b). Under Article 82(1), a company is deemed unable to pay its debts if a creditor to whom the Company is indebted a sum exceeding \$2,000.00 which is due and payable has served a written demand on the Company, by leaving it at the Company's registered office, requiring the Company to pay the sum due and the

Company has for three (3) weeks thereafter, neglected to pay the sum or agree terms relating to its payment to the reasonable satisfaction of the creditor. This application by a creditor whose debt meets the requirement may be commenced even where a voluntary winding up proceeding has already commenced pursuant to Article 82 and 174.

The court will order the commencement of the winding up proceedings once it is satisfied that the conditions have been met and shall identify the person that will be appointed as the liquidator who may elect to remain as the liquidator or summon the meeting of creditors and contributories for the purpose of choosing a liquidator.

The liquidator is responsible for officiating the winding up process. His/her role is to wind up the affairs of the company and to gather, realise and distribute the company's assets. Further, the liquidator may call for claims by creditors and prove, rank and pay the creditors' and shareholders' claims in the manner set out in the Insolvency Law.

When it comes to addressing creditors' claims, under Regulation 6.16.1 of the DIFC Insolvency Regulations, where the company is being wound up by the court, the creditors will be required to submit their claims in writing to the Liquidator. The creditors' claims shall contain sufficient information and supporting documentation that will assist the Liquidator in assessing the claim. The liquidator may estimate the quantum of the creditors' claim where the information is not sufficient to support the creditors' claims. It is also worth noting that upon receipt of a proof of debt, the liquidator may require the creditors to provide further information as may be necessary to evaluate the claim pursuant to Regulation 6.17.

Pursuant to Regulation 6.19, the liquidator may then admit or reject any proofs of debt in whole or part for the purposes of determining whether to make a payment to the creditor, along with other creditors. If the creditor is dissatisfied with the decision of the liquidator, the creditor has the option of appealing against the decision within 21 days of the notice of the decision.

Once the proof of claim is resolved and claims have been admitted or rejected, the next step will be the distribution of assets which shall abide by the priorities set out in the Insolvency Law and the [Regulations](#).

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*** End of Assessment ***