



**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?

[The key distinction is that each emirate maintains its own land registration systems.

In mainland UAE, the right of a mortgagee to sell the mortgage property following debtor's default must be exercised through the courts. In DIFC the creditor can sell the whole or part 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 insolvency of the debtor is that of the Court having jurisdiction over the debtor

(b) The primary determination of the scheme is done by the Expert appointed by the Court

(c) Creditors whose debts have been admitted through vote shall confirm the adoption of debtor's plan

(d) The trustee is responsible for supervising the implementation of the insolvency process

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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)?

[Preventive composition settlement is prior to the application being filed with the court and restructuring is an alternative bankruptcy procedure post filing of application with the court.

The debtor is required to initiate bankruptcy procedure where debtor is in default of its payment obligation for 30 consecutive days. Therefore, where the debtor is facing payment failure it may settle with its creditors by way of Preventive Composition. Where default extends to 30 consecutive days it is obliged to apply for bankruptcy procedure.

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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 debtor seeks preventive composition as an option to reach settlement with his creditors. Only the debtor can file an application with the court.

Restructuring is an alternative to liquidation that can be initiated by the creditor or the debtor. Therefore, on payment default the creditor may initiate bankruptcy if debt owed in over the threshold amount.

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Creditors may apply to the court to initiate bankruptcy if owed more than AED 100,000

## 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 Institutional framework in UAE is divided between Mainland and financial free zones that include Dubai International Financial Centre (DIFC) and Abu Dhabi Global Market (ADGM).

Until 2016 the insolvency law in mainland was underdeveloped. In 2016 the Federal Decree Law (No.9) of 2016 was adopted and later was amended in 2019 and 2020. The Bankruptcy Law consolidated the insolvency regime for commercial insolvencies in UAE. The Law provides for court-supervised processes including Preventive Composition, Restructuring and Liquidation. DIFC is governed by DIFC Law No 1 of 2019 with associated DIFC Regulations. ADGM is governed by Insolvency Regulation 2015. Both Laws are modelled on and adopt a number of provisions of the United Kingdom Insolvency Act 1986.

The Bankruptcy Law applies to:

- (a) All companies governed by the Commercial Companies Law;
- (b) Companies established under other legislation who by law or voluntarily have submitted to the provisions of the bankruptcy Law;
- (c) Free zone companies and establishments not governed by other insolvency procedures except those in the financial free zones;
- (d) Any person who is a trader; and
- (e) Licensed civil companies of a professional character.

There have been no more than a handful of applications decided under the Law since its adoption. Therefore, it will be too soon to say whether the law is considered friendlier to the debtors or the creditors. However, the Law has been received well as it has ensured negotiations between the debtors and the creditors regarding payment difficulties. Further the application of the Law has created an environment of greater legal certainty than it was prior to it [availability].

**Commented [DJ11]:** The influence of Dubai World on the developments and reform?  
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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.

[Where the debtor seeks to enter bankruptcy, an application is to be made to the Court. On application of by a qualifying debtor, court may grant a short term, 40-day period, to the debtor to negotiate a settlement of its debts with its creditors.

On submission of application, the court shall assess the whether the application is filed with the specified information. If not the court may reject the application<sup>1</sup> or shall require a person to provide further information<sup>2</sup>. The court may also join other parties to the proceedings and can make interim orders in respect to the debtor's property<sup>3</sup>.

The court is required to appoint an expert from the panel of experts to assess the financial condition of the debtor<sup>4</sup>.

The court shall decide upon the application within five business days of application or within five business days of the expert's report<sup>5</sup>.

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<sup>1</sup> Bankruptcy Law, art 79

<sup>2</sup> *Idem*, art 80

<sup>3</sup> *Idem*, art 81

<sup>4</sup> *Idem*, art 77

<sup>5</sup> *Idem*, art 78



Where the court is satisfied that conditions have been met, it shall order the commencement of the bankruptcy procedure and shall appoint a trustee, being either a person nominated by the debtor or a person enrolled in the table of experts appointed by the Financial Restructuring Committee.

The court may allow on request of the trustee for assistance<sup>6</sup>. It may also substitute the trustee or the expert on its own volition, on request of the trustee or on application by the debtor<sup>7</sup>. The court shall decide on the trustee fee, authorise payments from the funds deposited or determine any objection towards the fee. The court also appoints creditor representatives as supervisors<sup>8</sup>.

The court is required to provide the trustee with information of the debtor that it holds<sup>9</sup>.

The list of claims as prepared by the trustee is lodged with the court along with any proposal regarding repayment. Where there are objections, the court shall decide the application within 10 business days of the application<sup>10</sup>. The court may admit debt on interim basis and shall finally determine the list of creditors<sup>11</sup>.

In respect of contracts where debtor is a party, the court has powers to suspend interest and other penalties<sup>12</sup> or rescission of contract<sup>13</sup>.

The trustee shall submit a report with the court on the debtor's business, possibility of restructuring with a statement of the debtor's commitment to continue the business or the possibility of selling it as a going concern<sup>14</sup>. The court shall review the report to confirm that it takes account of all creditor claims. The court then directs the trustee to convene a meeting of creditors and to prepare a restructuring scheme.

The restructuring scheme is to be submitted with the court for its review. The court can request the trustee to vary the scheme. Following the review the court must request the trustee to issue an invitation to the creditors for their review of the scheme. The court may direct the formation of committees representing class of creditors. Where the creditors seek for amendments, the court may direct further meetings to consider the proposed amendments<sup>15</sup>. Voting at meetings is to be done by creditors whose debt has been admitted. However, the court may direct that creditors whose debt is admitted on interim basis may vote.

Pursuant to the approval of the scheme at the creditor's meeting, the scheme is put before the court who shall decide urgently. Creditors who have voted against the scheme may object and the court shall finally determine the objection<sup>16</sup>. Where the scheme is rejected by the court, it is returned to the trustee for amendment and for resubmission with court<sup>17</sup>.

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<sup>6</sup> *Idem*, art 83

<sup>7</sup> *Idem*, art 86

<sup>8</sup> *Idem*, art 87

<sup>9</sup> *Idem*, art 88

<sup>10</sup> *Idem*, art 94

<sup>11</sup> *Idem*, art 94

<sup>12</sup> *Idem*, art 163

<sup>13</sup> *Idem*, art 165

<sup>14</sup> *Idem*, art 96

<sup>15</sup> *Idem*, art 105

<sup>16</sup> *Idem*, art 108

<sup>17</sup> *Idem*, art 109

The restructuring scheme needs to be approved earlier than 10 months following the commencement. However, the court may, in consultation with the trustee extend the time period for an additional four months<sup>18</sup>.

The trustee is responsible for the supervision of the implementation of the scheme, to report progress and to inform the court of any failure of implementation. Any amendment to the approved scheme requires court's approval<sup>19</sup>.

On completion of the restructuring the court shall pass an order confirming the implementation and for discharge of the obligation provided for in the scheme<sup>20</sup>.

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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.

[Historically there have been elements of deferral and postponement of restructuring primarily on account of absence of effective insolvency legislation. With the adoption of the Bankruptcy Law of 2016, it has created an environment of greater legal certainty.

The procedures require high level of court involvement that may be on account of the infancy of the insolvency system and limited judicial precedence.

Even then, the court intervention in managing the process can be limited to crucial elements of commencement, dispute resolution and scheme approval & supervision of implementation.

The responsibility for managing the process should be the duty of the trustee with limited procedural intervention by court.

Moreover, most jurisdictions are favouring the adoption of debtor in possession model through rescue tools such as pre-packs.]

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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:

<sup>18</sup> *Idem*, art 162

<sup>19</sup> *Idem*, art 114

<sup>20</sup> *Idem*, art 115

**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. Receiving the application by the court may be termed as date 'Zero'. The court decides to appoint an expert to prepare a report on the financial position of the debtor on day 'Zero'.
2. The report is to be delivered by the expert no later than 20 business days from the date of being instructed to prepare the report.
3. The court is required to decide the application within five business days of the report submission and also shall appoint a trustee by publication of the same. This would make the maximum period as 25 business days. Any creditor may object to the appointment of the trustee within five business days of the date of publication. The court shall determine the objection of the creditor within five business days on final basis. However, the process runs concurrently.
4. The trustee shall publish the court's decision to commence procedure within five business days of appointment. The maximum period extends to 30 business days.
5. The notice by trustee includes an invitation to creditors to file their claims within 20 business days of such publication. This extends the maximum period to 50 business days.
6. The trustee shall lodge a list of all claimants with the court within 10 business days of last date of lodging claims. The maximum period extends to 60 business days.
7. The court is responsible for finally determining the list of creditors within 10 business days. This shall extend the maximum period to 70 business days.
8. The preventive composition scheme must be submitted with the court within 45 business days from the date of publication of the decision to initiate the procedure (mentioned above in point 4). Thus the maximum period would be 75 business days.
9. The court shall review the draft scheme within 10 business days of submission. The court shall direct the trustee to issue invitation to creditors with five business days for attending creditor's meeting that needs to be held within 15 working days of such invitation. Approved scheme shall be placed before the court within three business days. Therefore the maximum time will be 108 business days.
10. The court shall approve the scheme urgently within five business days. On approval the scheme needs to be registered with debtor's governmental corporate register within seven business days. The maximum time would be 120 business days from the date of making the application to the court.]

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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 court shall make an order of bankruptcy of the debtor and the liquidation of the debtor's assets where the preventive composition is terminated and the restructuring procedures are inappropriate.

Upon making an order, the court shall appoint a trustee to undertake the liquidation who can be any expert or trustee previously appointed in relation to any other procedure to continue in office.

Creditors including staff need to make their claim with the trustee within 10 business days from the date of the judgment.

At the request of the trustee the court may suspend interest and other penalties for non-payment.

Where the debtor's assets, subject to security interest, are sold then the proceeds therefrom are applied in the payment of the debts owed to the secured creditors less the trustee's cost of sale. Any surplus after the sale of assets must be returned to the debtor.

The court shall approve the priorities of payments that shall be court costs, trustee costs and unpaid wages & salaries up to a maximum amount of three months' salary in this case. The creditors for supplying the debtor with goods and services during preventive composition, if not holding security interest, will be paid from remaining assets if any.

In addition to other specific liabilities, where the assets of the debtor are insufficient to pay 20% of the debts of the company, the court may require the directors and managers of the company to pay the debt in those cases where those persons' responsibility for losses is evident.]

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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?

[The creditors have an option to requisition the company to commence a creditors' voluntary winding up by passing a resolution or may approach the court for compulsory winding up where the debtor is unable to pay its debt.

A company is presumed to be unable to pay its debt where a creditor has made a demand for payment of a debt which is for a sum more than USD 2,000 and that demand has been unsatisfied for a period more than three weeks.

For winding up the company may nominate a liquidator to be appointed who shall be nominated by the creditors. Upon appointment of the liquidator, the director's powers cease. The creditors at their meeting may also appoint a liquidation committee to exercise function as under the DIFC Insolvency Law.

The liquidator shall be responsible for the winding up of the company, its affairs, to gather, realise and distribute the company's assets.

The creditor must submit to liquidator a claim for the amount in writing. The liquidator shall verify the claim to the supporting information provided. Where the debt cannot be ascertained, the liquidator may estimate the quantum. The liquidator must take into account any set off which exists between the creditor and the company and may take account of the accrued interest up to the date of the commencement of winding up. A creditor may prove a future debt, debt in foreign currency converted into US dollars and where it is a secured creditor for balance owing post realisation of any security interest.

DIFC being a financial centre all netting contracts expressly override any provisions of the Insolvency law (except in relation to what are defined as "the Business Rules" of "Authorised Market Institutions" – effectively exchanges or clearing houses – regarding the finality of payment.

The liquidator after evaluating the claim may then admit or reject (in whole or part) any proofs of debt for the purposes of determining whether to make a payment to the creditor. Creditor dissatisfied by the decision of the liquidator may appeal within 21 days of receiving notice by application to the court.

Where there are no specific provisions governing the contract that have not been fully performed, the claims shall be determined by the general law of liability, including law of debt, damages and [restitution.]

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**\* End of Assessment \***