



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**.

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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.

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Question 1.8

Which of the following **is not** a basis for an application to the Court for the commencement of bankruptcy proceedings under the UAE Bankruptcy Law?

- (a) If a secured creditor, having security over all or substantially all of the assets of a debtor, takes steps to enforce its security.
- (b) If a creditor (or a group of creditors) has given notice to a debtor requiring the debtor to pay a debt of AED 100,000, and the debtor has failed to discharge the debt within 30 business days of that notification.
- (c) Following the annulment or rescission of Preventive Composition by the Court.
- (d) If a debtor is in default of its payment obligations for 30 consecutive business days.

Question 1.9

Rehabilitation is a new DIFC insolvency procedure introduced by the 2019 law, which allows companies unable to pay their debts but able to reach agreement with its shareholders and creditors to agree to a plan referred to as a Rehabilitation Plan to achieve a court sanctioned plan that binds creditors. In regard to the rehabilitation procedure, which of the following statements is **incorrect**?

- (a) In order to initiate the rehabilitation process the company is required to make an application to court submitting the rehabilitation plan and nominating the proposed rehabilitation nominee.
- (b) A moratorium comes into effect for an initial 180 days, preventing creditors from commencing or continuing legal action against the company.
- (c) The moratorium disappplies contractual provisions that would otherwise enable a contract to be terminated upon insolvency.
- (d) Any creditor materially prejudiced by the moratorium may apply to court seeking the disapplication of the moratorium in relation to a particular contract.

Question 1.10

Which of the following statements **is not** correct?

- (a) The DIFC Courts will enforce judgments and arbitration awards from other countries in accordance with the Riyadh Convention (Riyadh Arab Agreement for Judicial Co-operation).
- (b) The DIFC Courts will enforce judgments and awards from other countries if there is a memorandum of understanding with the Courts of that country which enable the DIFC Courts to do so.
- (c) The DIFC Courts will enforce arbitration awards from other countries in accordance with the New York Convention for the Recognition and Enforcement of Foreign Arbitration Awards.
- (d) The DIFC Courts will enforce judgments and arbitration awards from other countries, even if the debtor has no presence of any type in the DIFC.

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?

Although the UAE law makes general provisions for registration of real property interests, each Emirates maintains its own land registration system . Therefore the registration process and enforcement of mortgages process is different in each emirates

For a Mortgagee to sell the mortgaged property(in case of debtor default), if the property is :-

- a) In Mainland UAE: The Mortgagee will have to take permission from the competent court to be able to sell the property inspite of the fact that the law provides that the mortgagee will have the right to sell the property in case of default without the courts approval
- b) In Financial Free Zone : The Mortgagee can firstly enter in the possession of the property by providing a 60 days notice to relevant parties and without the need of a court order the mortgagee is free to sell the real property either wholly or partially

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Question 2.2 [maximum 4 marks]

Preventive Composition and Restructuring are both insolvency processes that an entity can adopt under the UAE Bankruptcy Law. They share a number of similarities regarding the entry into and conduct of each of the respective processes. While the processes are different, various "actors" assume similar roles in each process. For all of the processes, which actor is responsible for each of the following:

- (a) A decision on any application to commence an insolvency process;
- (b) A primary determination as to whether a debtor's proposal should be adopted;
- (c) Confirmation of the primary determination as to whether a debtor's proposal should be

adopted;

(d) For supervising the implementation of the insolvency process by the debtor.

The actors responsible for the various process are:-

- a) The COURTS on the report of the EXPERT are responsible for a decision on any application to commence an insolvency process
- b) The CREDITORS (Only whose debts have been admitted/ whose debt have been admitted on Interim basis on direction of courts/ Secured Creditors who have surrendered their securities) are responsible for primary determination as to whether a debtor's proposal should be adopted
- c) The COURTS are responsible for confirmation of the primary determination as to whether a debtor's proposal should be adopted;
- d) The TRUSTEE is responsible for supervising the implementation of the insolvency process by the debtor

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Question 2.3 [maximum 2 marks]

Under the UAE Bankruptcy Law, for a debtor, what is the key difference between the circumstances which could give rise to an application to commence Preventive Composition or an application to commence Bankruptcy (whether leading to Restructuring or Liquidation)?

The application for commencement of Preventive Composition can be filed by the DEBTOR Only or by the "Competent Controlling Body" of the Debtor. The Preventive Composition application can be filed by the Debtor only before he is compulsorily mandated to file for Bankruptcy, therefore we can say that the Preventive Composition Mechanism is a way out for the Debtor to avoid bankruptcy as he can file a sort of restructuring/revival plan which Prevents Bankruptcy at a stage when he is under stress but not on verge of bankruptcy.

Whereas the Debtor is compulsorily required to file for Bankruptcy if the Debtor is in default of its payment obligations for more than 30 consecutive business days.

Therefore we can say that Preventive Composition application is at the discretion of the Debtor whereas bankruptcy application is a **compulsion**.

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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 is not eligible to file an application for commencement of Preventive Composition. However the Creditor or group of creditors collectively if owing more than AED 1,00,000 may file an application for initiation of Bankruptcy of the Debtor, provided they have given a notice demanding the debtor to settle their dues and the debtor has failed to discharge the dues within 30 business days of that demand **notice**.

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

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Question 3.1 [maximum 5 marks]

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

UAE is a confederation of 7(Seven) Emirates and came into existence in December 1971. UAE is a small country (geographical land mass) with a population of less than 10 Million (of which 88% are expatriates). The UAE can be considered as a Fully Developed Capitalistic economy with Oil & Gas, Trade, Transportation & Logistics, Tourism, Realestate & financial services being the key industries.

To boost trade and commerce and to attract International Capital and talent, each emirate of UAE has created "Free Zones". Thereby there exists parallel economic ecosystem of "Mainland" and "free Zones". The legal system of both "Mainland" and "Free Zone" are different, and the "free zones" have their own courts and their own legal system.

More over the UAE laws have a criminal liability built-in on the Debtors/borrowers in case of a default by them.

The Insolvency Framework in UAE was undeveloped till 2016. This was primarily because of:-
(a) Parallel legal systems of "mainland" and "Free Zones" was used/abused creatively by the defaulters

(b) Due to the criminality built-in the laws of UAE and due to the fact that 88% of the population is expatriate, it is always an easy route for a defaulter to abscond and leave the country rather than resolve the default through laws and court process

(c) The fact that the "mainland" laws draw elements from the Islamic law (wherein charging/incidence of interest is not appreciated) created an emotional bias against the insolvency laws

The only provision indirectly related to insolvency was the Law no 18 of 1993 , relating to Commercial Transactions (The Commercial Transaction Law) governing bankruptcy by the traders. However the inadequacy an unpreparedness of the Insolvency regime came into limelight in 2009, when DUBAI WORLD (an investment company of Dubai Government) faced a possibility of default. This event gave impetus to establishing a proper insolvency regime in UAE.

Thereby by adoption of Federal Decree Law (no 9) of 2016 (further amended in 2019 and 2020) the Bankruptcy Law for commercial insolvencies was introduced and the Commercial Transaction Law was repealed. This was followed by adoption of Federal Decree law (no 19) of 2019 wherein Personal Bankruptcy laws were introduced for the persons who do not fall in the ambit of commercial persons. Thereby a consolidated regime of Insolvency was introduced wherein resolution mechanism like "Preventive Composition", "Restructuring" and "Liquidation" were provided for.

For the Financial Free Zones, the Insolvency Law DIFC Law No 1 of 2019 (DIFC Insolvency Law) was introduced wherein "Rehabilitation" mechanism were provided for.

An additional ecosystem of Insolvency Practitioners "Experts" was also developed.

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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.

The courts are involved in various steps in the Restructuring Process in the UAE Bankruptcy law. Stage by stage involvement is as below:-

Stage -1 (Commencement of Bankruptcy- Appointment of Expert/Rejection of application)

When an Application is filed under the provisions of the Federal Law no 9 of 2016 by a debtor or a creditor seeking initiation of Bankruptcy of the borrower, the court is required to appoint an "Expert" from the panel of experts to assess the financial condition of the debtor.

The court may also reject the application if the specified information is not provided by the applicant. It can seek further information/ join other parties to the proceedings/ make interim orders in respect of the debtors property.

Stage-2 (Commencement of Bankruptcy- Appointment of Trustee & Supervisor)

The Court will have to determine the application for initiation of bankruptcy within 5 days of the submission of the "report of the financial position" of the borrower by the "expert". On approving the initiation of the bankruptcy the courts shall appoint a "Trustee" to manage the bankruptcy of the debtor and also may appoint a "supervisor".

Stage-3 (Commencement of Bankruptcy- Other Reliefs/Appeals/permissions given/handled)

- a) All the information about the debtor available with the courts shall be shared by the courts with the "trustee"
- b) Secured creditors may seek permission from the courts to enforce their securities. Herein the court will have to satisfy itself that there was no collusion between the secured creditors and the debtor
- c) Substitution of the Trustee (on an application or out of its own volition) or Appointment of an Expert so as to ensure the proper handling of the bankruptcy process
- d) Determination of the Trustees fees and to authorise the payment of fees from the funds deposited by the debtor/creditor at time of filing the bankruptcy application.
- e) To accept application for release of funds from the Court Treasury in case the funds deposited by the debtor/creditor are not enough to pay for the trustees fees
- f) Extending the time line for the trustee to file the list of claims

Stage-4 (Process of finalizing claims/ rescission of contracts/ penalties etc)

- a) Disposing off the objections filed by the debtor/creditor to the list of claims submitted by the trustee.
- b) Admitting the claims on interim basis and thereafter determining the final list of creditors
- c) Court may suspend the interest and penalties payable to a creditor at the request of the trustee.
- d) Termination of lease , rescission of contracts , termination of employment contracts on application of the creditors/trustees

Stage -5 (Initiation of Restructuring)

- a) The court goes through the report submitted by the trustee, wherein the trustee has highlighted the possibility of restructuring the debtor. The court is required to review the report and confirm that the report takes into account of all the creditor claims
- b) Direct the trustee to convene a meeting of creditors by way of notice /advertisement
- c) Court to direct the trustee to prepare a restructuring scheme if it is satisfied that liquidation is not appropriate

Stage-6 (Process of Restructuring- Review of Restructuring Scheme)

- a) The court is required to review the proposed scheme of restructuring submitted by the trustee within 10 days of the submission of the same.
- b) Court may direct the trustee to vary the scheme and resubmit if it finds that the scheme so submitted does not take care of the interest of all the parties
- c) After the review of the scheme the court must direct the trustee to issue invitation to the creditors for their review and approval of the scheme
- d) The court may direct the formation of committees representing the classes of creditors and may give directions about the appointment or conduct of the representatives of those classes of creditors in the creditors meetings

Stage -7 (Approval/Rejection of the Restructuring Scheme)

- a) The scheme so approved by the creditors is put before the court for final approval and the court may either accept or reject the same. The courts determination is final.
- b) The court before accepting/rejecting the scheme will have to dispose of the various objections raised by creditors against the scheme
- c) The courts will have to be satisfied that as per the proposals in the restructuring scheme the creditors will receive atleast the amount they would have received if the assets of the debtor are liquidated
- d) The court may not approve a scheme that affects the priority of any secured creditor rights.
- e) The court may order the acceleration of payment dates of long term debts
- f) The courts will have to decide upon the scheme urgently, however in case the court rejects the scheme then the scheme is returned back to the trustee for amendment the same be returned back by trustee within 10 days.
- g) If even after the return , the scheme is not approved by the courts then the debtor is declared bankrupt and process of liquidation is initiated

Stage-8 (Implementation of the Scheme)

- a) The court is required to approve/reject any amendment (wholly/ Partially) to the scheme of restructuring as proposed by the trustee (after approval of the same by the creditors of the debtor)
- b) If any asset of the debtor is essential for the operations of the debtor, the court may direct to stay the sale of such an asset without its permission
- c) To allow the debtor to take new finance with priority over the existing debt and to allow that finance to be secured against the unencumbered assets
- d) To direct the secured creditor to accept the alternate security being offered to the secured creditor

Stage-9 (Completion and Termination of the Restructuring)

- a) On completion of the restructuring the courts will issue an order confirming the completion of the implementation of the scheme
- b) The court will take measures to seize the properties of debtor in case criminal proceedings for specified dishonesty and crimes are initiated against the debtor
- c) The court may terminate a restructuring scheme and commence liquidation of debtors assets on its own initiative or on application of creditor or if the schemes implementation is impossible.

Commented [DJ14]: 8

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.

UAE bankruptcy law requires high degree of court involvement in a restructuring process and in my opinion although the involvement is huge , but it is necessary and appropriate given the present stature of evolution of UAE insolvency laws.

The Insolvency laws in UAE have been legislated in 2016 only, the number of insolvency cases in UAE are also limited , therefore the opportunities to evolve and develop the laws are have also been scarce. The Insolvency ecosystem of Experts/Trustees is also not fully developed and add to it the fact that there are 2 parallel judicial system.

These factors throws up a possibility that a fair conduct/implementation of the restructuring process may not be possible and therefore the interests of individual creditors may be compromised and rights of some stakeholders may be hampered.

The only way out to protect the rights and claims of the creditors is an active involvement of the courts at each and every stage of the restructuring process (because the rights and claims may be compromised at any step/stage of the process) and this will surely lead to a high degree of involvement of the courts in the process.

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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 sequence of steps in the Preventive Composition and timeline is as under:-

- Step 1- Application of Preventive Composition by the Debtor – Day 1 (ONE)
- Step 2- Appointment of Expert by the Courts- Day 6 (FIVE days after Step-1)
- Step 3- Submission of Report by the Expert about the debtor meeting the criteria – Day 26 (20 days from Step-2)
- Step 4- Appointment of Trustee and acceptance of the Preventive Composition Procedure- Day 31 (5 days from Step-3)

Step 5- Publication of Summary of courts decision to commence preventive composition by the trustee- Day 36 (5 days from Step-4)
Step 6- Time line for filing the claims by the creditors – Day 56 (20 days from Step-5)
Step 7- Lodging the list of creditors with the courts by the trustee- Day 66 (10 days from Step-6)
Step 8- Acceptance of the final list of creditors by the courts -Day 76(10 days from Step-7)
Step 9- Submission of Preventive Composition Scheme to the Courts- Day 81 (45 days from Step-5)
Step 10- Confirmation by the courts that the Scheme takes care of the interest of all the stakeholders – Day 91 (10 days from Step-9)
Step 11 – Issue of invitation by the Trustee to the creditors – Day 96 (5 days from Step-10)
Step 12- Meeting of the creditors to approve the scheme – Day 111 (15 days from Step-11)
Step 13- Submission of approved draft scheme before the court by the Trustee – Day 114 (3 days from Step 12)
Step 14- Final approval of the scheme by the courts – Day 124 (10 days from Step-13)

Commented [DJ17]: Your answer provides a list and not a brief outline of the steps.
4

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.

Once the creditors reject the Preventive Composition Scheme, the court will order a liquidation of the debtor and can appoint any expert/trustee previously appointed during the preventive composition procedure.

Once the trustee has been appointed, he published the order of liquidation (bankruptcy) within 3 days of the court order. The creditors are required to submit their claims within 10 days of the public announcement,

The trustee is mandated to liquidate all the assets of the debtor under the supervision of the courts and submit a monthly progress report to the court. The trustee may seek direction from the courts to allow the debtor to sell the assets in a period of 6 months. The trustee is required to notify the court /supervisors/debtor about the proposal for purchase of the assets of the debtor.

In the present case, out of the proceeds of sale of the restaurant site firstly the trustee's cost of sale, thereafter the secured creditors (the shareholders holding mortgage of the balance payable amount, the restaurant site being subject to security in favour of the shareholders) shall be paid off.

The balance proceeds from sale of restaurant site added with sale other assets shall be used to thereafter pay (in order of priority) (i) Courts Cost (ii) Trustees Cost (iii) Unpaid wages and salary upto a maximum of 3 months, (iv) government dues, (v) operational creditors. Any balance after the above payments shall be returned to the debtor to be paid to the shareholders of the debtor (in their capacity as shareholders and not mortgagee).

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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 of BNE Limited ,if they wish to see the BNE Ltd liquidated may apply for initiation of a process called "Creditors Voluntary Winding Up" with the DIFC.
In fact the process of winding up can be initiated by 2 ways (i) Voluntary Winding UP by resolution of company's shareholders (ii) Compulsory Winding UP (by courts order).

In creditors Voluntary Winding up the process commences on application by shareholders and when the LIQUIDATOR is appointed the powers of directors ceases and the control is retained by the LIQUIDATOR. The liquidator shall be nominated by the Creditors. The Committee may also appoint a LIQUIDATION COMMITTEE. It is liquidator/liquidation committee which is responsible for the winding up of BNE Ltd.

In the liquidation process the creditors will have to submit their claims to the Liquidator in writing with "Proof of Debt". The claims must be submitted with applicable supporting documents.

The proof of debt must include the NETTING OFF between the Creditor and the Debtor. DIFC has a specific legislation addressing NETTING under DIFC law, DIFC law no 2 of 2104 (netting law). This netting law over-rides all the insolvency laws / regulations .

Once the claims have been received by the liquidator, he may ask for further information and thereafter accept or reject (partially or wholly) the claims submitted by the creditor. The creditor if is dis-satisfied by the decision of the liquidator, may approach the courts with an appeal against the decision of the liquidator.

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*** End of Assessment ***