



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

Commented [DJ1]: TOTAL: 39 OUT OF 50

QUESTION 1 (multiple-choice questions) [10 marks in total]

Commented [DJ2]: 8 out of 10

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.

(b) The judgments and orders of the Courts of the DIFC are enforceable elsewhere in Dubai only through the Dubai Courts.

Commented [DJ3]: b

(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.

Commented [DJ4]: a

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]

Commented [DJ5]: 5 out of 10

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 security registry is different in different emirates of the UAE.]

Commented [DJ6]: 1
Differentiation between "mainland UAE and Financial Free Zones required for second mark.

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) Court
- (B) Expert
- (C) Trustee
- (D) Trustee

Commented [DJ7]: 2
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)?

[]

Commented [DJ8]: 0
Debtors have an option and are free to choose if it wishes to commence Preventive Restructuring. Debtor must initiate bankruptcy when in default.

Question 2.4 [maximum 2 marks]

What is the key difference for a creditor regarding the commencement of Preventive Composition or Bankruptcy of a debtor?

[The key difference regarding the commencement of Preventive Composition or Bankruptcy of a debtor is relation to the eligibility of application.

In Preventive Composition, only the debtor can apply to the court for the appointment of a composition while in bankruptcy both creditor and debtor can apply for the commencement of the Bankruptcy of a debtor.

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

Commented [DJ10]: 12 out of 15

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 insolvency regime in the UAE mainland was undeveloped until 2016, There were provisions in Law No 18 of 1993 relating to commercial transactions governing a bankruptcy by traders. The need for the proper insolvency regime was realized in 2009 when a investment company owned by the Dubai Government faced the possibility of defaulting its debts. This incident created an international concern. Subsequently, the adoption of Federal Decree Law (No 9) relating to bankruptcy happened, which has been amended in 2019 and 2020 (the Bankruptcy Law). The Bankruptcy Law repealed the previous laws and framed a consolidated insolvency regime.

Bankruptcy law applies to all commercial entities and individuals carrying on commercial activities (in respect of the individuals commercial affairs), except for state-owned companies, unless they have opted into the application of the law.

Since the Bankruptcy Law is in effect since 2016, there have been only a handful of applications decided under it. It is too soon to say how the law has been received till now but it can surely be said that the availability of an insolvency process has ensured that any negotiations between debtors and creditors regarding payment difficulties have taken place in a environment of greater legal certainty than there was before 2016.

Commented [DJ11]: 5

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.

[Restructuring is an alternative to liquidation and it can be initiated by either a debtor or a creditor and it is dealt with as part of the bankruptcy procedure.

As per Article 77, when a bankruptcy application is made, the court is required to appoint an expert from the panel of experts to assess the financial condition of the debtor. The court may reject any application if the specified information is not provided (Article 79). If the court is satisfied that the necessary conditions have been met, an order will be made whereby the bankruptcy procedure commences at that point. Now if the court decides to accept the commencement of the bankruptcy procedure, the court is required to appoint a trustee. The court shall determine trustee fees and shall authorise payment from the funds deposited by the debtor when making the application.

The court is required to review the report to confirm that the report takes account of all creditor claims which the trustee is required to provide all creditors with a copy of the report following the review by the court.

As per article 99, Court has the power to decide that the debtor should be restructured.

As per article 112, if the scheme is approved by the court, the trustee is required to register the decision in the debtor's governmental corporate register and publish a summary of the scheme.

In the restructuring procedure the court may, at the request of the trustee or the debtor, allow the debtor to take new finance with priority over existing debts and to allow that finance to be secured against unencumbered assets.

If the secured creditor rejects the security, the court may compel the creditor to accept it if the court finds that the proposed alternative security is of equal value to the existing security.

The restructuring is completed following the discharge of the obligations provided for in the scheme. Upon that occurring, the court is to make an order confirming the complete implementation of the scheme, which is to be advertised (Article 115)

The court draws the power from Section 123 to terminate a restructuring and commence liquidation of the debtor's assets on its own initiative or on the application of a creditor, or if the scheme's implementation is [impossible.]

Commented [DJ12]: 6
Some details missing.

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.

[For example, the court has the power to decide the degree of priority if there are many secured creditors for the same asset. Such level of involvement must be avoided and the duty of the court must be limited to accept, reject and monitor **only**.]

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

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.

[Preventive Composition is a debtor-led, court-supervised procedure available to a debtor who is i) in financial difficulties but not yet insolvent or ii) has been insolvent (under either of the tests mentioned above) for a period of less than 30 consecutive business days. The procedure aims to facilitate the rescue of a business by helping a debtor reach a settlement with its creditors.

Step 1 – Application

An application for Preventive Composition can be made only by the debtor or ordered by the court. The composition application must include detailed information on the debtor, including an overview of its financial situation, assets, employees, creditors and debtors, copies of financial books and statements, proposals for preventive composition and selection of a trustee to carry out the procedure.

Step 2 – Appointment of expert

Upon receipt of the application, the court is required to appoint an expert. A court-appointed expert will then prepare a report on the financial position of the debtor.

Step 3 – Appointment of trustee

If the court accepts the debtor's application, the debtor will be placed under the supervision of a court-appointed expert – or trustee – and all bankruptcy proceedings, other claims and enforcement actions relating to the debtor are automatically stayed.

Commented [DJ13]: You have not answered the question posed.
1

Commented [DJ14]: 14 out of 15

Step 4 – Notification of commencement

Within five business days of the trustee's appointment, the trustee is required to publish a summary of the court's decision to commence the preventive composition procedure.

Step 5 – Preventive Composition Scheme

The preventive composition scheme must be submitted to the court within 45 business days from the date of publication of the decision initiating the preventive composition procedure.

Step 6 – Creditor Approval

Within 10 business days from the days of submission of the scheme, the court is required to review the draft to confirm that it takes account of the interests of all interested parties.

Step 7 – Court Approval

The court is required to give any decision approving or rejecting the scheme.

Step 8 – Implementation of preventive composition

Within seven days of approval of the scheme by the court, the trustee is required to register the court's decision confirming the approval in the debtor's governmental corporate register and publish a summary of the scheme.

Altogether, it takes around 260 days to complete the entire **procedure**.

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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.

[Following the liquidation order, the appointed trustee must advertise the trustee's appointment within three business days. Creditors are required to make their claims with the trustee within 10 business days from the date of the judgement. Claims lodged later are not admitted unless the court accepts the reason for any failure to claim. Following the bankruptcy of the debtor, the trustee is required to liquidate all of the debtor's property by public auction, under the supervision of the court. The proceeds of sale of the liquidation of the debtor's assets are distributed by the trustee to creditors. The trustee may pay claims in the order for in the law. Following the liquidation of the debtor's assets, the court must make an order confirming the conclusion of the liquidation procedure. The trustee is required to return all documents to the debtor following completion of the liquidation.

Commented [DJ16]: This is not correct

Any expert or trustee previously appointed in relation to any other procedure could be appointed by Court to undertake the **liquidation**.

Commented [DJ17]: 4

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?

[Any DIFC incorporated company can be wound up under the DIFC Insolvency law, as can a DIFC registered branch of any foreign country. Here BNE Limited is incorporated as a DIFC company so DIFC regulation apply.

The creditors can opt for winding up. An application to the court for the winding up of a company may be brought by the company. A creditor with a debt of at least USD 2000 may apply to the court for an order winding up of the company.

Under the DIFC Insolvency Regulations, it is provided that a creditor wishing to recover a debt in the liquidation of a company being wound up by the court must submit a claim for the amount in writing to the liquidator. The creditor must set out in writing the claimed amount and provide supporting documents to allow the liquidator to verify the claim. Upon receipt of a proof of debt, the liquidator may then admit or reject based on the information provided. If the creditor is dissatisfied with the liquidator's decision regarding a proof, the creditor may then appeal against the decision within 21 days of receiving notice of that decision. After the payment of the expenses of the winding up, preferential creditors claims are paid in priority to unsecured claims and in priority to claims secured by a security interest over all .]

Commented [DJ18]: 5

*** End of Assessment ***