



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.

Commented [DJ1]: TOTAL: 45 OUT OF 50
Well Done!

Commented [DJ2]: 9 out of 10

Commented [DJ3]: c

(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]

Commented [DJ4]: 8 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?

Each emirate maintains its own land registration system – as a result the registration of interests can be subject to slightly different laws in each emirate. In the mainland, a secured creditor may only enforce their right to sell the mortgaged property by application to the court. In the free zones, the creditor may enter into possession by giving 60 days' notice to relevant parties, without involving the court.

Commented [DJ5]: 2

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 court
 - b) A creditors' meeting

- c) The court
- d) The trustee

Commented [DJ6]: 4

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 is available to the debtor (not creditors) as an option, and "stops the clock" on the time limit for a mandatory application for bankruptcy proceedings. An application to commence bankruptcy may be made by a creditor in addition to the debtor.

Commented [DJ7]: 2

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 is that the creditor has a role in the commencement of a preventive composition (as the creditors' meeting must provide preliminary approval) while the creditor has no similar role in bankruptcy.

Commented [DJ8]: 0

This answer demonstrates some confusion. Creditors have no right to compel a debtor to enter Preventive Composition. They may apply to the court to initiate bankruptcy if owed more than AED 100,000

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

Commented [DJ9]: 13 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.

Prior to 2016, there was little in the way of insolvency law in the UAE. Debt enforcement overlapped with the criminal process (in particular, it is a crime to dishonor a cheque). As a result, there was a very strong incentive for debtors in financial trouble (often, due to the nature of the UAE's population, expatriates from other countries) to simply leave the country to avoid criminal sanction.

In 2009, Dubai World, an investment company owned by the Dubai Government, came close to defaulting on its debts. This created a strong impetus to develop a properly functioning insolvency regime. Out of this process came Federal Decree Law (No 9) of 2016 (the "Bankruptcy Law"). The Bankruptcy Law applies to commercial debtors (as opposed to consumer debtors) and introduced a number of court-supervised processes such as preventive compositions and bankruptcy. At present, although the new law has been welcomed, there are insufficient statistics available to properly analyse the extent of its impact, although anecdotally it seems only a small number of processes have been conducted in practice.

Commented [DJ10]: 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.

Once a bankruptcy application has been made, the court must appoint an expert to assess the debtor's financial condition, per Article 76. This expert's role is to give their opinion on the possibility of a successful restructuring of the debtor business. The court may then appoint a trustee. Throughout the process, the court retains a supervisory role.

Under Art. 96, upon appointment, the trustee must produce a report on the debtor's business; this is required to address the possibility of restructuring the business. The report is then submitted to the court, which is required to review it. If the court considers that restructuring is viable, and the debtor confirms they are willing to continue to carry on business, then it orders the trustee to prepare a restructuring scheme (Art. 99). The court retains a supervisory role, and is required to review the report to determine whether it properly observes all parties' interests; it may request revisions if it considers it does not do so (Art. 103).

Once the scheme has received preliminary approval from the creditors' committee, the court has the final say on whether it ought to be approved. This can take into account creditors' objections. The court's decision on this is final (Art. 108). Once the scheme is approved, the trustee retains responsibility for supervising the implementation; however, the court must approve certain actions, such as any amendment to the scheme, or the decision not to sell assets which are essential to the debtor's business. If the debtor wishes to take out new finance, this must be approved by the court.

On the completion of the scheme, the court must make an order confirming that it has been completely implemented. Otherwise, the court may terminate a restructuring and commence a liquidation instead; this may be done either of its own motion or upon the application of a creditor, or if it appears that the scheme will be impossible to implement (Art. 123).

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.

The high level of court involvement does, in certain cases, allow the court to protect the rights of individual creditors and other stakeholders in the insolvency process. This can be seen in circumstances such as an aggrieved creditor's right to object to approval of a restructuring scheme. This allows the aggrieved party to be heard and to invoke the protection of the court, while still allowing the court the discretion to refuse the objection if it considers it to be overall in the best interests of all that the restructuring proceed. That being said, the high level of court involvement does risk creating a cumbersome system – for example, the court is required to review the restructuring scheme, then re-approve it after the creditors' committee has done so. This would risk creating a backlog of cases were the procedure to become more popular, as the court's involvement would create a bottleneck.

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.

Commented [DJ11]: This is a very condensed version of the court's extensive involvement in proceedings.
6

Commented [DJ12]: 2

Commented [DJ13]: 15 out of 15

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 first step in the process is the making of an application to the court. Once this has been made, the next step is for the court to appoint an expert to report on the debtor's financial position; the latest this may be produced is 20 business days from the date the expert is instructed. Once the report is delivered, the court must decide on the application within five business days.

Assuming the court approves the application, the next step is the appointment of a trustee. The trustee must advertise their appointment within five business days of their appointment, and must notify creditors. Creditors have 20 business days in which to lodge claims, with supporting evidence (Art. 35). The trustee must then lodge the list of creditors at court, within 10 business days of the expiry of the notice period.

Within 45 business days of the date of the publication of the decision initiating the preventive composition, the preventive composition scheme must be submitted to the court for approval. The court then has 10 business days in which to review the draft; if satisfied, the trustee will be given five business days in which to invite creditors to attend a creditors' meeting. The meeting must be held within 15 business days of the invitation being sent out. Assuming the meeting approves the scheme, it must then be put to the court within three business days for final approval. If granted, the trustee then has seven business days in which to register the decision and publish a summary of the [scheme](#).

Commented [DJ14]: 5

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.

On the assumption that the court has made an order for liquidation, the first step is to appoint a trustee. The trustee may be nominated by the debtor, or may be a person listed among the

panel of experts held by the Financial Restructuring Committee. They can be a natural or legal person, but must not be (among other things) a creditor of the debtor, or a person who was a partner, employee, auditor or agent of the debtor within the preceding two years.

All debts owed by the debtor fall due immediately upon bankruptcy, albeit future debts may be subject to an adjustment for interest. As such, the shareholder's debt arising from the purchase of the restaurant site would immediately fall due despite nominally not being due until 2025. All creditors must lodge their claims with the trustee within 10 business days of the date of the judgment.

The secured creditor (whose debt has now fallen due) may enforce his security, but must first apply to the court for permission to do so. The court must determine such an application within 10 working days of the application being made.

If the debtor has any assets other than the one which is secured, the trustee must liquidate it all at a public auction under court supervision. The proceeds are distributed to creditors.

Commented [DJ15]: 5

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?

If BNE Ltd's creditors wish to wind it up they must apply to the DIFC court. They can establish that the company is unable to pay its debts by making a demand for a sum of more than \$2,000 – if this remains unsatisfied for a period of three weeks, then the company is deemed unable to pay its debts. Alternatively, they can establish that the company's assets are exceeded by its liabilities or show that an execution process has been returned unsatisfied. Once this has been done the creditors (including prospective or contingent creditors) can present a petition to the court.

If the court grants the application, it will appoint a liquidator, who must be an insolvency practitioner. The liquidator is responsible for winding up the affairs of the company and gathering, realising and distributing the assets of the company. This includes adjudicating upon claims.

A creditor who wishes to claim in the liquidation must submit a claim in writing to the liquidator, along with supporting evidence which allows the liquidator to verify the claim and ascertain the level of debt, including any set-off between the creditor and the debtor. The liquidator then either admits or rejects (including in whole or in part) the claim. Within 21 days of notice of that decision, the creditor may appeal to the court; this also allows for a member of the company or another creditor to challenge creditor claims.

Commented [DJ16]: 5

*** End of Assessment ***