



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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Well Done!

Commented [DJ2]: 6 out of 10

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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.

Commented [DJ5]: 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.

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.

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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?

- Each Emirate owns its own land registration system. The registries are kept separate.
- Unlike Mainland UAE, under the DIFC system, a creditor can sell secured assets after 60 days notice for payment without leave of the court. In Mainland UAE, court sanction is required for the sale of all secured assets by a creditor.
- Unlike financial free zones, In Mainland UAE, the security interest over a property is not taken on by the purchaser of said property, provided that they were unaware of the security interest prior to the execution of the sale agreement.

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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 court is required to make a decision on application to commence preventive composition, after considering the court appointed expert's report.
- b) The primary determination on whether a debtors' proposal should be adopted is carried out by the court appointed expert, following the debtor company's application for preventive composition
- c) Creditors of the debtor company are then required to provide confirmation of the proposal on whether it should be adopted
- d) The trustee, who is appointed by the court, following acceptance of preventive composition is tasked with overseeing the implementation of the of the plan, being carried out by the debtor company, who will continue to run the company during this time.

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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)?

- A debtor under UAE Bankruptcy law must file for bankruptcy rather than preventive composition if they are of the opinion that the company is unable to pay its debts and will be unable to financially recover from the position they find themselves in.
- A debtor company may find themselves liable if they apply for preventive composition where there was no real prospect of restructuring of debt, or formulating a plan to continue to trade in the future.

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 Greater clarity of expression would have ensured 2 marks.

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?

- Under Article 6 of the Law, a creditor is not permitted to commence preventive composition proceedings against a debtor. This process must be commenced by the debtor company only.
- A creditor is required to commence bankruptcy proceedings against a debtor for non-payment of debts due if this payment obligation has not been settled for at least 30 consecutive days.

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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.

- Prior to 2016, the bankruptcy Law in Mainland UAE was undeveloped.

- The only provisions that made reference to bankruptcy were contained in the Commercial Transactions Law which governed bankruptcy proceedings for traders. This came from Law no 18 of 1993.
- The lack of bankruptcy Law in UAE became apparent with Dubai World facing bankruptcy in 2009. Dubai World would have been the largest company to default in Mainland UAE for a number of years and really highlighted the need for a legislative framework to be introduced for dealing with bankruptcy proceedings in Mainland UAE.
- As a result, the Federal Law decree was introduced in 2016 (Federal Law Decree No.9), which was amended in 2019 and 2020 and is now the Bankruptcy Law.
- The UAE now has Bankruptcy Law and Personal Bankruptcy Law as its foundation for dealing with all insolvency scenarios within its borders.
- While this new legislation has been largely well received, it has been largely untested with only a small number of applications being taken out using mechanisms prescribed by these Laws.
- These Bankruptcy Laws only apply to entities incorporated in Mainland UAE. The DIFC and ADGM jurisdictions operate their own court systems and do not adopt the Insolvency Laws as Mainland UAE.
- The Bankruptcy Law will also apply to entities where its COMI is in Mainland UAE or if an entity carries out substantial business, or has substantial assets in that jurisdiction.

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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 court is required to be engaged in restructuring in a bankruptcy process of a debtor in the following circumstances:
- The court initially receives the bankruptcy application, either from the debtor company, or from a creditor of the company who has not received payment of a debt for over 30 consecutive days.
- Subsequent to the application being made, the court is then required to appoint an expert from its panel of experts to assess the financial position of the company under Article 77 of the Law.
- The court is then required to determine the commencement of the bankruptcy procedure within 5 business days of the application being made, or from 5 business days from receipt of the expert's report under Article 109 of the Law.
- The court may reject the bankruptcy application if the expert has not been provided with the requisite information from the debtor company in order to form an opinion.
- When the court approves the commencement of the bankruptcy procedure, they are required to appoint a trustee to oversee the process. This will be a person nominated on the application, or be appointed from the Financial Restructuring Committee.
- The court is also responsible for determining the trustee's fees during the process and will authorise funds to be paid from the debtor company's assets to settle these fees under Article 117 of the Law.
- Under Article 118, if saw fit, the court may also appoint one or more supervisors to oversee the restructuring process if they see fit to do so.
- The court is required to provide any information it holds on the company to the trustee on commencement of the bankruptcy under Article 199.
- The trustee will make an adjudication of the creditors that should be admitted into the estate as part of proceedings. This list of creditors is then sent to the court. It is the

court that then makes the final adjudication on the creditors list that should be admitted for the purposes of restructuring.

- An initial report is then required to be complete by the trustee where the court will make an initial determination, where they will then instruct the trustee to compile a restructuring scheme.
- The trustee will then compile a report on a possible restructuring (restructuring scheme) within 3 months of their appointment. This must be reviewed by the court to determine the viability of a restructuring under Article 139 of the Law.
- Once submitted, the court is required to inform the trustee to convene a meeting a creditor to discuss the scheme plan under Article 143 of the Law
- If a requisite majority approves the scheme, details relating to same are then submitted to the court. The court will then make a final decision on whether to approve the scheme plan or not.
- Upon finalisation of the scheme, the court is required to make an order confirming the completion of the scheme which is then advertised, as prescribed under Article 158 of the Law.

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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.

- The court provides for an independent third party to adjudicate on whether a proposed restructuring is viable, which is the most appropriate way for doing so.
- The level of court involvement during this process is appropriate to ensure all steps taken during the process are transparent, ensuring the rights of all creditors are upheld.
- Although this court involvement may be slow, this is to ensure all facets of the proposal are transparent, and free from any undue bias, either from the debtor company, or a debtor nominated trustee.
- Final adjudication of creditors' claims decided by the court ensures all creditors are fairly examined, regardless of the previous relationship with the company
- The high level of court oversight ensures there is little room for debtor companies and trustees to collude, which may leave certain creditors in a more advantageous position following the implementation of a restructuring.

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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.

- A debtor must make an application to the court to appoint a preventive composition trustee. On application, an expert will then be appointed who is required to produce a report within 20 days of being instructed to do so.
- The court then has 5 business days to decide on the application, on whether or not to accept upon receipt of the report.
- Within 5 business days, the trustee is required to publish a summary of the court's decision on whether to enter into preventive composition.
- The trustee then provides creditors 20 business days to lodge claims.
- The trustee then submits the creditors' claims to the court within 10 business days of completion.
- A preventive composition is then required to be submitted to the court, upon publication of the commencement of the plan within 45 days.
- The court shall review the protective composition plan within 10 days on submission to the court.
- If approved and the decision is returned to the trustee, the trustee has 5 business days to call a creditors meeting for approval into the scheme where the advertisement should also be submitted to newspapers.
- The meeting shall be held within 15 days of the advertisement.
- Within 3 business days following the meeting, the trustee shall submit the draft composition plan to the court if approved by creditors where it should be ruled urgently by the court.
- Within 7 business days of the court's ruling, the trustee shall register the preventive composition plan in the commercial or professional register.

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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 creditors rejecting the proposed preventive composition, it seems BNE LLC will apply to enter into bankruptcy.
- There were provisions allowed for in the Bankruptcy Law Amendment decree for entities effected by the Covid-19 pandemic between April 2020 and July 2021 where 40-day moratorium on debts due would be implemented to allow for a restructuring of their debt. BNE would have been in line to use the procedure but this law is no longer in place, and BNE had already attempted to do so using preventive composition.

- On application, BNE will have to provide details of the company's financial position to the court and nominate a trustee to oversee the bankruptcy procedures.
- The court will appoint a trustee who will rule on whether it is appropriate to place BNE into bankruptcy proceedings.
- On commencement, the directors may no longer manage its assets or pay any creditors.
- The court in appointing a trustee will either accept the suggestion of the debtor company, or appoint one enrolled in the panel of experts appointed by the Financial Restructuring Committee.
- The trustee can be a natural person or a legal person, with up to three trustees allowable to be appointed as long as none of the trustees are a creditor, a relative or spouse of the debtor, a person who has been convicted of dishonesty offences or any person who was deemed to have a commercial relationship with debtors in the preceding two years.

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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 BNE liquidation process would be governed under DIFC insolvency law which is underpinned by the common law principle.
- A creditor of BNE may make an application to the court in DIFC for the winding up on the company, if they hold a debt of more than USD 2,000.
- Either a creditor, the company itself, the directors of BNE, any prospective creditor or the DIFC authority may make an application to court have BNE enter liquidation proceedings. The DIFC authority may only do so if they feel it would be in the best interest of DIFC and the court felt that it was just and equitable to do so.
- If an order is made by the court, it is the court who would then appoint a liquidator. This liquidator may choose to continue as liquidator, or convene a meeting of creditors and contributories to choose a liquidator. If there is a difference of opinion relating to the individual being appointed as liquidator, the creditors choice will usually be appointed.
- In a winding up, creditors are required to submit a proof of debt to the liquidator, outlining the basis for them with supporting documentation.
- Upon receipt of the proof, the liquidator may require further information in order to adjudicate which the creditor is required to provide. The liquidator will then either accept or reject the claim. On rejection, the creditors have 21 days to make an application to the court to appeal the decision.

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*** End of Assessment ***