



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).
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6. The final submission date for this assessment is **31 July 2022**. The assessment submission portal will close at **23:00 (11 pm) BST (GMT +1) on 31 July 2022**. No submissions can be made after the portal has closed and no further uploading of documents will be allowed, no matter the circumstances.
7. Prior to being populated with your answers, this assessment consists of **8 pages**.

ANSWER ALL THE QUESTIONS

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

Questions 1.1. – 1.10. are multiple-choice questions designed to assess your ability to think critically about the subject. Please read each question carefully before reading the answer options. Be aware that some questions may seem to have more than one right answer, but you are to look for the one that makes the most sense and is the most correct. When you have a clear idea of the question, find your answer and **mark your selection on the answer sheet by highlighting the relevant paragraph in yellow**. Select only **ONE** answer. Candidates who select more than one answer will receive no mark for that specific question.

Question 1.1

The **most significant barrier**, historically, to the development of a culture of distressed business rescue in the UAE has been:

- (a) The failure of the responsible authorities to enact laws which would encourage a business rescue culture.
- (b) The low rate of business failure in the UAE.
- (c) The owners of failed businesses are liable as a matter of criminal law for the failure of their business.
- (d) There could be criminal law consequences for business owners arising from the security agreements which a business might have with its creditors.

Question 1.2

What is the **principal difference** between the "mainland" UAE Bankruptcy Law and the insolvency laws of the two financial centres (the DIFC and the ADGM)?

- (a) The insolvency laws of the financial centres govern the insolvency of financial service businesses only, while the Bankruptcy Law governs the insolvency all other businesses.
- (b) The insolvency laws of the financial centres have no application and cannot be enforced in the UAE "mainland" (that is, outside of the financial centres), while the Bankruptcy Law is the only applicable law governing insolvency in the UAE "mainland".
- (c) The Bankruptcy Law drew on the experiences of a number of jurisdictions, while the insolvency laws of the financial centres are based on the insolvency laws of one other country.
- (d) The Bankruptcy Law incorporates substantial elements of Islamic law, while the insolvency laws of the financial centres are based on the common law.

Question 1.3

Which statement **correctly describes** the relationship between the Courts of the DIFC and the Courts elsewhere in the UAE?

- (a) The judgments and orders of the Courts of the DIFC are not enforceable outside of the DIFC.

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

(c) The judgments and orders of the Courts of the DIFC are enforceable elsewhere in Dubai only after recognition for enforcement by the Joint Judicial Committee.

(d) The judgments and orders of the Courts of the DIFC are not capable of enforcement outside of Dubai.

Question 1.4

As regards security in Mainland UAE a secured creditor's rights, both in relation to real and personal property security, are not substantially affected by any formal insolvency process; the secured creditor can generally enforce its rights notwithstanding the debtor's insolvency. Is this statement **True or False**?

(a) True.

(b) False.

Question 1.5

Which statement **is correct** in relation to the operation of security interests for both real and personal property in the DIFC?

(a) The law regulating security interests in land and personal property in the DIFC is based on Australian law.

(b) A mortgagee of land in the DIFC requires a court order to allow it to repossess land subject to a mortgage.

(c) The regulating security interests in land and personal property in the DIFC is based on English common law.

(d) There are separate registers in which security interests in both land and personal property in the DIFC can be registered.

Question 1.6

Which of the following statements is **incorrect** in relation to creditor rights following the Court's decision to commence preventive composition under the UAE Bankruptcy Law up until the approval of the scheme?

(a) All legal claims and proceedings and any judicial enforcement procedures against the debtor are suspended, unless otherwise decided by the Court.

(b) The commencement of preventive composition procedures will also suspend any criminal proceedings brought in relation to a dishonoured cheque, including against the signatory of the cheque.

(c) Creditors may not bring or pursue claims against persons jointly liable with the debtor or any guarantors of the debtor's debts.

(d) Secured creditors may enforce their securities provided they have obtained Court permission to do so.

Question 1.7

Which of the following **is not** a consequence or possible outcome of the commencement of Preventive Composition?

- (a) Interest on debts owed by the debtor stops accruing on the date of commencement of Preventive Composition.
- (b) The debtor can borrow further money during the period of preventive composition, with the Court's permission.
- (c) The debtor is not allowed to change its ownership in any way.
- (d) The Court can order the rescission of effective contract to which the debtor is a party.

Question 1.8

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

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

Question 1.9

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

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

Question 1.10

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

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

QUESTION 2 (direct questions) [10 marks]

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Question 2.1 [maximum 2 marks]

What is the key point of distinction regarding the registration of real property interests, including mortgages, in the different emirates of the UAE? What is the key difference between the sale of mortgaged real property following a debtor default if that real property is in a financial free zone or if the real property is in "mainland" UAE?

[Type your answer here]

Registration of real property interests including mortgages in mainland UAE requires the security holder to exercise the right to sell the mortgaged property through the courts in the case of mortgaged immovable property, and Federal Law No 4 of 2020 regarding mortgaging of movable property, grants the right of creditors to enforce their security without court orders in some cases.¹

In a financial free zone, DIFC, has a separate register of ownership and other interests in land and other charges. In the event of non-payment or default by a debtor, a creditor holding the mortgage over the debtor's land can enter into possession of the land by providing 60 days' notice to certain relevant parties and without the need for a court order.²

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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:

¹ Gambrell, Iremonger, Somekh & Clamon, Foundation Certificate in Insolvency Law Module 7E – Guidance Text – United Arab Emirates 2021/2022 ("Guidance Text") 5.1 page 9

² Guidance Text 5.2 page 10

- (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.

[Type your answer here]

- (a) The Debtor in the case of Preventive Composition; the Debtor Company in the case of a Rehabilitation³
- (b) The Creditors⁴
- (c) The Court⁵
- (d) The Trustee in the case of Preventive Composition; the Rehabilitation Nominee (an Insolvency Practitioner) in the case of a Rehabilitation⁶.

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a)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)?

[Type your answer here]

There is only one mechanism available for entering Preventive Composition, which is under article 6 of the Bankruptcy Law, which is a court-supervised mechanism prescribed and only the debtor can apply to the court for the appointment of a composition trustee by the court. A Preventive Composition terminates the debtor's obligation to initiate bankruptcy proceedings. A Preventive Composition will be rejected by a court if the debtor is subject to liquidation proceedings; the debtor does not provide information or funding required; the debtor acts in bad faith or is abusing court procedures by making an application; there had been a final judgement in relation to the dishonesty against the debtor; the procedure is evidently inappropriate for the debtor; or if the court decides to initiate the bankruptcy procedure under Bankruptcy Law.⁷

Bankruptcy is preceded by an application to the court, by either a debtor or a creditor to initiate bankruptcy proceedings. Bankruptcy proceedings are triggered by either the debtor being in default of its payment obligations for 30 consecutive business days; a creditor or a group of creditors collectively owed more than AED 100,000 may apply to court to initiate bankruptcy procedures if it has given notice requiring the debtor to settle the debt and the debtor failed to do so within 30 business days of such notification.⁸

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³ Guidance Text 6.4.1 page 14; 6.4.2 page 22

⁴ Guidance Text 6.4.1.5 page 19

⁵ Guidance Text 6.4.1.6 page 20

⁶ Guidance Text 6.4.1.7 page 20; 6.4.2 page 22

⁷ Guidance Text 6.4.1 page 14

⁸ Guidance Text 6.4.5.1 page 25

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?

[Type your answer here]

A creditor cannot initiate a Preventive Composition, only a debtor can do so, however a creditor can initiate a Bankruptcy procedure. Upon approval of a Preventive composition, all legal proceedings against the debtor is suspended for 10 months and all criminal proceedings against a debtor in relation to a dishonoured cheque are suspended.⁹ Accordingly the creditor's legal proceedings against the debtor are suspended.

In Bankruptcy proceedings, either the debtor or the creditor can initiate it; this leads to either restructure or liquidation. Restructure largely follows the effects of a Preventive Composition including the process and time frames provided, though this is proposed by a trustee and ordered by a court after a review of the debtor's position¹⁰; liquidation however requires creditors to lodge their claims in a shorter period (10 days as opposed to 20 days) from the date of the judgment with interest and penalties possibly suspended by the court.¹¹

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

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

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.

[Type your answer here]

The UAE can be divided into two types of zones, the financial free zones such as DIFC and ADGM, and the remainder of the UAE (or "mainland UAE"). Separate laws to mainland UAE govern the financial free zones as far as it relates to insolvency.¹²

The evolution of Bankruptcy Law in the Mainland UAE draws on elements of Islamic law (principally for personal bankruptcies) and civil law, predominantly from France via Egypt (in respect of commercial matters).¹³ Until 2016, mainland UAE insolvency law was undeveloped predominantly relied on a basic mechanism for insolvency provided for in Law No 18 of 1993 for commercial transactions (Commercial Transactions Law), which were rarely utilized.¹⁴

In 2009, the risk of default by Dubai World, an investment company owned by the Dubai Government, highlighted the shortcomings in the UAE insolvency regime. This caused a change to the position in 2016 by the adoption of the Federal Decree Law (No 9) of 2016 relating to bankruptcy, which has since been amended in 2019 and

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⁹ Guidance Text 6.4.1.2 page 16

¹⁰ Guidance Text 6.4.5.3 page 23; 6.4.5.5 page 30

¹¹ Guidance Text 6.4.6.1 pages 32 – 33

¹² Guidance Text 3.4 pages 3 – 4

¹³ Guidance Text 4.1 page 4

¹⁴ Guidance Text 4.2.3 page 6

2020 (the "Bankruptcy Law"). The Bankruptcy Law repealed the provision of the Commercial Transactions Law and put in place a consolidated insolvency regime for commercial insolvencies in the UAE drawing on experiences from a number of other jurisdictions.¹⁵ Bankruptcy Law applies to all companies governed by the Commercial Companies Law, state owned companies established by federal or local government which have chosen to submit to the Bankruptcy Law, free zone companies except those incorporated in DIFC or ADGM, persons who engage "in trade" and professional firms.¹⁶

Federal Decree Law (No 19) of 2019 ("Personal Bankruptcy Law") was adopted in 2019 to put in place a consolidated insolvency regime for debtors who did not fall within the ambit of the Bankruptcy Law.¹⁷

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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.

[Type your answer here]

A debtor (or a creditor) can apply to court for an order initiating bankruptcy proceedings. Federal Decree Law (No 9) of 2016 as amended in 2019 and 2020 ("**Bankruptcy Law**") provides for two possible outcomes from initiation of proceedings, either restructuring or liquidation of the debtor's assets. In the case of a corporate bankruptcy, following a judgment for bankruptcy, no other insolvency or liquidation steps may be taken against the debtor company except as provided for in Bankruptcy Law.¹⁸

As in this scenario restructuring is possible, the court is involved as follows: First, the court is approached by either the debtor or a creditor for an order initiating bankruptcy proceedings¹⁹; then the court is required to appoint an expert from the panel of experts (article 77 of the Bankruptcy Law) to assess the financial condition of the debtor who is required to report on the debtor's financial condition and give an opinion on the debtor successfully restructuring (article 78 of the Bankruptcy Law)²⁰. The court then orders for the commencement of bankruptcy proceedings and appoints a trustee and provides the trustee with any information it holds on the debtor (article 88 of the Bankruptcy Law)²¹; the trustee is to provide the court with a list of creditors (after the published the calls for and received the proof of debts). Any creditor whose debt was not accepted may object to the list by application to court that must determine the application in 10 business days which may then be appealed with the debts admitted on an interim basis. The court must finally determine the list of creditors (article 94 of the Bankruptcy Law)²². The trustee produces a report on the debtor's business to court following its appointment, the court then reviews the report

¹⁵ Guidance Text 4.2.3 pages 6 – 7

¹⁶ Guidance Text 6.4.1 page 13

¹⁷ Guidance Text 4.2.3 page 7

¹⁸ Guidance Text 6.4.5.1 page 24

¹⁹ Guidance Text 6.4.5.1 page 24

²⁰ Guidance Text 6.4.5.2 page 26

²¹ Guidance Text 6.4.5.3 page 27

²² Guidance Text 6.4.5.3 page 28

to confirm that it takes account of all creditor claims (Bankruptcy Law Article 97). The court then directs the trustee to convene a meeting of the creditors by way of notice and advertisement.²³ The trustee prepares a scheme for restructuring and submits it to court, the court is required to review the proposed scheme within 10 business days and can request the trustee to vary the scheme and resubmit it within a further 5 day period (Bankruptcy Law article 103)²⁴. Following review, the court must request the trustee to convene a meeting of the creditors to review the scheme and may also direct the formation of committees representing classes of creditors and may give directions about the appointment or conduct of any representatives of those classes at the meeting of creditors.²⁵ The creditors then vote on the scheme by creditors whose debts have been admitted, the court may direct that the creditors whose debts have been admitted on an interim basis may vote if proposed by the trustee, subject to terms and conditions imposed by the court.²⁶ If the scheme is approved at the creditor's meeting, the trustee then puts the scheme to court for approval, the court may either approve or reject the scheme. Any creditor who voted against the scheme may object to the proposed scheme within a further three business days and the court must make a determination within five business days from the date of submitting the objection the court's determination is final (Bankruptcy Law art 108)²⁷. The court then gives its determination on the scheme as a matter of urgency provided it is satisfied that all necessary conditions have been met the court may not approve a scheme that affects the priority of any secured creditor rights.²⁸ If the scheme is approved by the court the trustee is to implement it, if the trustee considers that the amendment to the scheme is required and such amendment may affect any party's rights, the court needs to consider the trustee's application for amendment (Bankruptcy Law Art 114).²⁹ Once the restructuring is completed following the discharge of obligations provided for under the scheme, the court is to make an order confirming the complete implementation of the scheme (Bankruptcy Law art 115)³⁰.

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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.

[Type your answer here]

The level of court involvement in the UAE Bankruptcy Law is high however in the circumstances specific to the UAE, namely that the UAE has an insolvency regime that is fairly new and relatively untested due to the low rates of business failure in the UAE, the court's intervention in the steps involved is appropriate to guard against

²³ Guidance Text 6.4.5.4 page 29

²⁴ Guidance Text 6.4.5.4 page 29

²⁵ Guidance Text 6.4.5.4 pages 29 - 30

²⁶ Guidance Text 6.4.5.5 page 30

²⁷ Guidance Text 6.4.5.6 page 30

²⁸ Guidance Text 6.4.5.6 page 30

²⁹ Guidance text 6.4.5.7 page 31

³⁰ Guidance Text 6.4.5.8 page 32

unfair outcomes to creditors and potentially debtors, the oversight adds an added layer of legitimacy to the process that may for most professionals in the jurisdiction be an area where opportunities for practice therein are infrequent. Therefore the degree of court involvement is in my opinion adequate for the jurisdiction.

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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.

[Type your answer here]

The time frames involved in the Preventive Composition process have been stepped out in the table below for ease of reference:

Step	Process	Maximum Days (within days)
1	Application for Preventive Composition, the Court appoints an expert to prepare a report on the financial position of the debtor and report back to court ³¹ (Expert report)	20 days
2	Court to decide on Preventive Composition Application from receipt of expert's report (or immediately from application if no expert report is required) ³² The Court then appoints a trustee ³³	5 days
3	Trustee publishes the decision of the court ordering Preventive composition and calling for creditors to come	5 days

³¹ Guidance Text 6.4.1.1 page 14; Bankruptcy Law art 13

³² Guidance Text 6.4.1.1 page 14; Bankruptcy Law art 14

³³ Guidance Text 6.4.1.2 pages 14 - 15

	forward within 20 days of publication in two widely read newspapers, one in English, one in Arabic ³⁴	
4	The trustee submits the Preventive Composition Scheme within 45 days from the date of publication ³⁵	45 days
5	The Court reviews the draft composition scheme as submitted by the trustee and confirm that it takes into account the interests of the parties ³⁶	10 days
6	If the court is satisfied, the trustee is then directed to issue invitations within 5 days to the creditors for purpose of attending a creditor's meeting ³⁷	5 days
7	Creditor's meeting is held within 15 days of direction by court to invite creditors ³⁸	15 days
8	Once the scheme is approved by the creditors at the meeting, the trustee must then put the scheme to court within 3 days from approval for the court to approve or reject the scheme ³⁹	3 days
9	The court is required to give a determination on the scheme urgently, if a creditor objects to it, the court is to make a decision on the objection within 5 days, so it is conceivable that urgent determination in this instance would be up to 5 days if there are no objections	5 days
10	Within 7 days of court approval, the trustee is to register the courts determination confirming the approval in the debtor's governmental corporate register and publish a summary of the scheme ⁴⁰	7 days
	TOTAL DAYS:	120

Therefore the time it takes between making an application and registration of the scheme before final approval is 120 days.

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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.

[Type your answer here]

If the proposed Preventive Composition is rejected and the company has to be placed into liquidation, then the court is required to appoint a trustee to undertake the liquidation, though it can order that any expert or trustee previously appointed in relation to any other procedure should continue office.⁴¹

³⁴ Guidance Text 6.4.1.3 page 17; Bankruptcy Law art 35

³⁵ Guidance Text 6.4.1.4 page 18

³⁶ Guidance Text 6.4.1.5 page 19; Bankruptcy Law art 42

³⁷ Guidance Text 6.4.1.5 page 19

³⁸ Guidance Text 6.4.1.5 page 19

³⁹ Guidance Text 6.4.1.6 page 20

⁴⁰ Guidance Text 6.4.1.6 page 20; Bankruptcy Law art 49

⁴¹ Guidance Text 6.4.6.1 page 33

The trustee can be a natural or legal person, and up to three may be appointed to act jointly. The trustee may not be a creditor, a relative or spouse of the debtor, a person who has been convicted of certain dishonesty offences, and any person who has had prescribed commercial relationships with the debtor in the previous two years.⁴²

The trustee must advertise the trustee's appointment within three business days and the debtor's correspondence must state that the debtor is subject to a bankruptcy order.⁴³ Creditors are required to make their claims with the trustee within 10 business days from the date of the judgment; claims lodged later are not admissible unless the court accepts the reason for the failure to claim.⁴⁴ All debts of the debtor falls due on the date of the order for bankruptcy in the case of failure of a debtor to perform on a contract the other party may apply to court for an order for rescission, bankruptcy does not automatically lead to rescission.⁴⁵

The trustee is required to liquidate all of the debtor's property by public auction under the supervision of the court.⁴⁶ The proceeds of sale of the assets are distributed by the trustee to the creditors in the order provided for in the law.⁴⁷

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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?

[Type your answer here]

Any DIFC incorporated company can be wound up under DIFC Insolvency Law, there are two forms winding up, either voluntary winding up or compulsory winding up. Voluntary winding up commences as soon the company to wind up passes a resolution by a Members Voluntary Winding up for its winding up this can either be a solvent If the company states it is solvent and a liquidator finds it is insolvent, the liquidator must call the creditors to a meeting for a creditors voluntary winding up.⁴⁸ Upon commencement of a winding-up, a liquidator is appointed and the directors' powers cease.⁴⁹

A court ordered winding up or "compulsory winding up" is made if the company passed a resolution that it is unable to pay off its debts, if a moratorium under a Company Voluntary Arrangement has ended without an arrangement being approved or under any other provision of DIFC law or if the court considers it to be just and equitable to wind the company up.⁵⁰

⁴² Guidance Text 6.4.5.2 page 27; Bankruptcy Law Article 84

⁴³ Guidance Text 6.4.6.1 page 33; Bankruptcy Law Article 128 and 133 respectively

⁴⁴ Guidance Text 6.4.6.1 page 33; Bankruptcy Law Article 129

⁴⁵ Guidance Text 6.4.6.1 page 33

⁴⁶ Guidance Text 6.4.6.1 page 33

⁴⁷ Guidance Text 6.4.6.1 page 34

⁴⁸ Guidance Text 6.4.7; 6.4.7.1 page 36

⁴⁹ Guidance Text 6.4.7.1 page 37

⁵⁰ Guidance Text 6.4.7.1 page 37

The most common grounds for commencement of winding up is if a creditor has made a demand for payment of a debt of a sum of more than \$2000 USD which is unsatisfied for a period of more than 3 weeks; any execution process is unsatisfied; it is proved that a company is unable to pay its debts as they fall due; or it is proved the value of the company's liabilities exceeds the value of the company's assets, including any prospective and contingent liabilities.⁵¹

An application for the winding up of a company may be brought by the company, its directors or any creditor (including a prospective or contingent creditor), or by the DIFC Authority where it considers the winding-up to be in the best interests of the DIFC and the DIFC court is of the opinion that it is just and equitable for the company to be wound up.⁵²

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⁵¹ Guidance Text 6.4.7.1 page 37

⁵² Guidance Text 6.4.7.1 page 37