



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: 36 OUT OF 50

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

Commented [DJ2]: 3 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.

Commented [DJ3]: d

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.

Commented [DJ4]: c

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.

(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.

Commented [DJ5]: d

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.

Commented [DJ6]: c

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.

Commented [DJ7]: a

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.

Commented [DJ8]: b

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.

Commented [DJ9]: b

QUESTION 2 (direct questions) [10 marks]

Commented [DJ10]: 7 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 key point of distinction regarding the registration of real property interests, including mortgages, in the different emirates of the UAE is that each emirate maintains its own land registration system. In turn, this means that the registration and enforcement of real property interests, including mortgages, can be subject to different laws and procedures in each emirate, although it should be noted that the basis of the law is often the same.

The financial free zones are the Dubai International Financial Centre ("DIFC") and the Abu Dhabi Global Market ("ADGM"), established in 2004 and 2013 respectively.

Commented [DJ11]: 1

In "mainland" UAE, a mortgagee can petition the Court for an order for sale, and the Court's execution department will conduct the sale of the mortgaged property. In the financial free zones, a mortgagee can enter into possession of the land and sell the land without the need for a court order.

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 responsible for making a decision on any application to commence an insolvency process (NB, only a debtor can seek "preventive composition")
- (b) The Court/creditors/trustee are responsible for the primary determination as to whether a debtor's proposal should be adopted;
- (c) The Court/creditors/trustee are responsible for confirmation of the primary determination as to whether a debtor's proposal should be adopted; and
- (d) The Trustee is responsible for supervising the implementation of the insolvency process by the debtor.

Commented [DJ12]: 2
 Marks not awarded for b or c as you have given multiple answers where only one is acceptable.
 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)?

The key difference between the circumstances which could give rise to an application to commence Preventive Composition or an application to commence Bankruptcy relates to the initiation of the same. Only a debtor can seek Preventive Composition, whereas an application to commence Bankruptcy (whether leading to Restructuring or Liquidation) can be initiated by either a debtor or a creditor.

Commented [DJ13]: 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?

As noted above, only a debtor can seek Preventive Composition ("PC"), whereas an application to commence Bankruptcy (whether leading to Restructuring or Liquidation) can be initiated by either a debtor or a creditor.

The key difference for a creditor regarding the commencement of PC or Bankruptcy of a debtor relates to the position as regards legal proceedings against the debtor. Unless otherwise provided for in the Bankruptcy Law, the commencement of PC results in the suspension of any legal proceedings against the debtor until the earlier of: the approval of the PC plan or a period of ten months after the Court's decision to open the PC.

Commented [DJ14]: 2

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

Commented [DJ15]: 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.

Insolvency law was undeveloped in mainland UAE until 2016. Shortcomings in the UAE's insolvency regime were highlighted in 2009 when an investment company owned by the Dubai Government (Dubai World) faced the possibility of defaulting on its debts – a possibility that caused international concern. Whilst Dubai World was able to address its issues, the position it found itself in resulted in not just the Dubai Government, but the UAE as a whole, establishing a functional insolvency regime.

The Bankruptcy Law applies to the following entities:

- a) All companies governed by the Commercial Companies Law (the principal corporate legislation in mainland UAE);
- b) Any companies established under other legislation that have (by law or voluntarily) submitted to the provisions of the Bankruptcy Law;
- c) Free zone companies and establishments not governed by other insolvency procedures, i.e. all free zone companies and establishments, save for those in the financial free zones, being DIFC or ADGM;
- d) Any person who is a "trader", i.e. someone engaged in commercial activities in a personal capacity; and
- e) Licensed civil companies of a professional character, such as professional partnerships etc.

Commented [DJ16]: 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.

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) in the following ways:

- In accordance with Article 77 of the Bankruptcy Law ("BL"), it is required to appoint an expert to assess the financial position of the debtor, upon a bankruptcy application being made (this assessment should include the expert's views as to whether or not the debtor meets the necessary criteria to accept the application procedure);
- In accordance with Article 79 of the BL, it is able to reject an application if it does not contain specific information;
- In accordance with Article 80 of the BL, it can request a person provide further detail and information as regards the application;
- In accordance with Article 81 of the BL, it can make interim orders in respect of the debtor's property;
- In accordance with Article 80 of the BL, it can add other parties to the proceedings;
- It is required to determine the application for commencement of the debtor's bankruptcy procedure within five business days of receipt (or from the date of the expert's report referred to above);
- If it accepts the application, it then appoints a trustee;
- It is required to determine any objections of creditors as regards the trustee's appointment within a further five business days;
- It is able to substitute the trustee of its own volition, or upon receiving an application from the debtor;
- It can permit secured creditors to enforce their securities (although I note in this instance that there are no secured creditors); and
- In accordance with Article 87 of the BL, it is able to appoint supervisors (i.e. creditors' representatives)

As noted previously, an application to commence Bankruptcy (whether leading to Restructuring or Liquidation) can be initiated by either a debtor or a creditor – I note in this instance that the debtor company is seeking to enter bankruptcy.

Commented [DJ17]: 8

Question 3.3 [maximum 2 marks]

In any insolvency system that involves the forced compromising of individual creditor claims, the requirement for court involvement is to ensure that the rights of all parties, including individual creditors, are being protected. The UAE Bankruptcy Law requires a high degree of Court involvement. Briefly describe (100-150 words) whether you consider that the level of Court involvement in approving a restructuring to be appropriate. Provide reasons for your answer.

[Type your answer here]

Commented [DJ18]: 0

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

Commented [DJ19]: 13 out of 15

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.

Article 5 of the Bankruptcy Law provides for "Preventive Compositions", being debtor-led corporate rescues. Preventive Composition is governed by articles 5 to 66 of Section 3 of the Bankruptcy Law.

Below, I set out the necessary steps that will determine the maximum time taken between making an application and the registration of the scheme following final approval:

- 1) NB, if the debtor applying for the Preventive Composition is subject to the control of a "competent controlling body", the debtor may make such an application, subject to the debtor giving the controlling body 10 days' notice

- 2) If the application meets all of the necessary criteria, the Court needs to decide on the same within five business days of receipt (or from the date of the expert's report referred to below)
- 3) Following receipt of the application, the court needs to appoint an expert to prepare a report on the debtor's financial position. This should include the expert's views as to whether or not the debtor meets the necessary criteria to accept the application procedure. The report must be delivered to the court within 20 business days following the expert's instruction.
- 4) Should the court accept the application, it then appoints a trustee. Any creditor may object to the appointment of a trustee within five business days of the date of publication of the appointment. NB, the objection is done by way of an application to the court.
- 5) The court is required to determine any objections within a further five business days.
- 6) The court decides upon the level of trustee's fees. Any interested party may object to the trustee's fees, and the court needs to determine upon any such objection within five business days of the same being made.

The commencement of PC of a debtor results in the suspension of any legal proceedings against the same until the earlier of: the approval of the PC plan or a period of ten months after the Court's decision to open the PC.

Commented [DJ20]: 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.

The court is required to make an order for the bankruptcy of the debtor and liquidation of its assets in circumstances where a company's creditors do not approve the restructuring and also upon the termination of a preventive composition (as provided for under the Bankruptcy Law), in addition to under certain other circumstances.

As noted in the question, BNE LLC's creditors rejected the proposed preventive composition scheme, meaning that the court is required to make an order for the bankruptcy of BNE LLC and for the liquidation of its assets. The court must also appoint a trustee to deal with the same.

The trustee cannot be a creditor, relative, or spouse of the debtor, nor someone who has been convicted of specific dishonesty offences, or who has had a commercial relationship with the debtor in the previous two years. NB, the trustee may be the one previously appointed in relation to BNE LLC's preventive composition.

It is understood that BNE LLC's staff were not paid during the four month process. Preferential creditor claims are governed by the Preferential Creditor Regulations 2008, and these regulations state that preferential creditor claims should be paid in priority to unsecured claims and claims secured by a security interest over all (or substantially all) of BNE LLC's assets.

Commented [DJ21]: 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?

Any company incorporated in the DIFC can be wound up under the DIFC Insolvency Law, meaning BNE Limited can be wound up. There are two methods of winding up – one can be done by way of BNE Limited's shareholders resolving to its winding up by way of passing a resolution, this is known as voluntary winding up, and the other method is a compulsory winding up, following an order made by the DIFC courts.

As regards voluntary winding up, there are two forms – creditors' voluntary winding up (for insolvent entities) and members' voluntary winding up (for solvent entities).

An application for the winding up of BNE Limited, can be brought by BNE Limited itself, its directors, or any creditor – including any prospective or contingent ones – or finally, by the DIFC Authority in instances where it considers that the winding up is in the interests of the DIFC (and the DIFC court is of the opinion that it is just and equitable to do so). To this end, BNE Limited's creditors can make an application for its winding up, if they wish to see BNE Limited liquidated in the DIFC.

Commented [DJ22]: Some elements regarding the procedure missing.
3

*** End of Assessment ***