



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: 202223-336.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 2023. The assessment submission portal will close at 23:00 (11 pm) BST (GMT +1) on 31 July 2023. 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 10 pages.**

ANSWER ALL THE QUESTIONS

Commented [SE1]: Very well done. 45/50. 90%.

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

Commented [SE2]: 8/10.

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

One of the most significant barriers to the restructuring process 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 absence of a moratorium on creditor actions after the commencement of a bankruptcy proceeding inhibits the restructuring process.
- (d) There could be criminal law consequences for business owners arising from the security agreements which a business might have with its creditors.

Commented [SE3]: Correct.

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 DIFC and AGDM insolvency laws and regulations are primarily based on the insolvency laws of one other country.

Commented [SE4]: Incorrect. The correct answer is C.

(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 in mainland UAE?

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

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

Commented [SE5]: Correct.

(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.

Commented [SE6]: Correct.

(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 [SE7]: Correct.

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.

Commented [SE8]: Correct.

(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.

Commented [SE9]: Correct.

(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.

Commented [SE10]: Correct.

(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 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.

Commented [SE11]: Correct.

(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 incorrect?

(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).

Commented [SE12]: Incorrect. The correct answer is B.

(b) A foreign judgment is enforceable in mainland UAE as long as there is reciprocity between the UAE and the foreign state issuing the judgment for which enforcement is sought.

(c) The ADGM courts may recognise reciprocity with a foreign jurisdiction in the absence of an applicable treaty if the Chief Justice of the Courts is satisfied that

substantial reciprocal treatment will be assured regarding recognition and enforcement in that foreign country of the judgments of the ADGM courts.

(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 in total]

Commented [SE13]: 7/10

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 UAE Movables Security Law introduces a security registry for real property, although a secured creditor is free to enforce their rights notwithstanding a debtor's insolvency (although they may need Court permission).

In the DIFC there is register of ownership an interests in land. This is similar to ADGM. In 'mainland' UAE a mortgagee can petition the Court for an order for sale without first obtaining judgment. Whereas, in the DIFC and ADMG a creditor holding a mortgage or security interest can take possession of their security on default without recourse to the courts.

Commented [SE14]: 2/2. Also note that each emirate maintains its own land registration system.

Question 2.2 [maximum 4 marks]

Commented [SE15]: 3/4.

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. Which actor is responsible for each of the following processes?

(a) A decision on any application to commence an insolvency process.

Debtor or creditor (only a debtor can apply for a preventive composition)

Commented [SE16]: Incorrect. The court makes decisions on any application to commence an insolvency process.

(b) A primary determination as to whether a debtor's proposal should be adopted.

Creditors at a meeting to consider proposal.

Commented [SE17]: Correct.

(c) Confirmation of the primary determination as to whether a debtor's proposal should be adopted.

Court must confirm proposal.

Commented [SE18]: Correct.

(d) To supervise the implementation of the insolvency process by the debtor.

Trustee must oversee **implementation**.

Commented [SE19]: Correct.

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 preventative composition or an application to commence bankruptcy (whether leading to restructuring or liquidation)?

Commented [SE20]: 1/2. The key difference is that preventative composition is voluntary and bankruptcy procedures are compulsory if the debtor is in default of its payment obligations for 30 consecutive business days.

Preventative composition is aimed at facilitating debtor led corporate rescues and can only be applied for by a debtor. Whereas either a debtor or creditor can initiate bankruptcy proceedings under article 67 of the Bankruptcy Law seeking either a restructuring or liquidation of the debtor's assets.

Question 2.4 [maximum 2 **marks**]

What is the key difference for a creditor regarding the commencement of preventative composition or bankruptcy of a debtor?

Commented [SE21]: 1/2. The key difference is that creditors cannot compel a debtor to enter preventative composition, but a creditor (or group of creditors) owed more than AED 100,000 can initiate involuntary bankruptcy procedures against a debtor.

The debtor is obliged to continue to operate their business under the supervision of the trustee in a preventative composition and continue to incur further indebtedness from creditors who are not allowed to terminate their contracts with the debtor.

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

Commented [SE22]: 15/15

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.

Commented [SE23]: Correct. 5/5.

*Prior to 2016, the insolvency law of UAE was undeveloped. However, the Bankruptcy Law was effected in 2016 and introduced a consolidated insolvency regime for commercial insolvencies in the UAE. The Law applies to, *inter alia*, all companies governed by the UAE Commercial Companies Law, state owned companies, free zone companies (other than those of the ADMG or DIFC) and anyone who engage in 'trade'. There have been several amendments since its adoption, and in 2019 a consolidated personal insolvency regime was introduced.*

Th Bankruptcy Law provides for a number of court supervised processes, with a focus on preventative restructuring where possible. One such process is a 'Preventive Composition' which is a debtor in possession process. The other primary 'bankruptcy'

process is split into restructuring and liquidation. The Bankruptcy Law also created a 'Financial Restructuring Committee' appointed by the Minister for Finance who are tasked with overseeing insolvency practice and procedure in the UAE.

Given its relative infancy, there is little by way of established case law or jurisprudence, although it is important to note that the UAE legal system is not bound by precedent and courts are free to depart from previous judgments made by other courts. However the UAE legislature have shown themselves willing to issue corrective legislation where they consider it necessary in order to address lacunas or undesirable effects arising from the decisions of the UAE courts. One such example followed the Dubai Court of First Instance's decision Marka Holdings PJSC which found the directors personally liable for the debts of the company. Soon afterwards, the an amendment to the Bankruptcy law was adopted which clarified that directors would only be liable commensurate to the extent of their responsibility for the debts of the company.

The UAE legislature have been willing to enact changes in response to global trends. One such example is the introduction of the concept of an "Emergency Financial Crisis" in response to the Covid 19 pandemic.

Question 3.2 [maximum 8 marks]

Commented [SE24]: 8/8

If a debtor company seeks to enter bankruptcy, describe the ways in which the court is required to be actively engaged in the restructuring in bankruptcy process (assume that a restructuring is possible, that there are no unusual features to the bankruptcy, there are no secured creditors and there has been no criminal conduct by any person involved in the debtor). Your answer should provide references to the legislation.

Restructuring through a bankruptcy process in the UAE involves a high level of court involvement. Either a creditor or debtor can bring such an application, and a debtor is obliged to initiate bankruptcy proceedings where they have been in default on a debt for 30 consecutive days. Where an application is made, the Court will be required to appoint an expert (from a designated panel) to assess the debtor's financial position (art 77). The court can require the debtor to provide all information they consider necessary (art 80), it can also join others to the proceedings and make interim orders relating to the debtors assets and property (art 81). The expert will then submit a report on the debtor and the possibility of a restructuring and the court must decide within 5 days of the application or receipt of the report, if it is satisfied the conditions have been met and the process can be undertaken (art 78).

If the bankruptcy process in commenced, any legal proceedings involving the debtor will be stayed until either the approval of the restructuring plan or 10 months after the court's decision to open the bankruptcy process, although the court can extend this period for up to 4 month following consultation with the expert (art 162). On commencement of the bankruptcy process, the court must appoint a trustee who is either nominated by the debtor or one of the experts approved by the Financial Conduct Committee. A creditor can object to the choice of expert within 5 days of

notification of their appointment and, if so, the court must determine the objection within days (art 82). Under art 83, the Trustee can ask the court to make an order providing them an assistance they deem necessary. The court may also appoint supervisors who will represent the interests of the creditors (art 87).

Following publication of court's decision and after notice has been provided to creditors to enable them to lodge claims, the trustee must prepare a list of creditors for the court which can be objected to by the debtor or any creditor. If so, the court must determine any such application within 10 business days (arts 94 and 95). The court also has the power to suspend interest and other potential penalties for non-payment at the request of the trustee (art 163).

Following receipt of the trustee's report on any possible restructuring, the court is required to review and ensure it considers all creditor claims. It must then direct the trustee to convene a meeting to discuss the restructuring plan. However, the court will not approve a restructuring unless the debtor agrees to cooperate and the restructuring is viable (art 98). If so, then the trustee must prepare a scheme which must also be submitted to the court for review and which the court can request changes to if it does not adequately provide for all parties' interests (art 103). The court must then direct the trustee to convene a creditors' meeting to discuss the restructuring scheme and can give instructions regarding the composition of classes of creditors or their representatives (art 104). If approved the trustee must seek the court's approval of the scheme. Any creditor can object but the court's decision re any objection is final (art 108). The court must be satisfied that all creditors will do at least as well as they would in a liquidation. If approved, the trustee must implement the plan and must report to the court every 3 months (art 114). The trustee can apply to the court if an amendment is required and court must notify all creditors who voted on the scheme before deciding on any such amendment (art 114). The court has wide powers to facilitate any restructuring scheme and can also direct that assets be sold (art 110), not sold without court order (art 112) or to allow the debtor take new finance (art 181). Once complete, the court will make an order confirming the completion of the scheme which must be advertised (art 115).

Question 3.3 [maximum 2 marks]

Commented [SE25]: 2/2

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 to 150 words) whether you consider that the level of court involvement in approving a restructuring to be appropriate. Provide reasons for your answer.

The involvement of the court as an independent arbitrator in any restructuring process, while it can be administratively burdensome, should ensure and fairness and equality among creditors who hold competing interests. This is what the UAE Bankruptcy Law seeks to achieve. The court must review the trustee's report to ensure that it take

account of all creditor claims. It also ensures that all meetings regarding the report and any scheme are advertised so that all potential creditors are on notice. Should a restructuring proceed, it must also review any resulting scheme and can require the trustee to amend the scheme to ensure it takes account of all parties' interests, with the ultimate goal of ensuring that all creditors do better than they would otherwise do in a liquidation.

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

Commented [SE26]: 15/15

RZA LLC operates a restaurant chain in various locations in Dubai. It was a thriving and successful business but has been negatively impacted by the increase in global food prices. It has exhausted all available funds and has no cash to pay creditors. RZA LLC owns a restaurant site which is under development, but the development is not expected to be completed for seven months. The site had been purchased by one of RZA LLC's shareholders and was transferred to RZA LLC on the basis that payment for the site would be made by RZA LLC to the shareholder in full in 2024. In the meantime, the shareholder holds a mortgage over the property for the unpaid purchase price.

Question 4.1 [maximum 5 marks]

Commented [SE27]: 5/5

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 process must be initiated by a debtor.

1. **Once the application is made the court is required to appoint an expert to prepare a report on the financial position of the company and which must be delivered within 20 business days from the date of that expert's appointment.**
2. **Once received, the court must decide on whether to grant the preventive composition application within business days of the expert's report.**
3. **The court must then appoint a trustee to the company which can be objected to by any creditor.**
4. **Within business days of their appointment, the trustee must publish a summary of the court's decision and publish notices in both English and Arabic newspapers, they must also invite creditors to submit claims within 20 business days from the date of the notice.**

Commented [SE28]: 5 BD

Commented [SE29]: 5 BD

5. *The trustee must then prepare a list of creditors which must be lodged with the court within 10 days of form the cut off date for lodging claims and the court must finalise the list of creditors.*
6. *The trustee must submit a scheme for the preventive composition within 45 business days of the court's decision to open the preventive composition, although this can be extended by up to 20 business days.*
7. *The court will review the draft scheme and give their views within 10 days and, if satisfied, direct the trustee to give notice to the creditors of a meeting to approve the scheme.*
8. *The scheme meeting must be held within 15 days of the date court's direction to arrange the meeting.*
9. *If the scheme is approved, the trustee must put the draft scheme to the court within 3 business days and the court is required to approve or reject the scheme urgently.*
10. *The trustee must register the court's decision to approve the scheme within 7 business days of the approval and the trustee must then begin implementing the scheme.*

Accordingly the scheme, if approved, should be registered within 80 days of the date that the application for the preventive composition was approved.

Question 4.2 [maximum 5 marks]

RZA 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.

Give *the creditors do not support the proposed restructuring, the court will have to appoint a trustee to undertake the liquidation. The court is free to order that the trustee appointed in respect of the preventive composition continue as trustee to oversee the liquidation, or it can appoint a new trustee (art 126).*

Following appointment, they must advertise their appointment within 3 business days and all correspondence must state the debtor is subject to a bankruptcy order. The trustee must also report to the court monthly on the progress of the liquidation. Creditors must make their claims within 10 days from the date of the judgment and the trustee must consider all claims unless there are insufficient funds to pay them (art130). Importantly, all debts owed by the company are deemed to have fallen due when the order for bankruptcy is made. This means that all outstanding staff wages and the payment due to the company's shareholder for the restaurant site will become due notwithstanding that it is not supposed to be repaid until 2024. Future debts such as this can be adjusted to account for any interest which may have become due

Commented [SE30]: 5/5

Commented [SE31]: RZA LLC would first have to apply to commence bankruptcy proceedings.

The court would be required to make an order for the bankruptcy of RZA LLC and the liquidation of its assets, because the restructuring procedures would be inappropriate for the debtor, and it is likely that the expert's report would conclude that restructuring in bankruptcy is impossible. The trustee of the proposed preventive composition scheme can continue as a trustee for the liquidation.

on the loan, however at the request of the trustee the court can suspend interest and other penalties for non-payment (art 163).

The trustee is then required to liquidate all of the company's property by public auction which is supervised by the court. the trustee may also ask the court to permit the debtor to undertake a sale of the company's assets and business if he concludes that this would be in the creditors interest (art 131). The proceeds of the sale of the company's assets, including the restaurant site which is secured by a mortgage, are payable to creditors in the order set down by UAE law and subject to certain priorities. In particular, as the restaurant site is secured by a mortgage, the proceeds of sale for this site would be applied to debts owed by the company in respect of the shareholder's loan (less the trustee's costs of sale).

As staff were not paid during the four months that the preventive composition was before the court, their claims for three months' worth of unpaid wages and salary would have priority, in addition to the costs of the court and the trustee (art 189). The fourth month of unpaid wages and salary would represent unsecured debt and would be treated in the same way as claims of other unsecured creditors.

Following the liquidation of the company's assets, and the payment of the sums due to the mortgagor and the priority payments due to the employees and to cover the costs of the liquidation, the remaining assets would be distributed in the manner prescribed by UAE law. Once complete the court will make an order confirming the conclusion of the liquidation which must be advertised.

Question 4.3 [maximum 5 marks]

Commented [SE32]: 5/5

RZA LLC incorporated and registered a fully-owned subsidiary company in the DIFC to operate a restaurant in the DIFC. The subsidiary is called RZA Limited and it is incorporated as a DIFC company. RZA Limited is also unable to pay its debts. What actions can RZA Limited's creditors take if they wish to see RZA Limited liquidated in the DIFC? In particular, who can take such actions and what steps would have to be taken? If the RZA 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 creditors of RZA Limited (Company) can apply to have it wound up by way of winding up under part 6 of the DIFC Insolvency Law. The Company's creditors can seek to have the company compulsorily wound up if it can be shown that the company is unable to pay its debts. Pursuant to art 82 of DIFC Insolvency Law, the Company will be presumed to be unable to pay its debts if: (i) it does not satisfy a demand for payment of a debt of USD2,000 or more for a period of more than 3 weeks, (ii) if it is proved that the company is unable to pay its debts as they fall due, (iii) any execution process is returned unsatisfied, or (iv) it is proved that the value of the Company's assets succeed the value of the Company's liabilities, including its contingent liabilities.

Accordingly, it appears that the Company is unable to pay its debts and any of the Company's creditors, the company itself, its directors, or the DIFC Authority, could bring a petition seeking to have the Company wound up. If such an order is made, the Court must identify someone to act as the liquidator of the Company. This person must elect whether to act a liquidator or convene a creditors meeting to choose a liquidator (art 90). The court can also appoint a provisional liquidator once a petition has been presented if they consider it necessary to maintain the value of the estate (art 91). Once a order winding up the Company is made no proceedings can be commenced against the Company without leave of the court (arts 86 and 88).

The liquidator would have to realise and distribute the assets of the Company in accordance with the powers afforded them by Schedule 3 of the DIFC Insolvency Law. In respect of creditors' claims, all claims would have to be submitted to the liquidator via a proof of debt setting out the particulars of their claim. The liquidator can request further information relating to any proof of debt or claim before deciding whether to admit it. Proofs of debt must also include set offs and may take into account any accrued interest to the commencement of the winding up. There is now also a provision for netting under DIFC law. Once all proofs have been adjudicated the liquidator will distribute funds to the Company's creditors. If there are insufficient funds, as seems to be case here given that the Company is unable to pay its debts, the court will determine the expenses of the winding up which are paid in priority, and preferential debts will be paid in accordance with the Preferential Creditors Regulations 2008 (e.g. employee wages, pension contributions etc). The rest of the debts of Company will rank equally.

*** End of Assessment ***