



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**

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

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**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.**

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.**

**(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 [E3]: Incorrect. The correct answer is C.

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.**
- (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 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 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).**

**(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**

Commented [E4]: Incorrect. The correct answer is B.

*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]

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Question 2.1 [maximum 2 marks]

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

Each Emirate maintains its own land registration system in relation to real property interest and the enforcement of mortgages can be subject to slightly different laws and procedures in each emirate. With respect to sale of mortgaged real property in "mainland" UAE, the general approach in the emirates is that a mortgagee can petition the court for an order for the sale without first obtaining judgement for the debt. On the other hand, if the real property is in a financial zone a creditor holding a mortgage over the debtor's land can enter into possession over the land by providing 60 days' notice to relevant parties without the need for a court order. The creditor can sell the whole or part of the property, receive rent and profits from the land etc.

Question 2.2 [maximum 4 marks]

Commented [E7]: 2/4

***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.***

The Court.

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

Expert appointed by the Court.

Commented [E8]: The debtor's unsecured creditors make this determination.

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

The Creditors.

Commented [E9]: Confirmation of the creditor's determination is made by the court.



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

The Trustee

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, is that a debtor under Article 6 of the UAE Bankruptcy Law can seek preventative composition as an option for corporate rescue and continues to manage its asset, whereas bankruptcy proceedings can be initiated either by a debtor or creditor where the debtor has conducted an act of insolvency. Further, the debtor cannot manage its asset

Question 2.4 [maximum 2 marks]

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

The key difference for a creditor regarding the commencement of preventative composition or bankruptcy of a debtor is that;

- Under preventative composition commencement of proceedings, a secured creditor may not enforce their security, unless they obtain prior permission from court, while
- under bankruptcy a secured creditor can enforce its security with the permission of the court.

QUESTION 3 (essay-type question) [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.**

Before 2016, in the UAE mainland, provisions in Law Number 18 of 1993 (the Commercial Transactions Law) regulated bankruptcy by traders. It provided a mechanism through the courts of insolvency for those engaged in commerce, but was rarely used. The legal position changed after the possibility of default by Dubai World internationally, which was an investment company owned by the government of Dubai. 2016 Federal Decree Law (Number

Commented [E10]: 1/2

Commented [E11]: Not quite. The key distinction is that under the UAE Bankruptcy Law, a debtor has an option and is free to choose whether it wishes to commence preventive restructuring; while a debtor must initiate bankruptcy procedures if in default of its payment obligations for 30 consecutive business days.

Commented [E12]: 0/2.

This question is focused on the commencement of proceedings. Under the UAE Bankruptcy Law, a creditor has no right to compel a debtor to enter preventive composition, but a creditor, or group of creditors collectively, who are owed more than AED 100,000 (USD 27,229), may apply to the court to initiate bankruptcy procedures if the creditor has given notice to the debtor requiring the debtor to settle the debt and the debtor has failed to discharge the debt within 30 business days of any such notification.

Commented [E13]: 10/15

Commented [E14]: 2/5

Commented [E15]: There are no specialized insolvency courts in the UAE

9) enacted the Bankruptcy Law, thereby repealing provisions of the Commercial Transactions Law. The new law consolidated the Insolvency regime for commercial insolvencies in the UAE.

The Bankruptcy law applies to:

- All companies governed by the Commercial Companies Law;
- Any companies established under other legislation who have by law or voluntarily submitted to the provisions of the Bankruptcy Law;
- Free zone companies and other establishments not governed by other insolvency procedures;
- Persons engaged in commercial activities;
- Licensed civil companies like professional partnerships.

The Bankruptcy law has been viewed **positively** by the business community in the UAE and is applied through a court supervised process.

**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.***

A court may actively engage in the restructuring in the bankruptcy process either by preventative composition under the provisions of Article 6 of the Bankruptcy Law or by restructuring under article 67 of the Bankruptcy Law.

Under preventative composition, the court is required to appoint an expert to prepare a report on the debtor's financial position upon the receipt of the application from the debtor.<sup>1</sup> After accepting the preventative composition procedure the court is required to appoint a trustee and shall determine such trustee's fees.<sup>2</sup>

The Court determines the final list of the debtor's creditors from the submissions and recommendations of the trustee.

The court reviews a draft preventative composition scheme submitted by the trustee to ensure it considers the interests all interested parties, within 10 days from the date of submission of the scheme.<sup>3</sup> Thereafter, the court is required to direct the trustee to issue invitations within 5 business days to the debtor's creditors to attend a creditors' meeting to discuss the proposed scheme. Once the scheme is approved by creditors, within 3 working days after the approval, the trustee must place the scheme before the court for confirmation.

While implementing the scheme, the trustee must report progress to the court every 3 months. Once the obligations under the scheme have been discharged, the court must confirm the complete implementation of the scheme.<sup>4</sup>

<sup>1</sup> Bankruptcy law art. 13.

<sup>2</sup> Idem art.17.

<sup>3</sup> Idem art. 42.

<sup>4</sup> Bankruptcy Law art. 56.

**Commented [E16]:** No system of precedent, difficult to predict outcomes, leads to uncertainty.

No discussion of how it has been applied.

**Commented [E17]:** 6/8.

- The bankruptcy procedure is preceded by an application to the court, by either a debtor or a creditor, for an order initiating bankruptcy proceedings. When a bankruptcy application is made, the court is required to appoint an expert from the panel of experts to assess the financial condition of the debtor. The expert is required to report on the debtor's financial condition and to give an opinion on the possibility of the debtor successfully restructuring. If the court is satisfied that the necessary conditions have been met, an order will be made whereby the bankruptcy procedures commence at that point.
- If the court decides to accept the commencement of the bankruptcy procedure, the court is required to appoint a trustee, being either a person nominated by the debtor or a person enrolled in the table of experts appointed by the Financial Restructuring Committee. Upon making an appointment, the court is required to provide any information which it holds about the debtor to the trustee. The court shall determine the trustee's fees and shall authorise payment from the funds deposited by the debtor when making the application.
- The court may also appoint one or more supervisors. The procedure to be adopted for the appointment of supervisors is to be the same as is adopted for supervisors of preventative composition. Essentially, supervisors are representatives of the creditors.
- The court must determine any application regarding whether a creditor should or should not be included in the list of creditors. The court's decision may be appealed. The court may admit the debt on an interim basis (although no debt may be admitted if the creditor has brought a criminal claim in relation thereto). The court must finally determine the list of creditors.
- The court should direct the trustee to prepare a restructuring scheme, but may not do so unless the debtor confirms its willingness to continue to carry on business and unless it appears that the proposed restructuring is viable.
- Once the trustee submits the proposed restructuring to the court, the court is required to review the proposed scheme and can request the trustee to vary the scheme if it does not properly observe all parties' interests and to re-submit the proposed scheme.
- Following that review, the court must direct a meeting of the debtor's creditors to review the scheme. The court 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.
- If the scheme is approved by creditors at the creditors' meeting, the trustee is required to put the scheme before the court, for the court either to approve or reject the scheme. Any creditor who voted against the scheme may object to the proposed scheme, with such an objection being determined by the court.
- The court is required to give its decision approving the scheme, provided that it is satisfied that all necessary conditions have been satisfied. The court must be satisfied that all affected creditors will receive at least as much as the creditors would have received if the debtor's assets had been liquidated on the date of voting on the scheme.
- Upon the conclusion of a successful implementation of a restructuring, the court is required to make an order confirming the complete implementation of the scheme, which is to be advertised.

Under restructuring a debtor or creditor can bring the application to court. The restructuring procedure commences once the court makes an order for restructuring. The Court appoints a trustee, and determine such trustee's fees as well as his/her/its disbursement. The court makes a final determination on the list of creditors supplied by the trustee. Such creditors would have lodged their claims before the court appointed trustee.

The court thereafter reviews a report from the trustee, which addresses the possibility of restructuring the debtor's business. While reviewing, the court should confirm that the report has considered all creditor claims.

From the report the court decides whether the debtor should be restructured. In that event the trustee is required to develop a scheme for restructuring which should address;

- The possibility of the business generating profits;
- Proposed resolution of liabilities;
- Proposals on the sale of the business if applicable;
- Possibility of conversion of debt to equity.
- The time frame for implementation of the scheme being not more than 5 years.<sup>5</sup>

The court reviews the proposed scheme, which is thereafter approved by creditors. The scheme approved by the creditors is then confirmed by the court. In confirming the scheme, the court must be satisfied creditors will not be worse off than if the debtor had been liquidated.

Upon the discharge of obligations, the court confirms through a court order the complete implementation of the scheme.<sup>6</sup>

Question 3.3 [maximum 2 marks]

Commented [E18]: 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.***

Court involvement in approving restructuring appears to be rather high. It is appreciated that the Bankruptcy Law considers bankruptcy cases to be urgent but some of the functions can be delegated so as not to over-burden the court. An example is the need for the court to confirm the list of creditors' claims. It should be sufficient for a court appointed trustee to prove claims without having to approach the court for confirmation. As the trustee is appointed as an expert, the court may not necessarily possess the expertise to fully interrogate a restructuring plan. It is sufficient that the court should be a last resort and not perform administrative functions as well. Approving a list of creditors and confirming a preventative composition or restructuring scheme should be delegated to perhaps the Master of the High Court.

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<sup>5</sup> Idem art 99 & 101.

<sup>6</sup> Idem art 115.

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

Commented [E19]: 14/15

**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.**

*[Type your answer here]*

Question 4.1 [maximum 5 marks] 5/5

Commented [E20]: 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.**

An application for preventative composition is brought by the debtor under Article 6 of the Bankruptcy Law.

1. Upon receipt of the application the court is required to appoint an expert, who must within 20 business days of being instructed, prepare a report setting out the financial position of RZA LLC.
2. Within 5 business days from the receipt of the expert's report, the court should reach a decision whether to accept the preventative composition application. Upon acceptance, RZA LLC's preventative composition procedure commences.
3. The court upon the commencement of the preventative composition procedure must appoint a trustee<sup>7</sup>, whose duties include taking an inventory of the debtor's assets, produce a report on RZA LLC's creditors, supervise operation of the business during preventative composition. The trustee must publish the court's decision to commence the preventative composition within 5 business days of the trustee's appointment.

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<sup>7</sup> Bankruptcy Law art 17.

4. Thereafter, creditors must file their claims with the trustee within 20 business days from the date of publication of commencement by the court.<sup>8</sup>
5. Within 10 business days after the expiry of the lodging of claims by creditors, the trustee is required to lodge the list of claims including whether they are approved or rejected with the court.
6. Within 45 business days from publication of the court's decision commencing the preventative composition procedure, the Trustee must submit a draft preventative composition scheme to the court.
7. The court must review the draft scheme within 10 business days from the date of submission and thereafter direct the trustee to invite by public advertisement RZA LLC's creditors to discuss the proposed scheme.
8. The meeting must be held within 15 working days from the court's direction to invite creditors.
9. Within 3 days after approval by creditors, the trustee must place the scheme before the court for its approval, which approval must be given urgently.
10. The trustee must register the court's approval of the scheme within 7 working days from the date of approval, in the debtor's governmental corporate register and publish a summary of the scheme.<sup>9</sup>

Question 4.2 [maximum 5 marks]

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***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.***

Where the creditors reject the proposed preventative composition scheme as in the facts above, the court may make an order for the liquidation of RZA LLC's assets.<sup>10</sup> As the court has issued the order, following rejection of the scheme by the creditors, the court is required to appoint a trustee, who can include the trustee who had been engaged in the preventative composition scheme or any expert.

The appointed trustee in RZA LLC's liquidation must advertise his/her appointment within 3 business days and invite creditors to lodge their claims within 10 business days from the date of the judgement for the trustee's consideration.

The trustee is required to liquidate RZA LLC's property including the restaurant site under development. The shareholder with a mortgage over the site is entitled to the proceeds from

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<sup>8</sup> Bankruptcy Law art 35.

<sup>9</sup> Bankruptcy Law art 54.

<sup>10</sup> Idem art 124.

the sale of the restaurant site less the trustee's costs of sale. The sale of RZA's assets is done by public auction under the supervision of the courts.

The order of priority of payment of creditors with respect to the sale of RZA's other assets is as follows;

- Court and trustee's costs,
- The restaurant staff's salaries for up to 3 months wages,
- Amounts due to governmental bodies,
- Costs of supplying the debtor with goods and services following the bankruptcy process and
- Unsecured creditors.<sup>11</sup>

The trustee must furnish the court with a monthly progress report on liquidation of the RZA's assets.<sup>12</sup>

The court must make a final order confirming the conclusion of the liquidation process, which order must be advertised. Thereafter the trustee must return all documents to RZA LLC. RZA is presumed to be fully rehabilitated after 5 years from the date of completion of the liquidation.

Question 4.3 [maximum 5 marks]

Commented [E22]: 4/5

***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?***

Liquidation of RZA Limited in the DIFC is governed primarily by the Insolvency Law DIFC Law Number 1 of 2019 as amended and the DIFC Insolvency Regulations 2022. Liquidation is addressed by Winding up.

The actions the creditors of RZA Limited can take include a creditors voluntary winding up or a court sanctioned compulsory winding up because RZA Limited is unable to pay its debts.

With respect to the creditors voluntary winding up, this is commenced by the passing of a resolution and the appointment of a liquidator nominated by the creditors. In the case of a compulsory winding up by the court, a creditor may apply to court for such order stating that RZA Limited is unable to pay its debts. The court identifies a person to be liquidator who acts as such or may call a meeting of creditors and contributories to elect another liquidator.

The responsibility of the liquidator is to wind up the affairs of RZA and to gather, realise and distribute its assets.

Commented [E23]: •The most common means of establishing that a company is unable to pay its debts is for a creditor made demand for payment of a debt which is for a sum of more than USD 2,000, and that demand has been unsatisfied for a period of more than three weeks.

<sup>11</sup> Bankruptcy art 189.

<sup>12</sup> Idem art 134.

In addressing creditor claims against RZA, each creditor must submit their claim against the company to the liquidator in writing, together with supporting information to enable the liquidator to verify the claim.<sup>13</sup> The liquidator may admit or reject the claim for purposes of determining whether to pay the creditor. Whenever the liquidator has enough funds s/he may declare a dividend and pay the dividend to the creditors.

After preferential debts, the company's debts rank equally. In the event the company has sufficient assets to pay all its creditors in full, interest must then be paid on the creditors' interest-bearing claims.

**End of Assessment \***

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<sup>13</sup> DIFC Insolvency Regulations reg 6.16 & 6.17.