



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

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

Commented [SE1]: 5/10

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.**

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 [SE2]: 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.

Commented [SE3]: The correct answer is B.

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 [SE4]: The correct answer is 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.

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.

Commented [SE5]: The correct answer is A.

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 disaplication 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 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.

Commented [SE6]: The correct answer is B.

QUESTION 2 (direct questions) [10 marks in total]

Commented [SE7]: 8/10

Question 2.1 [maximum 2 marks]

Commented [SE8]: 2/2

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?

Ans:-

In my view, with regard to real property, while UAE law makes general provision for the granting of mortgages over land, each emirate maintains its own land registration system; the registration and enforcement of mortgages can be subject to slightly different laws and procedures in each emirate, although the substance of the law is generally the same.

As the related law provision provides for the right of a mortgagee to sell the mortgaged property following the debtor's default, this right must be exercised through the courts. There have been a number of cases, in several of the Emirates, which have sought to determine whether the mortgagee must first obtain judgement for the mortgage debt before proceeding with sale; although the general approach adopted appears to be that a mortgagee can petition the court for an order for sale without first obtaining judgement for the debt. Once an order for sale is obtained, the court's execution department will conduct the sale of the mortgaged property.

Under the applicable legislation (provided that the mortgage contract includes a power of sale in the event of a default by the mortgagor), in the event of non-payment or other default by a debtor, a creditor holding a mortgage over the debtor's land can enter into possession of the land by providing 60 days' notice to certain relevant parties and without the need for a court order; the creditor can sell the whole or part of the land, receive rents and profits from the land and apply the proceeds of sale in payment of the mortgage debt.

Commented [SE9]: Note that this applies only in the financial free zones

Question 2.2 [maximum 4 marks]

Commented [SE10]: 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.

Ans:- A Court will decide about the same.

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

Ans:- A Trustee will take a call about it.

Commented [SE11]: This is the role of the unsecured creditors.

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

Ans:- A Creditor will take a call on this.

Commented [SE12]: The court confirms this determination.

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

Ans:- It’s the Trustee’s job.

Question 2.3 [maximum 2 marks]

Commented [SE13]: 2/2

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)?

Ans:-

The difference between “preventive composition” and “restructuring” is principally that a debtor can seek preventive composition as an option, whereas restructuring is an alternative to liquidation, it can be initiated by either a debtor or a creditor, and it is dealt with as part of the bankruptcy procedure.

Question 2.4 [maximum 2 marks]

Commented [SE14]: 2/2

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

Ans:-

The commencement of the preventive composition procedure will prevent creditors seeking to enforce debts, and will also limit the exposure of cheque signatories to criminal penalties in relation to dishonoured cheques; although preventive composition will generally not prevent a secured creditor from taking action under the creditor’s security.

The commencement of the preventive composition procedures results in the suspension of legal proceedings against the debtor until the earlier of the approval of the preventive composition plan or 10 months following the court's decision to open preventive composition procedures (although the court may, in consultation with the trustee, extend this time period for up to an additional four months). However, secured creditors may enforce their securities provided they have obtained court permission to do so.

The difference between "preventive composition" and "restructuring" is principally that a debtor can seek preventive composition as an option, whereas restructuring is an alternative to liquidation, it can be initiated by either a debtor or a creditor, and it is dealt with as part of the bankruptcy procedure.

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

Commented [SE15]: 2/15

Question 3.1 [maximum 5 marks]

Commented [SE16]: 0/5

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.

Ans:-

Until 2016, in the UAE mainland, insolvency law was undeveloped. There were provisions in Law Number 18 of 1993 relating to commercial transactions (the Commercial Transactions Law) governing a bankruptcy by traders; the law provided for a basic mechanism for insolvency for those engaged in commerce, which was a process to be pursued through the courts, but these procedures were rarely, if ever, utilised

The legal position changed in 2016, with the adoption of Federal Decree Law (Number 9) of 2016 relating to bankruptcy, which has since been amended in 2019, 2020 and 2021 (the Bankruptcy Law). The Bankruptcy Law repealed the bankruptcy provisions of the Commercial Transactions Law and put in place a consolidated insolvency regime for commercial (but not consumer) insolvencies in the UAE. The Bankruptcy Law draws on experiences from a number of jurisdictions.

Further, in 2019 the adoption of Federal Decree Law (Number 19) of 2019 (Personal Bankruptcy Law) put in place a consolidated insolvency regime for debtors who did not fall within the ambit of the Bankruptcy Law, filling a gap which had previously existed within the legislation.

Both the Bankruptcy Law and the Personal Bankruptcy Law provide for several court-supervised processes, including "Preventive Composition" (or in the case of the Personal Bankruptcy Law, "Financial Settlement Proceedings" and "Bankruptcy"); Bankruptcy is further divided into formal restructuring (in the case of commercial debtors) and liquidation (in the case of commercial and non-commercial debtors). Furthermore, the Bankruptcy Law creates a "Financial Restructuring Committee", appointed by the Minister of Finance, with a degree of supervisory control over insolvency practice and procedure in the UAE.

Commented [SE17]: This is cut and pasted directly from the text.

The Bankruptcy Law is largely comprehensive and governs essentially all aspects of the insolvency process. The law applies to:

- (a) all companies governed by the Commercial Companies Law (the principal corporate legislation in mainland UAE);
- (b) any companies established under other legislation who by law or voluntarily have submitted to the provisions of the Bankruptcy Law;
- (c) free zone companies and establishments not governed by other insolvency procedures (which is essentially all free zone companies and establishments except those in the financial free zones);
- (d) any person who is a “trader” (engaged in commercial activities in a personal capacity); and
- (e) licensed civil companies of a professional character (professional partnerships, etcetera).

The Bankruptcy Law is available to essentially all commercial entities and individuals carrying on commercial activities (in respect of the individuals’ commercial affairs), except for state-owned companies, unless they have opted into the application of the law.

Question 3.2 [maximum 8 marks]

Commented [SE18]: 2/8

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.

Ans:-

In the given case, voluntary winding up provisions will be applicable. The winding up is deemed to commence at the time of the passing of a resolution to wind up the company. The company must cease to carry on business from the time of the passing of the resolution for the commencement of the winding up, although the company continues to exist and have legal personality during the winding up. The powers of the directors cease upon the appointment of the liquidator.

The court has jurisdiction to order the winding up of a company if the company has passed a resolution to that effect.

The distribution of funds happens as given in Article 75 of the code.

The court also takes a call about an appointment of a liquidator for winding up of the company. The said liquidator is supposed to submit reports to the court about financials of the company, distribution of assets/ funds and finally for dissolution.

The court plays an active role at various stages by supervising the process, calling

for submission of various reports by the liquidator and so on.

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

Ans:-

If we talk first about Preventive Composition scheme approval by the court, the court is required to give any decision approving or rejecting the scheme urgently. 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.

The court may not approve a scheme that affects the priority of any secured creditor rights. However, the court may accelerate payment dates of longer-term debts, if that would be in the interests of the success of the scheme.

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

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]

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.

Commented [SE19]: The court plays a very active role in bankruptcy cases, which is not explored in this response.

For example:

- 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 preventive 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...

Commented [SE20]: 0/2

Commented [SE21]: This question is asking for your view on whether the level of court involvement is appropriate.

Commented [SE22]: 0/15

Commented [SE23]: 0/5

The application for preventive composition is made to the court by way of an application setting out the debtor's position, the debtor's proposal for preventive composition and the name of the proposed appointee as trustee to oversee the preventive composition. Upon receipt of the application, the court may make interim orders to preserve the position, may request further information and may require funds to pay the costs of the preventive composition procedures.

Upon receipt of the preventive composition application, the court is required to appoint an expert to prepare a report on the financial position of the debtor, which should include the expert's views on whether the debtor has met the criteria necessary to accept the preventive composition application procedure. The report must be delivered no later than 20 business days from the date of the expert being instructed to prepare the report.

The court is required to decide on the preventive composition application within five business days of application (if the application meets all necessary criteria) or from the date of the expert's report. If the court accepts the application, the preventive composition procedure commences.

If the court decides to accept the preventive composition 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. The trustee can be a natural or legal person, and up to three trustees may be appointed to act jointly at any one time. Any creditor may object to the appointment of a trustee within five business days of the date of publication of the appointment; the objection is by way of application to the court, which is required to determine any objection within a further five business days, on a final basis. The preventive composition procedure will continue during the period of any such objection and determination.

Within five business days of the trustee's appointment, the trustee is required to publish a summary of the court's decision to commence the preventive composition procedure (all advertisements and publications of notifications by the trustee require the trustee to publish any such notifications in two widely-read newspapers, one newspaper publishing in English and the other publishing in Arabic). The notice given by the trustee is also required to invite creditors to file claims within 20 business days from the date of publication.

The trustee is required to lodge the list with the court within 10 business days from the date of the period for lodging claims, which period can be extended, once for a similar period, by the court. The court is responsible for finally determining the list of creditors.

Commented [SE24]: Cut and paste from guidance text.

The preventive composition scheme must be submitted to the court within 45 business days from the date of publication of the decision initiating the preventive composition procedure. At the request of the debtor or the trustee, the court may extend this period for periods of up to 20 business days.

The debtor is required to assist the trustee to prepare a preventive composition scheme. The preventive composition scheme is required to include:

- (a) a report on the debtor's financial position and proposals regarding restructuring;
- (b) the proposed means of settlement of debts;
- (c) any proposed debt for equity exchanges; and
- (d) how long the proposed scheme implementation period would be.

Commented [SE25]: Cut and paste from guidance text.

Within 10 business days from the date of submission of the scheme, the court is required to review the draft to confirm that it takes account of the interests of all interested parties.

The court may require the trustee to make amendments to the scheme; if the court does so, the trustee must return the amended scheme to the court within 10 business days of such a request (such period may be extended once for a similar period). If the court is satisfied with the terms of the proposed scheme, the court is required to direct the trustee to issue invitations (by way of public advertisement, as well as any other means directed by the court) within five business days, to be given to the debtor's creditors, for the purpose of attending a creditors' meeting to discuss and vote on the proposed scheme. The meeting is to be held within 15 working days of the date of direction to invite creditors.

Once the scheme has been approved, the trustee is required to put the draft scheme before the court within three business days, for the court either to approve or reject the scheme.

The court is required to give any decision approving or rejecting the scheme urgently.

Question 4.2 [maximum 5 marks]

Commented [SE26]: 0/5

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.

Following any annulment or rescission of preventive composition, the debtor is then automatically subjected to bankruptcy procedures provided for under the Bankruptcy Law. The court may terminate the preventive composition and commence bankruptcy procedures on its own initiative, or on the application of a creditor, if the debtor has evidently committed the act of bankruptcy, namely if the debtor has been in default for more than 30 days before the making of the preventive composition procedure, or if the scheme's implementation is impossible and the termination of the procedure will result in the debtor being unable to pay its debts for more than 30 business days.

Commented [SE27]: Cut and paste from guidance text

Following the initiation of any bankruptcy procedures, the appointment of the trustee for the preventive composition terminates (unless the trustee is appointed as the bankruptcy trustee); the court continues to act as the court implementing the procedures for declaring bankruptcy and liquidation of the debtor's assets under the Bankruptcy Law.

If the court makes an order for liquidation, the court is required to appoint a trustee to undertake the liquidation, although it can order that any expert or trustee previously appointed in relation to any other procedure should continue in office.

Following the making of the liquidation order, the appointed trustee must advertise the trustee's appointment within three business days. The trustee is required to report to the court monthly on the progress of the liquidation of the debtor's assets and otherwise in relation to the bankruptcy.

Creditors are required to make their claims with the trustee within 10 business days from the date of the judgment; claims lodged later are not admissible unless the court accepts the reason for any failure to claim. The trustee is required to consider the claims made, unless the debtor's assets are insufficient to pay legal fees and secured creditors. All debts owed by the debtor fall due upon the order for bankruptcy. Future debts can be adjusted for an amount

equivalent to legally payable interest and foreign currency claims must be converted to UAE currency at the rate prevailing at that date. At the request of a trustee appointed under the bankruptcy procedures (and subject to notice to the creditor), the court may suspend interest and other penalties for non-payment. In the event of any failure by the debtor to perform its obligations, the other party may apply to the court for an order for rescission of the contract, but commencement of a restructuring does not automatically lead to a rescission.

Following the bankruptcy of the debtor, the trustee is required to liquidate all of the debtor's property by public auction, under the supervision of the court. The trustee may ask the court to permit the debtor to undertake the sale of the debtor's business and assets over a period of up to six months (which can be extended by up to two months), if it would be in the public interest or interest of creditors to do so.

The trustee is required to notify the court, any supervisors and the debtor of the substance of any proposals received for the purchase of the debtor's business. If any interested party objects to any proposed sale, the court is the party to determine the objection. The debtor and certain related persons are ineligible to purchase the assets of the debtor from the trustee.

The proceeds of sale of the liquidation of the debtor's assets are distributed by the trustee to creditors. The trustee must pay claims in the order provided for in the law, subject to court approval for the distribution and approval of payment of priorities. Claims for debts which have not been admitted are to be held by the court pending determination of the claims. The proceeds of sale of any assets sold subject to a security interest are to be applied in payment of the debts owed to the secured creditor, less the trustee's costs of sale. Any surplus after sale of the assets must be returned to the debtor.

In relation to other assets, the order of priority is the payment of the court costs and the trustee's costs, unpaid wages and salary up to a maximum amount of three months' salary, alimony debts under a judgment against the debtor, amounts due to governmental bodies and the costs incurred in supplying the debtor with goods and services following the commencement of the bankruptcy.

Following the liquidation of the debtor's assets, the court must make an order confirming the conclusion of the liquidation procedure, including the final list of creditors and the amounts remaining unpaid. The decision is to be advertised. The trustee is required to return all documents to the debtor following completion of the liquidation. Following completion of the liquidation, any creditor may enforce any debt remaining unpaid (as admitted in bankruptcy) against any remaining assets of the debtor.

The debtor can ask the court to terminate the bankruptcy if the grounds for the bankruptcy have ended (for instance, if all debts have been paid). Following the expiration of the period of five years from the date of the completion of the bankruptcy, the debtor is deemed to be fully rehabilitated.¹⁸⁵ This time period can be accelerated if the debtor is able to discharge its debts before the expiry of this period.¹⁸⁶

Question 4.3 [maximum 5 marks]

Commented [SE28]: 0/5

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?

An application to the court for the compulsory winding up of a company may be brought by the company, its directors, or any creditor (including any prospective or contingent creditor), or by the DIFC Authority where it considers the winding-up to be in the best interests of the DIFC and the DIFC court is of the opinion that it is just and equitable for the company to be wound up. A creditor with a debt of at least USD 2,000 may apply to the court for an order winding up the company.

Commented [SE29]: Cut/paste from guidance text.

In the case of a creditors' voluntary winding up, when passing the resolution to commence the winding up, the company may nominate a liquidator to be appointed, but the liquidator shall be the person nominated by the creditors (or in absence of any nomination, the person nominated by the company). Upon the appointment of the liquidator, the directors' powers cease. The creditors may also appoint a liquidation committee at the meeting of creditors, to exercise the functions conferred on the committee under the DIFC Insolvency Law.

Any liquidator appointed must be an insolvency practitioner, as provided for in Part 10 of the Insolvency Law. The liquidator's role is to wind up the affairs of the company and to gather, realise and distribute the company's assets. A liquidator has the powers set out in Schedule 3 to the law. The liquidator can (amongst other powers) carry on the business of the company (to the extent that it is beneficial to the winding up), conduct litigation in the name of the company, sell the company's property and do anything else which may be necessary for the winding up of the company's affairs and distributing its assets. The liquidator may also call for claims by creditors and to prove, rank and pay creditors' and shareholders' claims. The liquidator may enter into contracts in the name and on behalf of the company (which together with other enumerated powers would appear to cover the continued supply of goods and services to the company as may be beneficial to the winding up, however there is no provision requiring any person to continue to supply goods and services to a liquidator). The liquidator may disclaim onerous property, including unprofitable contracts, unless the liquidator has been appointed in a members' voluntary winding up.

The liquidator also has a duty to investigate powers the affairs of the company and the cause of its failure, and the liquidator must report its findings to the court; the liquidator can require any person to submit further information in relation to any matters included in the statement of the affairs of the company, inspect the company's books and records and require any officer of the company to attend before the liquidator and to provide information or such other assistance as the liquidator may reasonably require. The liquidator must report to the creditors at various times during the winding up as to the state of affairs of the company. If a liquidation committee has been appointed, after the first meeting has occurred, the liquidator may determine when further meetings of the committee take place.

Under the DIFC Insolvency Regulations, it is provided that a creditor wishing to recover a debt in the liquidation of a company being wound up by the court must submit a claim for the amount in writing to the liquidator. The document so lodged is described as a "proof" of debt. This provision also expressly applies to members' voluntary winding up and appears to apply to a creditors' voluntary winding up.

The creditor must set out in writing the claimed amount and provide supporting information to allow the liquidator to verify the claim. If the debt cannot be ascertained, the liquidator may estimate its quantum. A proof of debt must take into account any set-off which exists between the creditor and the company and may take account of accrued interest up to the date of the commencement of the winding up. A creditor may prove for a future debt and for a debt in a foreign currency, converted into US dollars. A secured creditor may only prove for the balance owing, or which is estimated would be owing, following realisation of any security interest.

Upon receipt of a proof of debt, the liquidator may require the creditor to provide such further information as may be necessary to evaluate the claim. The liquidator may then admit or reject (in whole or in part) any proofs of debt for the purposes of determining whether to make a payment to the creditor, along with other creditors. If a creditor is dissatisfied with the liquidator's decision regarding a proof, the creditor may then appeal against that decision within 21 days of receiving notice of that decision, by application to the court; a member of the company or another creditor may also appeal against any such decision by the liquidator.

There are no specific provisions governing contracts which have not been fully performed upon the commencement of a winding up. The value of such claims as between the company and the other party to the contract falls to be determined by the general law of liability, including the law of debt (for amounts due), damages (for any breaches of contract arising from non-performance following the commencement of winding up) and restitution (if applicable, in respect of property transferred).

*** End of Assessment ***

Commented [SE30]: 15/50. 30%.