



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]: 7/10

**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 [SE2]: The correct answer is D.

Question 1.2

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

- (a) The insolvency laws of the financial centres govern the insolvency of financial service businesses only, while the Bankruptcy Law governs the insolvency all other businesses.**
- (b) The insolvency laws of the financial centres have no application and cannot be enforced in the UAE "mainland" (that is, outside of the financial centres), while the Bankruptcy Law is the only applicable law governing insolvency in the UAE "mainland".**
- (c) The Bankruptcy Law drew on the experiences of a number of jurisdictions, while the 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 [SE3]: 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 substantial reciprocal treatment will be assured regarding recognition and enforcement in that foreign country of the judgments of the ADGM courts.**

Commented [SE4]: The correct answer is B.

**(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 [SE5]: 8/10

Question 2.1 [maximum 2 marks]

Commented [SE6]: 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?**

*The primary distinction with regards to the registration of real property interests in the different emirates of the UAE is the use of different land registration systems between each emirate, furthermore the laws relating to the registration of mortgages can also be slightly different.*

*In mainland UAE sales of mortgaged real property following a debtor default require the consent of the court, whereas in the free financial zones, provided that a power of sale clause is included in the contract, the creditor can possess the land by giving 60 days' notice without the need for a court order.*

Question 2.2 [maximum 4 marks]

**Preventive composition and restructuring are both insolvency processes that an entity can adopt under the UAE Bankruptcy Law. They share a number of similarities regarding the entry into and conduct of each of the respective processes. While the processes are different, various "actors" assume similar roles in each process. Which actor is responsible for each of the following processes?**

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

*In preventive composition the decision on the application to commence the process is made by the court as it is a court supervised process. Similarly in a restructuring the decision on the application to commence the process is made by the court.*

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

Commented [SE7]: This is the role of the creditors

*Restructuring - the proposal is first provided to the court to make the primary determination before going to creditors.*

*Preventive Composition - the proposal is first provided to the court to make the primary determination before going to creditors*



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

Commented [SE8]: This is the role of the court

*Restructuring - the proposal is confirmed by the creditors voting on the proposal  
Preventive Composition - the proposal is confirmed by the creditors who have been admitted to vote on the proposal*

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

*Restructuring - the trustee is responsible for supervising the implementation of the scheme  
Preventive Composition - the trustee is responsible for supervising the implementation of the scheme*

Question 2.3 [maximum 2 marks]

Commented [SE9]: 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)?**

*In a bankruptcy the debtor is obligated to start bankruptcy proceedings if they are in default of payment obligation for 30 straight days.*

*For preventive composition, there is no strict requirement to enter an application for commencement of the process, however it should be noted that the application for preventive composition terminates a debtors obligation to enter bankruptcy proceedings.*

Question 2.4 [maximum 2 marks]

Commented [SE10]: 2/2

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

*In a preventive composition, only the debtor can apply to the court for a composition trustee to be appointed and for the process to commence. For the commencement of bankruptcy, the application can be made by either a debtor or a creditor.*

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

Commented [SE11]: 15/15

Question 3.1 [maximum 5 marks]

Commented [SE12]: 5/5

**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.**

*Generally speaking, the insolvency laws of the UAE are quite young with most of the main developments to the system being made in the past ten years. Up until major reforms led to the introduction of the Bankruptcy Law in 2016 there were mechanisms to insolvency withing the Commercial Transactions Law relating to the bankruptcy of traders and commercial transactions, this process was available through the courts though was rarely used.*

*One of the main impetuses for change occurred in 2009, when Dubai World, a state owned investment vehicle, was on the verge of collapse drawing concerns around the region that the insolvency regime of the UAE would be ill equipped to deal with a collapse of that scale. Although ultimately Dubai World did not collapse, it highlighted a need for a new insolvency regime that would be able to tackle modern insolvency issues.*

*In 2016 the Bankruptcy Law was introduced, repealing bankruptcy provisions contained withing the Commercial Transactions Law and creating a consolidated insolvency regime for commercial UAE insolvencies. Since 2016 the Bankruptcy Law has been further amended in 2019, 2020 and 2021.*

*The Bankruptcy Law applies to commercial insolvencies in mainland UAE (i.e., not the DIFC or ADGM) as personal insolvencies are dealt by another law.*

*The general consensus on the introduction of the Bankruptcy Law has been that it is a welcome addition to the UAE as is necessary for the continual development of the commercial landscape of the country, albeit the number of insolvency processes in the country still remains limited after the introduction of the Bankruptcy Law.*

Question 3.2 [maximum 8 marks]

Commented [SE13]: 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.***

*When a debtor company seeks to enter bankruptcy, the court is actively engaged from the outset as the process is started by an application to the court (either by a debtor or creditor, however by a debtor in this case) which must be approved by the court to enter a bankruptcy process and move forward with a restructuring.*

*In order for the application to be approved the debtor must produce a series of documents to the court including its financial positions, other financial information and the proposed trustee to oversee the process.*

*While overseeing the process the court is required to appoint a trustee (which can be a natural or legal person), the trustee can either be nominated or can be selected from a group of experts available. In the event that a creditor objects to the proposed trustee they are able to submit the objection to the court which must make a determination on the issue.*

*Upon the appointment, the trustee is able to request resources from the court in order to assist them in their duties, this can include the appointment of supervisors or experts. Additionally, the trustee is required to submit any fees that they incur for approval to the court for authorisation, external parties are free to object to the fees presented, in which case the court is then required to decide on the fee positions.*

*Once the trustee has been able to analyse the debtor's business and financial positions, they are required to submit a report to the court address the possibility of a restructuring. Upon receipt, the court will instruct the trustee to convene a creditors meeting, where unless the court believes a liquidation is more appropriate the court will instruct the trustee to create a restructuring plan.*

*The trustee will then have three months to create a restructuring plan and present it to the court for approval. The court is required to review the scheme within 10 days of receiving it and is able to request amendments to the scheme if it does not believe that properly provide for all parties' interests. Once approved by the court, the scheme is brought before creditors who will vote on it, during this stage only creditors who have had debts admitted may vote on the scheme, however the court may allow creditors whose debts have been admitted on an interim basis to also vote.*

*Subsequent to creditor approval, the court must approve the new scheme brought forward. In doing this the court must evaluate whether creditors will be made at least as well off as had a liquidation taken place and whether the priority rights of any secured creditors would be affected in addition to other criteria. If rejected the scheme must be amended and sent back to creditors however if accepted the trustee must publish details of the scheme and present updates to the court every 3 months for progress on its implementation. Furthermore, if any amendments are needed for the scheme post approval, court approval will be required. At the completion of the scheme after all obligations are discharged, the court will be able to make an order confirming the completion of the scheme.*

*Overall, the restructuring process governed by the Bankruptcy Law of the UAE is a heavily court led process, however it is designed in a way that is meant to assist the debtor in pursuit of a restructuring rather than hinder them. By providing assistance where required, and a set process with an element of flexibility, debtors are provided the tools to achieve viable restructurings.*

Question 3.3 [maximum 2 marks]

Commented [SE14]: 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 degree of court involvement in a restructuring is not in itself an innately positive or negative characteristic. Rather how the court is involved matters most, in some systems court involvement can be overly administrative affair hindering progress of a scheme and creating unnecessary barriers. However, on the other hand, a high degree of involvement can be a positive thing where, as is the case with UAE, the court provides resources and assistance to the trustee to assist with their obligations; while providing an additional level of scrutiny of any proposed scheme to ensure that the rights of all creditor classes are adequately protected.*

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

Commented [SE15]: 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.***

*[Type your answer here]*

Question 4.1 [maximum 5 marks]

Commented [SE16]: 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 first step of preventive composition is an application to the court by the debtor, this must be done subject to the debtor giving the relevant controlling body 10 days' notice of the application.*

*Once received the court will appoint an expert to create a report on the position of the debtor, this report must be delivered within 20 business days of the expert being instructed to create the report. The court will be required to decide on the application for preventive composition at the later of 5 days from the receipt of the application or from the date of the expert's report.*

*Once the scheme is approved a trustee is appointed by the court and is required to publish a notice of the court's decision within 5 business days, this notice will also invite creditors to file any claims within 20 business days of the publication. Following the expiration of this period for claims, the trustee must file a list of claims with the court within 10 business days.*

*Moving forward, a preventive composition scheme is required to be submitted to court within 45 business days of the publication of the notice that the process has begun. The court will then have 10 business days from the date of submission to review the draft, if approved by the court the trustee will have 5 business days to provide notice of a creditors meeting to be convened within 15 business days of the notice.*

*If approved the trustee must submit the draft scheme to the court within 3 business days, the court is required to decide on the scheme expeditiously after which the trustee will have 7 business days to register the court's decision confirming the scheme in the corporate register.*

*Therefore, given the parameters presented it should take a maximum of 120 business days.*

Question 4.2 [maximum 5 marks]

Commented [SE17]: 5/5

***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.***

*In the situation described above where a preventive composition scheme could not be agreed with the creditors of RZA LLC the preventive composition will be terminated, the trustee of the preventive composition process will terminate, and the court will implement the bankruptcy process for the debtor in accordance with the Bankruptcy Law and order the liquidation of the debtors' assets.*

*After the liquidation order is made the court will proceed with the appointment of a trustee to oversee the liquidation process, the trustee can either be an expert from the list available for selection or it can be the previously appointed trustee that oversaw the preventive composition.*

*Afterwards, similar to the preventive compositions scheme, the trustee must advertise their appointment and solicit creditor claims for a prescribed period, provided that the RZA LLC's assets are sufficient to pay secured creditors and legal fees, the trustee must consider all claims.*

*Once the court order for liquidation is approved the trustee must liquidate all of RZA LLC's assets via public auction with additional supervision by the court. With permission of the court the auction can be extended up to 6 months if the trustee believes it would be in the interest of the creditors or the public. In the sale of debtor assets, both the debtor and certain related persons are disallowed from purchasing any debtor assets.*

*The proceeds of assets sales are distributed amongst creditors in the waterfall as prescribed by the Bankruptcy Law. Assets sold subject to security will have proceeds paid to settle the related debts minus the trustees' costs of selling the assets, in this case the restaurant held by RZA LLC would be sold with proceeds used to settle the mortgage held by the RZA LLC shareholder who purchased the property.*

*In relation the facts presented for RZA LLC, priority of payment is to court costs, followed by the trustee costs and unpaid salaries up to a maximum of three months salary. Therefore only 3 months of the employee's salary would be treated as a priority payment, while the remaining month would be treated as an unsecured claim in the waterfall.*

*At the conclusion of the liquidation, once all matters are settled the debtor can request the bankruptcy be terminated and RZA LLC be dissolved.*

Question 4.3 [maximum 5 marks]

Commented [SE18]: 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?***

*If the creditors of RZA Limited wish to have the company liquidated in the DIFC they can either pursue an order in the DIFC courts to have RZA Limited wound up or they could pursue a creditors voluntary winding up.*

*For a creditors voluntary winding up, the winding up commences once the company passes a resolution to wind up the company, at this point the company will cease to carry on business and the directors will continue to operate in their roles until a liquidator is appointed.*

*Both the company and the creditors will have the power to nominate a liquidator for RZA LLC, however the company's nomination will only be appointed if there is no nomination from the creditors. The liquidator is required to be an insolvency practitioner as specified in Part 10 of the Insolvency Law.*

*In the case of a compulsory winding up, the DIFC courts would order RZA LLC to be wound up upon a successful application brought by either the company, its directors, a creditor or the DIFC Authority. Creditors applying for a company to be wound up via compulsory winding up are required to have a debt of at least USD 2,000.*

*After an order is granted by the court, the court will appoint a liquidator to oversee RZA Limited. Subsequent to appointment, the liquidator may choose to continue in their role as liquidator or convene a creditors and contributories meeting to choose an alternative liquidator. If the creditor and contributories select an alternative liquidator they will replace the current liquidator, in this case if each group selects a different alternative liquidator the creditors choice takes priority.*

*With regards to creditor claims in both a compulsory winding up and a creditor voluntary winding up, all creditor claims must be submitted to the liquidator with the specified amount and supporting documentation to allow the liquidation to verify the claim. Upon receipt of the claim the liquidator will evaluate the claim and either request additional information, admit the claim or reject the claim (in whole or part). If the creditor wishes to contest the decision taken by the liquidator in relation to the claim, they will have a 21 day period where they may make an application to the court who will rule on the liquidator's decision.*

\* End of Assessment \*

Commented [SE19]: 45/50. 90%.