



SUMMATIVE (FORMAL) ASSESSMENT: MODULE 7E

UNITED ARAB EMIRATES

***This is the*** summative (formal) assessment for Module 7E ***of this course and must be submitted by all candidates who*** selected this module as one of their elective modules.

The mark awarded for this assessment will determine your final mark for Module 7E. ***In order to pass this module, you need to obtain a mark of 50% or more for this assessment.***

### INSTRUCTIONS FOR COMPLETION AND SUBMISSION OF ASSESSMENT

Please read the following instructions very carefully before submitting / uploading your assessment on the Foundation Certificate web pages.

- 1. You must use this document for the answering of the assessment for this module. The answers to each question must be completed using this document with the answers populated under each question.**
- 2. All assessments must be submitted electronically in Microsoft Word format, using a standard A4 size page and an 11-point Arial font. This document has been set up with these parameters - please do not change the document settings in any way. DO NOT submit your assessment in PDF format as it will be returned to you unmarked.**
- 3. No limit has been set for the length of your answers to the questions. However, please be guided by the mark allocation for each question. More often than not, one fact / statement will earn one mark (unless it is obvious from the question that this is not the case).**
- 4. You must save this document using the following format: [studentID.assessment7E]. An example would be something along the following lines: 202223-336.assessment7E. Please also include the filename as a footer to each page of the assessment (this has been pre-populated for you, merely replace the words "studentID" with the student number allocated to you). Do not include your name or any other identifying words in your file name. Assessments that do not comply with this instruction will be returned to candidates unmarked.**
- 5. Before you will be allowed to upload / submit your assessment via the portal on the Foundation Certificate web pages, you will be required to confirm / certify that you are the person who completed the assessment and that the work submitted is your own, original work. Please see the part of the Course Handbook that deals with plagiarism and dishonesty in the submission of assessments. Please note that copying and pasting from the Guidance Text into your answer is prohibited and constitutes plagiarism. You must write the answers to the questions in your own words.**
- 6. The final submission date for this assessment is 31 July 2023. The assessment submission portal will close at 23:00 (11 pm) BST (GMT +1) on 31 July 2023. No submissions can be made after the portal has closed and no further uploading of documents will be allowed, no matter the circumstances.**
- 7. Prior to being populated with your answers, this assessment consists of 10 pages.**



**ANSWER ALL THE QUESTIONS**

Commented [SE1]: 39/50. 78%.

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

Commented [SE2]: 8/10

**Questions 1.1. - 1.10. are multiple-choice questions designed to assess your ability to think critically about the subject. Please read each question carefully before reading the answer options. Be aware that some questions may seem to have more than one right answer, but you are to look for the one that makes the most sense and is the most correct. When you have a clear idea of the question, find your answer and mark your selection on the answer sheet by highlighting the relevant paragraph in yellow. Select only ONE answer. Candidates who select more than one answer will receive no mark for that specific question.**

Question 1.1

**One of the most significant barriers to the restructuring process in the UAE has been:**

- (a) *The failure of the responsible authorities to enact laws which would encourage a business rescue culture.*
- (b) *The low rate of business failure in the UAE.*
- (c) *The absence of a moratorium on creditor actions after the commencement of a bankruptcy proceeding inhibits the restructuring process.*
- (d) *There could be criminal law consequences for business owners arising from the security agreements which a business might have with its creditors.*

Question 1.2

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

- (a) *The insolvency laws of the financial centres govern the insolvency of financial service businesses only, while the Bankruptcy Law governs the insolvency all other businesses.*
- (b) *The insolvency laws of the financial centres have no application and cannot be enforced in the UAE "mainland" (that is, outside of the financial centres), while the Bankruptcy Law is the only applicable law governing insolvency in the UAE "mainland".*
- (c) *The Bankruptcy Law drew on the experiences of a number of jurisdictions, while the DIFC and AGDM insolvency laws and regulations are primarily based on the insolvency laws of one other country.*

Commented [SE3]: Incorrect. The correct answer is C.

**(d) The Bankruptcy Law incorporates substantial elements of Islamic law, while the insolvency laws of the financial centres are based on the common law.**

Question 1.3

**Which statement correctly describes the relationship between the courts of the DIFC and the courts in mainland UAE?**

- (a) The judgments and orders of the courts of the DIFC are not enforceable outside of the DIFC.**
- (b) The judgments and orders of the courts of the DIFC are enforceable elsewhere in Dubai only through the Dubai courts.**
- (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 [SE4]: Incorrect. 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.**

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.**

**(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]: 4/10

Question 2.1 [maximum 2 marks]

Commented [SE6]: 1/2

**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 key point of distinction regarding the registration of real property interests, including mortgages, across different emirates of the UAE lies in the fact that each emirate, and each free zone within the emirates, has its own separate land registry and procedures. E.g. in DIFC the Property Law provides for a system of registration of interests in land (adopting the Torrens system), the DIFC has a separate register of ownership and other interests in land and other charges. The DIFC and ADGM each maintain their own real property registries and regulations.

The key difference between the sale of mortgaged real property following a debtor default in "mainland" UAE versus a financial free zone is the process of foreclosure. In mainland UAE, the court typically orders property sales, often through public auction. In contrast, financial free zones like the DIFC and ADGM permit self-help remedies, allowing mortgagees to enforce their security without the court intervening, subject to meeting the right conditions.

Commented [SE7]: A mortgagee would need to petition the court for an order for sale.

]

Question 2.2 [maximum 4 marks]

Commented [SE8]: 3/4

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

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

[The court]

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



[The Trustee (in preventive composition) or the Expert (in restructuring)]

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

[The court]

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

[The Trustee (in preventive composition) or the Expert (in restructuring)]

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 under the UAE Bankruptcy Law relates to the state of the debtor's solvency.

*Preventive Composition is a process intended for debtors that are in financial distress but have not yet reached a state of insolvency. Specifically, it is applicable when a debtor foresees that due to financial difficulties, it will become insolvent in the future, or the debtor has ceased to pay its debts for a period due to financial distress. The purpose is to assist the debtor to reach settlements with his/her creditors.*

*Bankruptcy is a process (that can lead to restructuring or liquidation) that is intended for debtors that have already become insolvent. This is generally defined as when a debtor has ceased to pay its commercial debts due to a financial crisis for a period of over 30 days. Following the suspension or annulment of the preventative composition the debtor is automatically subjected to bankruptcy procedures.*

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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?**

[

**Commented [SE9]:** This is the role of the debtor's unsecured creditors.

**Commented [SE10]:** 0/2

**Commented [SE11]:** The key difference is that 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 [SE12]:** 0/2

**Commented [SE13]:** 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

*The key difference for a creditor under the UAE Bankruptcy Law lies in the options available to them and the expected outcome of each process.*

*In a preventive composition proceeding, all legal proceedings against the debtor are stayed, and creditors cannot initiate new legal action. The goal of preventive composition is to enable the debtor to reach an agreement with creditors on the restructuring of its debts, potentially providing a better outcome for creditors than in bankruptcy. However, it can limit creditors' immediate ability to enforce their claims, as they are bound by the moratorium and the approved composition plan.*

*In bankruptcy proceedings, the debtor's assets are typically liquidated to pay off its debts, or a restructuring plan is adopted to enable the debtor to continue operations while repaying its debts over time. Depending on the circumstances, creditors may have ability to enforce their claims compared to preventive composition. In a liquidation, unsecured creditors often receive only a fraction of their claims, if anything, after secured creditors and costs of the bankruptcy proceedings have been paid. In a restructuring, creditors' rights are typically subject to the restructuring plan.*

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

Commented [SE14]: 12/15

Question 3.1 [maximum 5 marks]

Commented [SE15]: 4/5

**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.**

[  
*Before the UAE Bankruptcy Law (Federal Law No. 9 of 2016) came into being, insolvency situations in the UAE were managed by provisions found in the Law Number 18 of 1993 relating to commercial transactions (the "Commercial Transaction Law"). These provisions were widely out-of-date and insufficient, and the insolvency law was thus considered underdeveloped. They lacked modern restructuring mechanisms, primarily served the creditors' interests, and often led to jail time for unpaid debts and bouncing checks. This old legal framework negatively affected the country, with many debtors leaving the country to avoid facing criminal charges due to debt that they struggled to pay.*

*The UAE government recognized these issues and took steps to modernize the bankruptcy legislation by introducing the new Bankruptcy Law in 2016, which was seen as a big stride towards a more modern bankruptcy system when Federal Decree Law (Number 9) of 2016 was adopted. This law has been updated since in 2019, 2020 and 2021. This Law repealed the provisions of the Commercial Transaction Law for commercial insolvencies in the UAE. In 2019 the amendments also included debtors*

*that was not included in the previous reiteration of the Bankruptcy law, this was done via adopting Federal Decree Law (Number 19) of 2019 (Personal Bankruptcy Law).*

*The Bankruptcy Law and the Personal Bankruptcy Law both outline several processes that are overseen by the court. These include "Preventive Composition" and "Bankruptcy" under the Bankruptcy Law, and "Financial Settlement Proceedings" under the Personal Bankruptcy Law. The term "Bankruptcy" is further divided into two categories - formal restructuring, which applies to commercial debtors, and liquidation, which applies to both commercial and non-commercial debtors.*

*The law excludes companies based in the UAE's free zones, like the DIFC and ADGM, as these zones have their own separate insolvency laws. The arrival of the Bankruptcy Law has generally been acknowledged as a beneficial move for the UAE business sector as it has updated the insolvency system, introducing more efficient bankruptcy and restructuring mechanisms, and removed the criminal penalties due to unpaid debts. The Bankruptcy Law draws on practises from a many other Jurisdictions and has been quite responsive to the changing landscapes e.g. Brought on by the COVID19 crisis experienced all over the world.*

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Question 3.2 [maximum 8 marks]

Commented [SE16]: 6/8

***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.***

[  
*Under the UAE Bankruptcy Law (Federal Law No. 9 of 2016) (the "Bankruptcy Law"), the court plays an active role in the bankruptcy process, especially where restructuring is involved. Some of the key points where the court is required to be actively engaged in the restructuring in bankruptcy process are as follows:*

*Under Article 68 of the Bankruptcy Law the court decides on the application to commence bankruptcy proceedings. This involves reviewing the application of the debtor, verifying the debtor's insolvency or financial distress, and determining whether the conditions for bankruptcy proceedings are met.*

*Article 65 of the Bankruptcy Law outlines the court's role in examining the debtor's request for bankruptcy. The court has the authority to end the preventive composition process and start bankruptcy proceedings. This can be done either on its own accord or following a request from a creditor. The court would take this step if it's clear that the debtor has essentially become insolvent, which is the case if the debtor has been*

*unable to pay their debts for over 30 days prior to the initiation of the preventive composition procedure. Additionally, the court would also consider this move if implementing the agreed upon scheme becomes impossible, and the subsequent ending of the process would leave the debtor incapable of fulfilling their financial obligations for more than 30 business days.*

*Under Article 66 of the Bankruptcy Law, the role of the trustee in the preventive composition comes to an end, unless the same trustee is designated as the bankruptcy trustee, once any bankruptcy processes have begun. During this transition, the court maintains its role and continues to carry out the proceedings related to declaring bankruptcy and liquidating the debtor's assets as per the guidelines of the Bankruptcy Law.*

*Following the application by the Debtor which, the debtor also furnishes specified documents that includes the financial position, financial date specified and the name of a trustee to oversee the bankruptcy process. (Article 73 of the Bankruptcy Law).*

*According to Article 78 and article 14 of the Bankruptcy Law, the court must decide on the bankruptcy initiation application within five business days from either the submission of the application or from the date of the expert's report, depending on the situation.*

*According to Article 79 of the Bankruptcy Law, The Court shall reject the application if the documents and data provided in Articles (73) and (74) of the Bankruptcy Law are not provided, or if provided incomplete without reason, unless the Court decides to accept the application in the best interest of the creditors.*

*Throughout the process, the court also decides on any disputes or issues that may arise and ensures that the bankruptcy process is conducted in accordance with the law and in the best interests of the debtor and the creditors. While the court has an active role, the management of the debtor's business and the preparation of the restructuring plan are typically handled by the trustee and the debtor, unless the court decides otherwise (Article 80 of the Bankruptcy Law).*

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Question 3.3 [maximum 2 marks]

Commented [SE17]: 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 high level of court involvement as required by the UAE Bankruptcy Law in approving a restructuring is appropriate. This extensive court supervision ensures that the restructuring process is fair, transparent, and takes into account the interests of all parties involved (best interest of both debtors and creditors). It prevents the abuse of the system, ensures the lawful and equitable distribution of the debtor's assets, and verifies that the debtor is genuinely in distress and not using insolvency proceedings to avoid paying its debts.*

*The presence of the court gives credibility to the process and provides a forum for resolving any disputes or issues that may arise during the insolvency process. This increases the chances of a successful outcome and can help preserve value for both of the opposing parties.*

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**Commented [SE18]:** It can also make the process much more expensive. The requirement of court approval at each stage means that cases take longer to resolve and there is a cost to that process - those funds could be better spent paying creditors.

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

**Commented [SE19]:** 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 [SE20]:** 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.**

[

***Under the UAE Bankruptcy Law, the process of preventive composition involves a series of steps with specific timeframes. Given these assumptions, below are the 10 steps that will determine the maximum time between making an application and the registration of the scheme following final approval:***

- 1. On Application on the first day, the debtor submits an application for preventive composition to the court. (Article 5 and 6 of the UAE Bankruptcy Law). The debtor cannot be in default of any debt of more than 30 consecutive business days due to unstable financial position.***
- 2. According to Article 78 and article 14 of the Bankruptcy Law, the court must decide on the bankruptcy initiation application within five business days (Day 5) from either the submission of the application or from the date of the expert's report, depending on the situation.***
- 3. Upon the court's decision, an expert is appointed and the expert is to prepare a report on the financial position of the debtor including an analysis of its the required conditions needed to accept the preventive composition application. This report must be delivered not later than 20 business days from the date of notifying the expert of this decision. (Article 13)***
- 4. According to article 14 of the Bankruptcy Law, the court must decide on the bankruptcy initiation application within five business days from the date of the expert's report.***
- 5. 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 Court shall inform the trustee of the decision of his appointment on a date no later than the day following the issue of the decision (Article 17).***
- 6. Any creditor may lodge grievance against the decision of the Court in respect of the trustee appointment within (5) five business days from the date of publication of the appointment of the trustee and this is done via an application to the court.***
- 7. Within ten days of the creditors' meeting, the court decides whether to approve the scheme. And shall consider whether there has been no collusion between the debtor and the creditor. (Article 32)***
- 8. The trustee shall within (5) five business days from the date of being notified of the decision of his appointment publish a summary of the court's decision issued on initiating the preventive composition procedures in two daily local newspapers, one issued in Arabic and the other issued in English. The***

publication shall include the invitation of the creditors to file their claims and the supporting documents within twenty business days from the date of publication. (Article 35)

9. After the timeframe for submitting claims has passed, it's the trustee's responsibility to compile a list of all the claimants. The trustee must submit this list to the court within 10 business days after the deadline for submitting claims. (Article 37)

10. The court is responsible for determining the list of creditors. The debtor and any creditor, may object to the list by way of applying to the court within seven business days from the list's publication. The court is then court is required to determine any such application within 10 business days of the application. (Article 38)

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Question 4.2 [maximum 5 marks]

Commented [SE21]: 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.**

[

Because RZA LLC's creditors have rejected the preventive composition scheme and the owners have determined that restructuring isn't possible, liquidation seems to be the necessary course of action. The process that would follow as part of this liquidation, under the UAE Bankruptcy Law (Federal Law No. 9 of 2016) (the "Bankruptcy Law), involves the following steps:

1. The debtor, in this case, RZA LLC, would need to submit an application to the court requesting the commencement of bankruptcy and liquidation proceedings. This is required as the debtor is non-payment of its obligation for 30 consecutive business days. (Article 68 of the Bankruptcy Law)
2. This application by the debtor RZA LLC, would include a detailed statement of its financial position, specified financial information and the name of a trustee proposed to oversee this Bankruptcy procedure. (Article 73 of the Bankruptcy Law). The court may reject the application if these document and data provided herewith are incomplete. (Article 79 of the Bankruptcy Law).

3. *The court is required to appoint an expert from the panel of experts, when a bankruptcy application is made, to assess the financial condition of the debtor. (Article 77 of the Bankruptcy Law).*
4. *The expert has the responsibility to evaluate the debtor's financial situation and to provide an opinion on whether a successful restructuring of the debtor is feasible. The court then has a duty to decide on the initiation of the bankruptcy procedure within five business days of receiving the application or the expert's report. If the court concludes that all the necessary conditions have been fulfilled, it will issue an order to commence the bankruptcy procedures. (Article 78 of the Bankruptcy Law).*
5. *If the court decides to accept the commencement of the bankruptcy procedure, the court is required to appoint a trustee. This trustee could be someone proposed by the debtor, or someone chosen from the list of experts established by the Financial Restructuring Committee. A trustee could be an individual or a corporate entity, and up to three trustees can serve together at any given time. If any creditor wants to contest the trustee's appointment, they have five business days from the announcement of the appointment to do so. (Article 82 of the Bankruptcy Law).*
6. *The court would furnish all information it holds about RZA LLC to the trustee. The debtor shall also provide details related to its creditor to the Trustee. The trustee shall publish a summary of the court's decision in local newspapers (English and Arabic) to commence bankruptcy procedures, also calling for any other creditors to come forward within 20 business days from date of publication. (Article 88 of the Bankruptcy Law).*
7. *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 would take charge of RZA LLC's assets, including the restaurant site under development, and proceed to liquidate these assets in order to pay off the creditors. The liquidation must be performed in a manner that ensures the highest returns. (Article 132 of the Bankruptcy Law).*
8. *The trustee is responsible for dispensing the funds acquired from liquidating the debtor's assets to the creditors. They need to ensure that claims are paid in accordance with the order outlined by law. This distribution process and the prioritization of payments require approval from the court. If there are any funds left over after the assets have been sold and all obligations met, these remaining funds must be given to the debtor. (Article 137 of the Bankruptcy Law).*
9. *Once the debtor's assets have been fully liquidated, the court has to issue an order to confirm the completion of the liquidation process. This order would include the final list of creditors and the remaining unpaid amounts, if any. This*



decision needs to be published as an advert. (Article 138 of the Bankruptcy Law).

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Question 4.3 [maximum 5 marks]

Commented [SE22]: 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 RZA Limited's creditors wish to initiate the company's liquidation in the DIFC. Here are the primary steps that would need to be taken:*

- 1. The creditors can initiate a winding-up process as RZA Limited is unable to pay its debts this is done by the application of the DIFC Insolvency Law Part 6 (the "Insolvency Law"). The creditors have the option of a creditors' voluntary winding up as RZA is insolvent or the other choice is a compulsory winding up in an order made by the court.*
- 2. To start this process, a creditor would need to file a winding-up petition to the DIFC courts or the passing of a resolution to wind up the company.*
- 3. 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.*
- 4. A request to the court for the compulsory winding up of a company may be submitted by the creditors of RZA Limited 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.*
- 5. If the court agrees to the winding-up petition, it would appoint a liquidator to handle the company's liquidation.*
- 6. Under the DIFC Insolvency Regulations, a creditor must submit its claims for the amount in writing to the appointed liquidator. This will be known as the proof of debt. If the creditor cannot provide accurate amounts, the Liquidator will make estimates to quantify the claims.*

- 7. The liquidator may then admit or reject any proofs of debt for the purposes of determining whether to make a payment to the creditor, along with other creditors. These claims would then be assessed and verified by the liquidator.*
- 8. The liquidator would distribute the proceeds of the asset liquidation among the creditors. All debts of an insolvent company rank equally in any distribution, unless they are preferential debts as provided for by regulation.*
- 9. Once all assets have been liquidated and proceeds distributed, the liquidator would apply to the DIFC court for the company to be dissolved.*

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**\* End of Assessment \***