



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).
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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 [E1]: 44/50. 88%.

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

Commented [E2]: 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 [E3]: Incorrect. 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 [E4]: Incorrect. The correct answer is C.

#### **Question 1.3**

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

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

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

(c) The judgments and orders of the courts of the DIFC are enforceable elsewhere in Dubai only after recognition for enforcement by the Joint Judicial Committee.

(d) The judgments and orders of the courts of the DIFC are not capable of enforcement outside of Dubai.

#### Question 1.4

As regards security in mainland UAE, a secured creditor's rights, both in relation to real and personal property security, are not substantially affected by any formal insolvency process; the secured creditor can generally enforce its rights notwithstanding the debtor's insolvency.

Is this statement True or False?

(a) True.

(b) False.

#### Question 1.5

Which statement is correct in relation to the operation of security interests for both real and personal property in the DIFC?

(a) The law regulating security interests in land and personal property in the DIFC is based on Australian law.

(b) A mortgagee of land in the DIFC requires a court order to allow it to repossess land subject to a mortgage.

(c) The regulating security interests in land and personal property in the DIFC is based on English common law.

(d) There are separate registers in which security interests in both land and personal property in the DIFC can be registered.

#### Question 1.6

Which of the following statements is incorrect in relation to creditor rights following the court's decision to commence preventive composition under the UAE Bankruptcy Law up until the approval of the scheme?

(a) All legal claims and proceedings and any judicial enforcement procedures against the debtor are suspended, unless otherwise decided by the court.

(b) The commencement of preventive composition procedures will also suspend any criminal proceedings brought in relation to a dishonoured cheque, including against the signatory of the cheque.

(c) Creditors may not bring or pursue claims against persons jointly liable with the debtor or any guarantors of the debtor's debts.

- (d) Secured creditors may enforce their securities provided they have obtained court permission to do so.

**Question 1.7**

Which of the following is not a consequence or possible outcome of the commencement of preventive composition?

- (a) Interest on debts owed by the debtor stops accruing on the date of commencement of preventive composition.
- (b) The debtor can borrow further money during the period of preventive composition, with the court's permission.
- (c) The debtor is not allowed to change its ownership in any way.
- (d) The court can order the rescission of effective contract to which the debtor is a party.

**Question 1.8**

Which of the following is not a basis for an application to the court for the commencement of bankruptcy proceedings under the UAE Bankruptcy Law?

- (a) If a secured creditor, having security over all or substantially all of the assets of a debtor, takes steps to enforce its security.
- (b) If a creditor (or a group of creditors) has given notice to a debtor requiring the debtor to pay a debt of AED 100,000, and the debtor has failed to discharge the debt within 30 business days of that notification.
- (c) Following the annulment or rescission of preventive composition by the court.
- (d) If a debtor is in default of its payment obligations for 30 consecutive business days.

**Question 1.9**

Rehabilitation is a DIFC insolvency procedure introduced by the 2019 law, which allows companies unable to pay their debts but able to reach agreement with its shareholders and creditors to agree to a plan referred to as a Rehabilitation Plan to achieve a court sanctioned plan that binds creditors. In regard to the rehabilitation procedure, which of the following statements is incorrect?

- (a) In order to initiate the rehabilitation process the company is required to make an application to court submitting the rehabilitation plan and nominating the proposed rehabilitation nominee.
- (b) A moratorium comes into effect for an initial 180 days, preventing creditors from commencing or continuing legal action against the company.
- (c) The moratorium disapplies 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.

**Commented [E5]:** Incorrect. The correct answer is B.

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

**Commented [E6]:** 7/10

#### Question 2.1 [maximum 2 marks]

**Commented [E7]:** 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?

Each emirate maintains its own land registration system. In "mainland" UAE, a mortgagee can petition the court for an order for sale, and the court's execution department will conduct the sale of the mortgaged property. In the financial free zones, a mortgagee can enter into possession of the land and sell the land without the need for a court order.

[Answer:

Seven emirates make up the United Arab Emirates. Each emirate has a slightly distinct legislation governing the registration of real property interests, including mortgages, but the laws' core principles are generally the similar. The following are summaries of the laws' distinguishing characteristics.

#### Mortgage registration for real estate in Dubai.

In the UAE, Dubai has a sophisticated system for registering properties. The Dubai Property Registration Law (Dubai Law No. 7 of 2006) governs it. In the Emirate of Dubai, all real estate interests, including mortgages, must be registered with the Dubai Land Department. In Dubai, mortgages may be recorded against either freehold or leasehold interests. Mortgages are void if they are not registered.

#### Mortgage registration for real estate in Abu Dhabi.

There is no explicit regulation governing the registration of mortgages and real property interests in Abu Dhabi. The registration of property and its mortgage is governed by federal UAE civil law requirements. A unique aspect of federal civil law governing mortgages is that a property may only be mortgaged to a bank or other financial organisation that has a licence to conduct business in the United Arab Emirates. Mortgages cannot be created on off-plan properties under federal legislation, but this is allowed in Dubai.]

**Question 2.2 [maximum 4 marks]**

Commented [E8]: 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.

[Answer:

**“Actor” responsible for a decision on any application to commence an insolvency process - The Courts:**

The application for preventive composition as well as restructuring is required to be made to the court. The debtor’s position is explained in the application. After the application is received by the court, the court is required to appoint an expert from the panel of experts to prepare a report on the financial position of the debtor. The report should include the expert’s views on whether the debtor has met the criteria necessary to accept the preventive composition or restructuring application.

The court is required to decide on the application within five businessdays of application from the date of the expert’s report.

If the court is satisfied that the necessary conditions have been met, an order will be made whereby the preventive composition procedure or the restructuring commences.

The court may reject an application if the conditions to commence preventive composition or restructuring have not been met.]

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

[Answer:

**“Actor” responsible for a primary determination as to whether a debtor’s proposal should be adopted - The Experts:**

The expert appointed from the panel of experts have to prepare a report on the financial position of the debtor and to check whether the debtor has met all the requirements and criteria to be eligible for preventive composition or restructuring as the case may be.]

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

[Answer:

**“Actor” responsible for confirmation of the primary determination as to whether a debtor’s proposal should be adopted - The Courts”**

Commented [E9]: The debtor’s unsecured creditors make this determination.

The court are required to decide on the application within five business days of application from the date of the expert's report.

Based on the experts' report, if the court is satisfied that the necessary conditions have been met, an order will be made whereby the preventive composition procedure or the restructuring commences.]

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

[Answer:

**“Actor” responsible to supervise the implementation of the insolvency process by the debtor - The Trustees:**

If the court accepts the preventative composition procedure, it must appoint a trustee, who must be either a person recommended by the debtor or someone from the panel of trustees appointed by the Financial Restructuring Committee.

When a trustee is appointed, the court must supply the trustee with all information it has about the debtor. The debtor is also obligated to give the trustee with all information and facts on the intended procedure within the timeframe requested by the trustee.

When appointed, the trustee is obligated to take an inventory of the debtor's assets and submit a report to the court. The trustee must also prepare and submit to the court a report on the debtor's creditors. The trustee has the authority to seek information from people who have information about the debtor.

During the currency of preventative composition, the debtor is required to continue operating the debtor's business under the supervision of the trustee. The trustee may require the debtor to take certain activities to protect the debtor's interests during the preventative composition process, or the trustee may take specific actions on the debtor's behalf. The trustee may also seek court orders suspending the debtor's business. During the duration of any preventative composition, the trustee may seek a court order permitting the debtor to acquire finance with statutory priority.]

**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)?

[Answer:

**Protective composition** is a regime aimed to help debtors achieve settlements with their creditors through a scheme in which debts are paid on scheduled dates under the supervision of the court and with the assistance of a composition trustee appointed by the court. Before ceasing to pay its debts and filing for bankruptcy, a firm may file to the court a protective composition scheme to prevent bankruptcy.]

Commented [E10]: 1/2

Commented [E11]: The key distinction is that under the UAE Bankruptcy Law, a debtor has an option and is free to choose whether it wishes to commence preventive restructuring; while a debtor must initiate bankruptcy procedures if in default of its payment obligations for 30 consecutive business days



A declaration of **bankruptcy** depicts a company's inability to pay its debts when they become due owing due to a financial crisis. The bankruptcy legislation defines those businesses as corporations that fail to pay their debts for more than 30 consecutive working days as a result of their poor financial situation or if they have entered insolvency.]

**Question 2.4 [maximum 2 marks]**

Commented [E12]: 2/2

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

[Answer:

The key difference for a creditor regarding the commencement of preventive composition or bankruptcy of a debtor is as follows:

In preventive composition, **the application can be made by the debtor company only** and not the creditors. The creditors have to vote to approve the Preventative Composition plan in order for it to be valid. Creditors holding at least two thirds of the outstanding debts will pass the vote.

Whereas

In Bankruptcy, a creditor or group of creditors collectively, who are owed more than AED 100,000(USD 27,226), **may also 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. Any creditor of a company may seek its bankruptcy, even if the creditor is also a shareholder.]

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

Commented [E13]: 15/15

**Question 3.1 [maximum 5 marks]**

Commented [E14]: 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.

[Answer:

**Historical background to the introduction of the Bankruptcy Law:**

The insolvencies laws of UAE have recently been amended in 2016. Historically speaking, most corporate insolvencies in the UAE have been resolved through consensual restructuring of the debtor company as various stakeholders were apprehensive to rely on legislation that was largely untested. The new bankruptcy law is a major step forward and is inspired insolvency law of other countries.

In general, the Bankruptcy legislation streamlines and modernises UAE insolvency legislation, and it lays a new emphasis on early debt restructuring for struggling enterprises. Certain aspects of it aim to destigmatize company failure, and it is believed that it would act as a catalyst for cultural change in the region, leading to the development of a more robust legal framework for entrepreneurs and an improved atmosphere for investors. Much will, however,

depend on how the Bankruptcy Law is applied in practise, as well as the willingness and ability of businesses and practitioners alike to adapt in order to take advantage of the legislative changes.

A fundamental limitation of the Bankruptcy Law is that secured creditors are not bound by procedures initiated under it, therefore security can be enforced outside of those proceedings with the agreement of the court, in the case of Protective Compositions. This is likely to impede the Bankruptcy Law's efficacy in practise and may limit the number of debtors in major financing transactions seeking protection under the Bankruptcy Law.

### **Overview of the Bankruptcy Law**

Unlike previous legislation, which only applied to traders, the Bankruptcy Law has a broader potential application and includes all companies established under the Commercial Companies Law, most free zone companies (except those incorporated in free zones with their own comprehensive insolvency legislation, such as the DIFC and ADGM), individuals trading for profit, and licenced civil companies of a professional nature.

However, unless they have chosen to opt into the Bankruptcy Law by providing for its application in their company constitutions, companies that are totally or partially state-owned are exempt from the Bankruptcy Law.

This ambiguity extends to companies incorporated by decree because they are typically owned directly or indirectly by the government through government-owned investment companies, so the expectation is that the Bankruptcy Law does not apply to such companies unless they expressly opt into it as well. The Bankruptcy Law abolishes certain earlier insolvency-related criminal offences and consolidates the protected composition and bankruptcy procedures into two major court-driven procedures:

- Preventive Composition; and
- Bankruptcy (which comprises both a formal rescue procedure and insolvent liquidation).

Early drafts of the Bankruptcy Law included a private out-of-court procedure for corporations in financial trouble but not yet insolvent, which is consistent with international trends in insolvency law reform. Regrettably, such a method was not included in the Bankruptcy Law as adopted, but it is hoped that future modifications to the Bankruptcy Law will take advantage of the potential to establish procedures allowing for consensual settlements without the need for court participation.

### **The Bankruptcy law applies to:**

- (a) all companies governed by the Commercial Companies Law.
- (b) any companies established under any other legislation and who have by law or voluntarily submitted to the provisions of the Bankruptcy Law;
- (c) free zone companies and establishments not governed by other insolvency

procedures

- (d) licensed civil companies of a professional character (professional partnerships, etc.).
  - (e) any person who is a trader (engaged in commercial activities in a personal capacity);
- and

Except for state-owned corporations that have opted into the application of the law, the Bankruptcy Law is available to virtually all commercial organisations and individuals carrying on commercial activities (in respect of the persons' commercial affairs).

As previously stated, the Personal Bankruptcy Law is available to debtors who do not fall under the purview of the Bankruptcy Law.

The main challenge for the efficient implementation of an insolvency regime is the UAE's diversity, which makes it a difficult environment in which to create and implement a uniform insolvency regime; and the creation of more than one insolvency regime in one country will inevitably result in challenges.

There is the obvious point that the UAE is made up of seven different emirates, and that each emirate has a number of free zones with their own norms regulating corporate and company organisation. Any insolvency law regime must consider the reality that it must apply to a variety of entities, not all of which are constituted in the same way. This predicament is exacerbated by the fact that financial free zones have independent legal systems and have developed their own insolvency laws to handle insolvency in the free zones - and the financial free zone insolvency laws differ significantly from "mainland" bankruptcy laws.

Furthermore, due to the manner in which the free zones and their courts have treated questions of law and jurisdiction, there is a significant risk of overlap in the application of the insolvency regimes. There is also the issue of potential criminal liability for corporate collapse. Historically, this hampered the development of an insolvency regime because an effective insolvency regime was perceived as "allowing" corporate failure.

Furthermore, even though an insolvency regime has now been established for general application in the UAE, creditors can use criminal penalties to advance their position in isolation, and to exclude the operation of insolvency law; as the insolvency regime develops, the interplay between the criminal law and the insolvency regime, as well as the extent to which parties will have confidence in the workings of insolvency law in general, will determine

Finally, there are the issues provided by the UAE's demographic structure: the vast majority of inhabitants are "nonnationals," and they are in the UAE due to an immediate employment relationship (or that of an immediate family member). That implies that once that employment relationship ends, such people frequently have few reasons to stay in the UAE. That is one of the reasons it is difficult to establish a consumer insolvency regime, which the UAE has not done.]

**Question 3.2 [maximum 8 marks]**

Commented [E15]: 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.

[Answer:

Courts actively participate in various bankruptcy procedures under UAE law. The first time the court is involved is immediately following the filing of a bankruptcy application.

According to Article 77, the court must appoint an expert to provide a report on the debtor's financial situation. The expert's responsibilities, remuneration, and deadline for producing the report are also specified by the court. Additionally, the expert is ordered by the court to provide a report on the viability of restructuring the debtor.

According to Article 80, the court may issue directives requiring the submission of additional information for the purpose of deciding whether to open bankruptcy proceedings. It may also include additional parties in the bankruptcy process if they are inextricably linked to the debtor company.

According to Article 81, the Court may order the taking of steps necessary to maintain or manage the debtor's assets, including closing the debtor's business's premises while the application is being decided. This direction may be given at the request of any interested party or on the Court's own initiative.

According to Article 82, the court must appoint a trustee to oversee the bankruptcy proceedings. Up to three trustees may be selected by the court. The trustees' responsibilities are set by the court. The court may opt to keep the composition trustee in place if bankruptcy proceedings follow the preventative composition. The complaint of any party over the nomination of a trustee is decided by the court.

According to Article 83, the court makes a decision regarding a trustee's request to appoint an expert to assist the trustee.

According to Article 85, the court decides on complaints regarding the calculation of the costs and fees of the trustee or other expert hired for the bankruptcy process.

According to Article 86, the court has the authority to appoint a new trustee or other expert in bankruptcy proceedings. The court also decides on the trustee's request to be released from his obligations.

The court may appoint a controller in accordance with Article 87.

According to Article 93, the court may give an additional 10 days to file a list of creditors.

According to Article 94, the court decides any creditor's complaints regarding inclusion or exclusion on the list of creditors and the size of the obligation.

According to Article 97, the court considers the trustee's assessment on the viability of the debtor's business restructuring that was provided in accordance with Article 96. The report of the trustee may be amended at the court's direction.

According to Article 98, the court directs the trustee to call one or more hearings for the purpose of reviewing the report and inviting the debtor, the creditors whose debts are finally or provisionally recognised, and any controller appointed. The trustee may be instructed by the court to write the restructuring plan if it decides to pursue one.

A draft restructuring plan must be deposited with the court by the trustee in accordance with Article 101.

In accordance with Article 103, the court will assess the draught Restructuring Plan within ten working days after its submission to make sure that it takes into account the interests of all parties. The trustee may be given instructions by the court to modify the draught Plan in any way. The court orders the trustee to invite the creditors to a meeting to review and vote on the draught Restructuring Plan within five business days of incorporating any revisions, if any, into the plan.

In accordance with Article 104, the court may create committees of various classes of creditors to consider the plan.

According to Article 108, the court evaluates the restructuring plan that was accepted by the creditors. The court has the option of approving or disapproving the scheme. Additionally, under Article 109, the court may order the trustee to modify the plan. The objection of any dissident creditor to the restructuring plan is also decided by the court.

According to Article 114, the trustee must update the court on the status of the plan's implementation and any errors that may have occurred.

A decision confirming the completion of the implementation of the restructuring plan and the end of the debtor's restructuring procedures is issued by the court upon request from the trustee, the debtor, or any interested party following the fulfilment of all obligations outlined in the restructuring plan, in accordance with Article 115.

Thus, it is clear that the court participates actively throughout the bankruptcy process, from the outset to the very end. The court has extensive latitude in deciding whether to accept the application, appoint trustees, experts, and controllers, accept creditor claims, organise committees of creditors, and resolve the complaints of interested parties. Both in this draught form and once the creditors have approved it, the restructuring plan is also up for court review. The court is actively involved in every step of the bankruptcy procedure under UAE law, which is entirely court led.]

**Question 3.3 [maximum 2 marks]**

Commented [E16]: 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.

[Answer:

In the UAE, the level of court intervention in bankruptcy law is relatively high. This much court engagement, in my opinion, is undesirable and suggests a lack of faith in the ecology that supports it. The same is evident in both bankruptcy and protected composition processes.

### **Under preventive composition.**

According to this process, the court must assess if the application is appropriate for admission. In response to a request, the court names an expert to compile a report on the debtor's financial situation and make recommendations for the start of preventative composition. The expert's report has only informative value, and the court will still use its judgement to determine whether or not to issue the order. Furthermore, a plan is created and sent to the court whenever a preventative composition application is approved. Whether the plan is just and equitable to all creditors is decided by the court.

The plan is then presented to the creditors for approval, and they have the option to accept or reject it if they account for at least two-thirds of the debt's worth. The plan is once again offered to the court after receiving the required majority of creditor approval. The court again exercises its judgement and carefully examines the authorised plan; it may make suggestions for changes or even reject it. The court-approved plan is forwarded to the creditors for approval. Following the creditors' approval, the plan is once again presented to the court for review. At this point, the court has the option to accept the plan as is or to make modifications.

The only purpose of the court's involvement should be to assess the application debtor's eligibility. The designated trustee should next put together the scheme presentation and talk about it with the creditors. It makes no sense to present the proposed scheme to the court and ask for permission to discuss it with the creditors. The right to disclose information to creditors and to suggest revisions or changes to the plan has been granted to them by law. Unless the creditors whose rights are affected are excluded from the meeting, the court should not challenge the scheme once it has received the required majority of votes.

Accepting or rejecting a plan is a commercial choice made by the creditors, and the court should not become involved too much in situations where commercial judgements are involved.

### **Under Bankruptcy Procedures**

In the UAE, the court is heavily involved in the bankruptcy process, whether it results in a restructuring plan or liquidation.

The role of the court should be restricted to determining whether the debtor has defaulted at the moment the bankruptcy application is admitted. The application should be approved once there is a legal default. The prospect of restructuring should be investigated by the trustee in collaboration with the debtor. The creditors should have the last word in accepting or rejecting any restructuring plan that the debtor and trustee who are acting in accordance with the law offer.

The court's role should be restricted to preventing fraud caused by conspiring with the trustee, the debtor, or any creditor. It is avoidable for the court to have the authority to recommend changes to the plan or even to reject it before bringing it to the concerned creditors for approval.

The rights of creditors are impacted by composition or restructuring. The court shouldn't typically have the authority to override the creditors' decision if they are in agreement with any plan in the best interests of their business. Additionally, relatively low time frames, such as three days, five days, etc. are offered under UAE bankruptcy legislation to request the courts' judgement. Practical experience has shown that these deadlines are typically missed for good reasons, and as a result, relying too heavily on the courts causes delays in rescue operations where time is of the importance.]

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

Commented [E17]: 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.

**[Answers given below against each Question]**

**Question 4.1 [maximum 5 marks]**

Commented [E18]: 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.

[Answer:

The following steps are involved in a preventive composition:

1. Application must be submitted within thirty days of the debtor's payment cessation.
2. To create a report on the debtor's financial situation, the court appoints an expert. According to Article 13, the report must be submitted in (20) twenty business days.
3. Following receipt of the report, the court decides whether to accept the application and names a trustee in accordance with Article 14 within (5) five business days.
4. The trustee publishes the decision summary to begin the preventive composition within (5) five business days. Specified in Article 35.
5. The trustee gives creditors 20 business days to submit claims.
6. Within a maximum of (20) Twenty business days, including the extended period, the trustee must create a list of all creditors who have filed claims and submit it to the court. Article 37.1.
7. The list of creditors is published in newspapers by the trustee three (3) business days after it is filed with the court section 37(2).
8. Within (7) Seven business days after the list of creditors is published, any creditor may object. Article 38.1.

9. Within 10 days of filing, the court will decide the objection. Clause 38(2).

10. In (5) five business days, a person may appeal the court's ruling to the court of appeals. section 38(3).

11. Within a maximum of 65 (Sixty Five)(45+20) business days (including the extension of 20 days) from the date of publication of the decision to begin the preventive composition, the trustee, working with the debtor, prepares a draft protective composition plan. Rule 40(1).

12. The draft preventive composition plan is reviewed by the court ten business days after it is submitted. Article 42.1.

13. If the court accepts the plan, it orders the trustee to call a meeting of creditors within (5) five business days. Clause 42(2).

14. Within (15) fifteen business days, the trustee must schedule a creditors' meeting. Section 42(4).

15. If no decision is made regarding the scheme, the meeting of creditors may be postponed for seven days.

16. After the creditors have approved the plan, the trustee must file it with the court within (3) three business days. Section 49(1).

17. A dissenting creditor has three (3) business days from the time the scheme is filed to file an objection with the court, and five (5) business days from the time the objections are filed to have the court rule on the objections. Article 49 (2).

18. After the court has approved the plan, the trustee must register it in a commercial or professional register and publish it in newspapers within seven (7) business days.

The time needed to finish a preventive composition plan is approximately, according to the various timelines, 155 to 160 working days, counting from the application's submission day to the day the plan is registered in the commercial or professional register. This timeline is primarily determined by the actions that come next.

1. The hiring of a specialist to draft a report on the debtor's financial situation. In twenty (20) twenty business days, the report must be turned in. Clause 13.

2. The selection of a trustee and the making of a decision regarding the application's acceptance within (5) five business days.  
Chapter 14.

3. Making the decision to start the preventive composition and publishing the summary within (5) five business days. Chapter 35.

4. Creating a draft protective composition plan no later than 65 (Sixty Five) (45+20) business days (plus the additional 20 days) after the decision to start the preventive composition was published. Article 40.1.

5. The draft preventive composition plan will be reviewed ten (10) business days after it is submitted. Article 42, paragraph 1.

6. Giving the trustee the go-ahead to call a creditors' meeting in (5) Five business days. Section 42(2).



7. Calling a creditors' meeting within (15) 15 business days. Section 42(4).

8. Trustee must file the report within 3 business days after the creditors have approved the plan. section 49(1).

9. A dissenting creditor's objection must be resolved by the court within (3) three business days of the plan's filing, and any other objections must be resolved by the court within (5) five business days of filing. 49(2) of the Constitution.

10. (7) Seven business days after the court's approval date, the approved plan must be registered in a commercial or professional register, and it must be published in newspapers.]

**Question 4.2 [maximum 5 marks]**

Commented [E19]: 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.

[Answer:

The rejection of preventive composition scheme will bring about the liquidation order of RZA LLC. In terms of Article 125 the court will issue judgment restricting the debtor from participating in the control of the business enterprise and carrying out any industrial transactions.

Where an order of bankruptcy is made by the court the liquidation of the Debtor's belongings shall continue. The court shall appoint a trustee who shall undertake the bankruptcy and liquidation of the Debtor's belongings. The court may additionally employ a new trustee or order the continuation of work of any trustee or controller previously appointed in the procedure of the restructuring or the protective Composition.

After the order of bankruptcy, the trustee ought to advertise the appointment inside (three) 3 working days. In all of the debtor's communications, it has to be mentioned that the debtor is subject to bankruptcy.

all of the lenders are required to submit their claims with the trustee inside 10 working days. The claims may be made thereafter, best with the permission of court.

The impact of the order of bankruptcy is that all debts fall due on the date of order. similarly, interests and penalties for non-payment can be suspended by the court.

The trustee is required to sell the properties of the debtor under public auction under the supervision of the court. The sale of business of the debtor can be made with the permission of the court within six months.

The sale proceeds of the sale of assets of the debtor are distributed by the trustee as according to the priorities defined by law.

The wages & salary of the workforce for three months shall have precedence in payments.

After the liquidation of the assets of the debtor the court will make a declaration of the conclusion of the liquidation. A final list of creditors, with amounts remaining unpaid will be posted. All documents of the debtor may be returned to it, and the creditors could have the right to proceed to recover the unpaid quantity of debt from different assets of the debtor.]

**Question 4.3 [maximum 5 marks]**

Commented [E20]: 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?

[Answer:

In the DIFC, the subsidiary RZA Limited may be dissolved. In DIFC, winding up is used to deal with liquidation. In DIFC, there are two different forms of winding up procedures. both required and voluntary winding up. A member's voluntary winding up or a creditor's voluntary winding up are both acceptable options.

After adopting a resolution to that effect, the firm may begin a voluntary winding-up. The directors provide a solvency declaration in the event that the company is solvent, and the winding-up is referred to as a member's winding-up. The winding-up is known as a creditors' voluntary winding-up if the corporation is insolvent.

Since RZA is unable to pay its debts, the directors are not permitted to declare the company solvent in order to start the member's voluntary winding-up process.

According to DIFC insolvency legislation, the firm RZA Limited may likewise be forced to wind up. The questioned corporation is unable to pay its bills. Creditors must serve a notice of demand requesting payment from the corporation within three weeks in order to start the winding-up procedure. The debt should be greater than USD 2000. The creditor has the power to ask the court for orders of winding-up if the corporation fails to make the payment within three weeks.

Additionally, the creditor may demonstrate the company's incapacity to pay its debts by convincing the court that, after deducting contingent and prospective liabilities, the value of the company's present assets is less than the sum of its current liabilities.

**Creditor's claim in liquidation in DIFC**

According to DIFC insolvency procedures, creditors seeking to recover debt in a firm that is being wound up must submit a written claim to the liquidator. Documents that substantiate the debt must be included with the claim. The amount of the claim must be specified in the claim, and if it is not specified precisely, the liquidator may make estimations. The creditor is entitled to set off any amounts owed to one another. The amount of the alleged debt is calculated up until the start of the winding-up process, plus any applicable interest. Only the portion of the secured debt that was still due after the security was realised is subject to claims from secured creditors.

The creditor may be asked for more details regarding the claim amount by the liquidator. The liquidator makes a final decision regarding the amount of the claim that will be accepted or rejected after carefully reviewing all pertinent documents. Within 21 days of receiving the decision notice, a creditor who feels wronged by the liquidator's judgement may appeal it.]

**\* End of Assessment \***