



**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]: 4/10

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.

Commented [SE3]: 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]: 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.

Commented [SE5]: The correct answer is D.

(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.

**Commented [SE6]:** The correct answer is A.

**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.

Commented [SE7]: The correct answer is B.

#### 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 [SE8]: 10/10

**Question 2.1 [maximum 2 marks]**

Commented [SE9]: 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?

Each emirate maintains their own land registration system, registration of mortgages can be subject to different laws and procedures in each emirate although the substance of law tends to be the same.

In mainland UAE the law allows the mortgagee to sell following default, this however must be exercised through the court. In DIFC and ADGM a creditor can enter possession of the land by providing 60 days' notice to relevant parties and without the need for a court order. The creditor can sell whole or part of the land, receive rents and profits and apply proceeds of sale in payment of the mortgage debt.

**Question 2.2 [maximum 4 marks]**

Commented [SE10]: 4/4

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 only way to commence the preventive composition is by the court, where a debtor can apply for the appointment of a composition trustee.

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

The creditors may vote on the debtor's proposal at a creditors meeting, only if they have proved their debts. The majority for approval is a majority of creditors who two thirds of the debtor's debt.

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

Once the proposal is approved it must be put before the courts within three business days for the court to either approve or reject the scheme.

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

The trustee must supervise the implementation of the insolvency process by the debtor and must inform the court of any failure of implementation.

**Question 2.3 [maximum 2 marks]**

Commented [SE11]: 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)?

The key difference between preventive composition and restructuring is that preventive composition is a court-supervised mechanism and only the debtor can apply to the court for the appointment of a composition trustee by the court. The debtor is not insolvent but may be in distress and is seeking ways to improve their financial situation.

In the commencement of bankruptcy procedures an application to the court is required by a debtor or a creditor to initiate proceedings. Bankruptcy commencement usually leads to either restructuring or liquidation of a debtor's assets. No other insolvency procedures may be taken once there is a delivery of a judgment for bankruptcy.

**Question 2.4 [maximum 2 marks]**

Commented [SE12]: 2/2

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

During the commencement of preventive composition creditors approval of the debtor's proposal is required. In bankruptcy a creditor can apply to the court to commence proceedings, but it is ultimately up to the court to commence the bankruptcy proceedings. There is no proposal that creditors may vote on. Creditors play a bigger role in the implementation of preventive composition rather than in bankruptcy.

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

Commented [SE13]: 8/15

**Question 3.1 [maximum 5 marks]**

Commented [SE14]: 2/5

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.

The question asks for a discussion of the application and reception of the bankruptcy law, which is not provided here.

Prior to 2016 the insolvency law of the UAE was underdeveloped. There had been provisions in Law Number 18 in 1993 that related to commercial transactions governing a bankruptcy by



traders. The laws provided basic procedures on how to undertake insolvency proceedings but were rarely used.

In 2009 when government owned Dubai World faced the possibility of default, the shortcomings of the UAE insolvency regime were highlighted. The default would have been the largest government default since 2001.

In 2016 the legal position changed with the adoption of the Federal Decree Law (Number 9) of 2016, with it being amended in 2019, 2020 and 2021 (the Bankruptcy Law). The Bankruptcy Law repealed the provisions from Law Number 18 in 1993 and enacted a consolidated insolvency regime for commercial insolvencies in the UAE. UAE Bankruptcy Law takes pieces from several jurisdictions.

In 2019 the Federal Decree Law (Number 19) of 2019 enacted a consolidated regime for debtors who didn't fall within the scope of the Bankruptcy Law.

### Question 3.2 [maximum 8 marks]

If a debtor company seeks to enter bankruptcy, describe the ways in which the court is required to be actively engaged in the restructuring in bankruptcy process (assume that a restructuring is possible, that there are no unusual features to the bankruptcy, there are no secured creditors and there has been no criminal conduct by any person involved in the debtor). Your answer should provide references to the legislation.

Once a bankruptcy application is made the court must appoint an expert from the panel of experts to assess the debtor's financial condition. The court can reject the application if certain information is not provided. When making a decision about the application the court can require a person to provide more information, join other parties to the proceedings and can make interim orders in respect of the debtor's property.

Within five days of the application to commence bankruptcy the court must make their determination. If the court is satisfied the proper conditions have been met, they will make an order to commence bankruptcy procedures.

The court must appoint who is either nominated by the debtor or a person who is enrolled in the table of experts appointed by the Financial Restructuring Committee. If a creditor objects to the appointment of the trustee, they must apply to the court. The court must determine the objection within five days.

The court shall also determine the trustee's fees and shall authorise from the funds deposited by the debtor when making the application. An interested party may object to the fees and the court must decide within five days. If there are insufficient funds to pay the trustee's fees the trustee or expert may apply to the court for payment of the fees from the Court Treasury. These funds will be repaid in priority over all creditors upon the first realisation of additional assets.

The court may also appoint one or more supervisors. Supervisors are appointed to represent creditors.

### Question 3.3 [maximum 2 marks]

In any insolvency system that involves the forced compromising of individual creditor claims, the requirement for court involvement is to ensure that the rights of all parties,

**Commented [SE15]:** 4/8.

**This is mostly right, but there is much more to discuss:**

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

**Commented [SE16]:** 2/2

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.

As the UAE has new insolvency laws it would certainly be reasonable for the UAE to have a high degree of court involvement. Often there may be the need for the court to decide as they would need the court to interpret the law for them. As there is likely not much solid case law in the insolvency realm in UAE the high degree of court involvement paves the way to create new case law. Ideally, over time the need to use the court as much will probably not need to be as often as it is today. UAE law also does not operate on binding precedent, this may also increase the number of interactions with the court.

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

Commented [SE17]: 12/15

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.

#### **Question 4.1 [maximum 5 marks]**

Commented [SE18]: 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.

- Debtor can apply for preventive composition once the debtor gives the controlling body 10 days' notice of the application. This is made to the court.
- The court must appoint an expert to prepare a report on the debtor's financial position, this must be delivered no later than 20 business days from the date they are instructed. The court must decide within five business days of application or from the date of the expert's report. If accepted preventive composition commences.
- If accepted the court must appoint a trustee. Any creditor is allowed to object to the trustee's appointment within five business days of the date of publication of the

appointment. This must be done through an application to the court, the court must determine the objection within another five business days. The court must also determine the trustee's fees. Any party of interest may object, and the court must decide within five business days of the application being made. The court may also appoint a supervisor from the creditor body. Commencement of preventive composition halts legal proceedings against the debtor until the approval or 10 months which ever one is the earliest. Secured creditors can enforce their securities and must be determined with 10 working days from the application by the court.

- Within five business days of the trustee's appointment, the trustee must publish a summary of the court's decision to start the preventive composition process, it must also give creditors 20 business days to file claims, as well as notify all known creditors within the same period. Following this the trustee must send a list to the court within 10 business days from the period for lodging claims. The court will be responsible for determining the list of creditors, the debtor and any of the creditors may object to this determination through the courts within seven business days from the publication of the list. The court must determine any application within 10 business days of the application.
- The preventive scheme must be submitted to the court within 45 business days from the date the decision to commence the procedure is published. The court may extend the period up to 20 business days. The scheme must be implemented within three years from the date of approval but can be extended. A debtor may offer a secured creditor alternative security if a secured creditor rejects the security the creditor may be compelled to accept it. A decision may be appealed within five business days.
- Within 10 business days from the submission of the scheme the court must review the draft to ensure it takes account of the interests of all interested parties. If the trustee makes amendments, they must return them to the court within 10 business days. If the court is satisfied they will make the trustee issue invitations within five business days for the creditors to attend a meeting to discuss the proposed scheme. The meeting will be held within 15 working days from the invitation. The majority of approval for the scheme is the majority of creditors holding two-thirds of the debtor's debt, if not achieved the meeting is adjourned for seven days.
- Once the scheme is approved the draft scheme must be put before the court within three business days for approval or rejection within another three business days and the court must determine this within five business days from the date of an objection. If rejected by the court the trustee must make amendments within 10 business days. A debtor or creditor may object within 10 business days.
- Within seven business days of the date of approval the trustee must register the court's approval in the debtor's governmental corporate register and publish a summary.
- The trustee must monitor progress and report to the court if any part of the implementation fails. They must report every three months. If an application for approval is made the court must notify the voting creditors to make an application to propose amendments within 10 working days.

**Question 4.2 [maximum 5 marks]**

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.

Once preventive composition is cancelled and or the failure to implement the plan the debtor will automatically be subject to bankruptcy procedures. The court may also terminate preventive composition on their own accord or if a creditor applies to the court.

Following the initiation of bankruptcy proceedings, the appointment of the trustee will terminate unless they are appointed as the bankruptcy trustee. When passing resolutions to wind up the RZA they may nominate a liquidator to be appointed but they will be nominated by the creditors. The powers of the directors will cease once a liquidator has been appointed. The creditors can appoint a liquidation committee at their meeting of creditors committee to be represented.

A liquidator that is appointed must be an insolvency practitioner this is laid out in Part 10 of the Insolvency Law. The liquidator has the power to continue carrying on business as it seems fit and beneficial to the debtor. They can call for creditor claims, distribute assets and enter into contracts on behalf of the company. They also have a duty to investigate the affairs of the company which led to its failure.

The creditors of RZA may want to appoint a different trustee for the liquidation of the company. They may also see it beneficial to stay with the current trustee as they would be well versed in the affairs of the company, and it may be a more cost effective method of proceeding with the liquidation of the company.

**Question 4.3 [maximum 5 marks]**

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?

The creditors can call a meeting of creditors, in that meeting they will pass a resolution to commence the winding up of the company and nominate a liquidator.

The creditors can also seek to use a court-ordered winding up by making an application to the court. If the court believes it is just and equitable to wind up the company, they will grant the winding up. The most common method for commencing a compulsory winding up is that the company is not able to pay its debts (insolvent). A company is seen to be insolvent if a creditor has demanded payment of a debt for more than USD 2,000 and haven't been paid for three weeks, or any execution process is returned unsatisfied, or the company is rendered insolvent and can't pay their debts as they fall due, or the company's assets exceed its liabilities.

**Commented [SE19]:** 3/5.

Application for bankruptcy would still be required. What about the liquidation process?

**Commented [SE20]:** 4/5

Creditor must be owed at least USD 2,000 to apply to the court for the winding up of the company. However, the directors, the company and the DIFC Authority can apply for the company to be wound up.

The liquidator that is appointed will be responsible for the winding up in which they will call for creditor claims. These will be submitted to the liquidator and the rank and priority of creditors will then be determined.

**\* End of Assessment \***

**Commented [SE21]:** 34/50. 68%.