



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 [E1]: 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.
- (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 [E2]: The correct answer is C.

Question 1.3

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

- (a) The judgments and orders of the courts of the DIFC are not enforceable outside of the DIFC.
- (b) The judgments and orders of the courts of the DIFC are enforceable elsewhere in Dubai only through the Dubai courts.
- (c) The judgments and orders of the courts of the DIFC are enforceable elsewhere in Dubai only after recognition for enforcement by the Joint Judicial Committee.
- (d) The judgments and orders of the courts of the DIFC are not capable of enforcement outside of Dubai.

Question 1.4

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

Is this statement True or False?

(a) True.

(b) False.

Question 1.5

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

- (a) The law regulating security interests in land and personal property in the DIFC is based on Australian law.
- (b) A mortgagee of land in the DIFC requires a court order to allow it to repossess land subject to a mortgage.
- (c) The regulating security interests in land and personal property in the DIFC is based on English common law.
- (d) There are separate registers in which security interests in both land and personal property in the DIFC can be registered.

Question 1.6

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

- (a) All legal claims and proceedings and any judicial enforcement procedures against the debtor are suspended, unless otherwise decided by the court.
- (b) The commencement of preventive composition procedures will also suspend any criminal proceedings brought in relation to a dishonoured cheque, including against the signatory of the cheque.
- (c) Creditors may not bring or pursue claims against persons jointly liable with the debtor or any guarantors of the debtor's debts.
- (d) Secured creditors may enforce their securities provided they have obtained court permission to do so.

Question 1.7

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

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

Question 1.8

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

- (a) If a secured creditor, having security over all or substantially all of the assets of a debtor, takes steps to enforce its security.

(b) If a creditor (or a group of creditors) has given notice to a debtor requiring the debtor to pay a debt of AED 100,000, and the debtor has failed to discharge the debt within 30 business days of that notification.

(c) Following the annulment or rescission of preventive composition by the court.

(d) If a debtor is in default of its payment obligations for 30 consecutive business days.

Question 1.9

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

(a) In order to initiate the rehabilitation process the company is required to make an application to court submitting the rehabilitation plan and nominating the proposed rehabilitation nominee.

(b) A moratorium comes into effect for an initial 180 days, preventing creditors from commencing or continuing legal action against the company.

(c) The moratorium disappplies contractual provisions that would otherwise enable a contract to be terminated upon insolvency.

(d) Any creditor materially prejudiced by the moratorium may apply to court seeking the disapplication of the moratorium in relation to a particular contract.

Question 1.10

Which of the following statements is **incorrect**?

(a) The DIFC courts will enforce judgments and arbitration awards from other countries in accordance with the Riyadh Convention (Riyadh Arab Agreement for Judicial Co-operation).

(b) A foreign judgment is enforceable in mainland UAE as long as there is reciprocity between the UAE and the foreign state issuing the judgment for which enforcement is sought.

(c) The ADGM courts may recognise reciprocity with a foreign jurisdiction in the absence of an applicable treaty if the Chief Justice of the Courts is satisfied that substantial reciprocal treatment will be assured regarding recognition and enforcement in that foreign country of the judgments of the ADGM courts.

(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 [E3]: The correct answer is B.

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

Commented [E4]: 5/10

Question 2.1 [maximum 2 marks]

Commented [E5]: 2/2

What is the key point of distinction regarding the registration of real property interests, including mortgages, in the different emirates of the UAE? What is the key difference between the sale of mortgaged real property following a debtor default if that real property is in a financial free zone or if the real property is in "mainland" UAE?

[The key point of distinction regarding the registration of real property interests, including. Mortgages is the fact that each emirate state maintains its own land registration system in which registration and enforcement of mortgages is subject to different laws and procedures in each state.

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 is that in the mainland a creditor must apply to the court to sell the mortgaged property following the default of the debtor whereas in the DIFC, a creditor holding a mortgage over the debtor's land can obtain possession of the land by providing 60 days' notice to certain relevant parties and without a court order]

Question 2.2 [maximum 4 marks]

Commented [E6]: 1/4

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.

Commented [E7]: This question asks who makes the decision on an application to commence the process. The answer is the court.

[The Debtor]

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

[The Court]

Commented [E8]: The creditors make the primary determination.

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

[The Creditors]

Commented [E9]: Confirmation of the creditors' determination is the role of the court.

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

[The Trustee]

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)?

[A preventative composition is where a debtor can seek preventative composition as an option as opposed to restructuring and governed by section 3 of the Bankruptcy Law. Restructuring is one of the possible outcomes stemming from an application by a debtor for the commencement of bankruptcy proceedings. Restructuring is the alternative to liquidation]

Commented [E10]: 0/2

This question is asking about the key difference that could give rise to an application for preventive composition and bankruptcy. 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.

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?

[The key difference is the fact that a creditor cannot commence preventative composition proceedings as only a debtor can do that. A creditor may commence proceedings to apply for the bankruptcy of a debtor if they have given notice to the debtor requiring him or her to settle the debt and such debt has not been settled within 30 business days.

Furthermore, a preventative composition is where the debtor can seek preventative composition as an option as opposed to restructuring which is the alternative to liquidation stemming from an application by a debtor for the commencement of bankruptcy proceedings.]

Commented [E11]: 2/2

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

Question 3.1 [maximum 5 marks]

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.

[Up until recent times, the bankruptcy laws in the United Arab Emirates (UAE) were largely undeveloped and unregulated. Although Commercial Transaction Law No 18 of 1993 was in place, this related mainly to commercial transactions and only had very limited provisions relating to bankruptcy.

Commented [SE12]: 15/15

Commented [SE13]: 5/5

The need to implement a mainstream bankruptcy law system began in 2009, when a state-owned investment company faced the possibility of defaulting on its debts. Had the company have gone into default then it would have been the largest default by the government since 2001 and the possibility of default caused great concern amongst international creditors and the community at large. In 2016 the UAE finally implemented the Federal Decree law No 9 of 2016 which related to bankruptcy and is more commonly known as "the bankruptcy law". The Bankruptcy Law repealed the provisions relating to the previous Commercial Transaction Law and introduced a consolidated insolvency regime. It must be noted that this Law was exclusively for commercial insolvencies in the UAE. The Bankruptcy Act was modeled from a variety of different jurisdictions such as the United Kingdom.

In 2019 the insolvency law regime was further extended by the adoption of the federal decree law number 19 of 2019 which is commonly referred to as the "Personal Bankruptcy Law". First serve 2 cover the gaps left by The Bankruptcy Law by consolidating and insolvency regime for debtors who did not fall within the area of the Bankruptcy Law ie: individuals.

The bankruptcy law provides for various processes which are to be supervised by the Court. the procedures implemented include the preventative composition, financial settlement proceedings and bankruptcy proceedings. The bankruptcy proceedings consist of formal restructuring for commercial debtors and liquidation for commercial and individual debtors. A financial restructuring committee was also formed and appointed by the Minister of Finance.

The bankruptcy laws of the United Arab Emirates have been welcomed by the commercial community however there are no official statistics to confirm this as they have only been a limited number of insolvency process is conducted in terms of the bankruptcy law and a far greater number of proceedings will need to be concluded to adequately and accurately assess if the laws implemented in practice have been successful.]

Question 3.2 [maximum 8 marks]

Commented [SE14]: 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.

[The debtor must initiate the bankruptcy proceedings via an application to the court. The application must contain certain documents as stipulated in article 73 of the Bankruptcy Law such as a memorandum describing the debtor's economic and financial position as well as the list of assets and employees.

Once the application has been made, the Court will appoint an independent expert in terms of article 77 of the Bankruptcy Law to assess the financial condition of the debtor and produce a report on the debtor's financial position as well as giving an opinion on whether the debtor can be successfully restructured.

Once the court has commenced the bankruptcy proceedings the debtors is no longer allowed to manage its assets in most instances¹. The debtor is also not allowed to dispose of any of its assets or repay loans to creditors² the pool the restructuring plan is approved. The court,

¹ Section 157 of the Bankruptcy Act

² Ibid Section 157(1)(b)

however, must entertain any application made by a secured creditor within 10 working days of the application being launched in order to assist the creditor as a priority claimant.

The trustee appointed by the Court works hand in hand in assisting the Court and may ask the court for assistance in order to perform or execute their duties in terms of article 83 of the Bankruptcy act and may also appoint supervisors to assist the trustee in terms of article 87. The Court is also responsible for the determination of the trustees' fees.

The Court must also assist the trustee in furnishing all information regarding the debtor in its possession to the trustee in terms of article 88. Once the trustee has furnished its report to the court the court must review same and thereafter confirm the contents and provide all the creditors and with a copy of the final report³. They called in bottle direct the trustee to convene the creditors' meeting in order to propose the restructuring scheme. The trustee is required to develop the scheme within three months after the approval in terms of article 99.

The scheme must contain the possibility of profit generation as well as how the liabilities will be overcome as well as any proposals relating to the sale of the business or any conversion of debt into equity gain. The scheme must be able to be implemented within five years and could only be extended for three years with the consent of the majority of creditors.

Once the trustee has submitted the proposed scheme to Court, the Court must review the scheme within 10 days and either accept or request the trustee to vary the scheme. Should the scheme be accepted by the creditors, the court will authorize the formation of a creditors committee.

Once the decision is accepted by the court, the court must notify all creditors of the decision. Must be noted that the court may even force a secured creditor to accept a proposed alternate security should the debtor propose the same. Once the court has confirmed the order completing the implementation of the scheme and it is advertised the scheme may then be implemented and must be supervised and carried through by the appointed trustee.]

Question 3.3 [maximum 2 marks]

Commented [SE15]: 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.

[I am of the opinion that the level of court intervention in the UAE is extremely high as compared to other jurisdictions in the world. I do, however, believe that such in depth

³ Ibid article 96

intervention is a welcomed relief. Speaking from personal experience in the South African business rescue processes, an in depth scrutinization by the court would prevent issues such as restructuring practitioners taking on a company which is virtually insolvent for personal monetary gain move call for the company to be run in business rescue for a few years and thereafter go insolvent with the third business rescue practitioner being the only individual which benefits from the situation. Such Court involvement would also prevent any nefarious dealings from taking place between practitioners and creditors.

Therefore, I believe the level of court involvement that exists in the UAE is crucial for the success of a company going into restructure.]

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

Commented [SE16]: 9/15

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 [SE17]: 5/5

The process of preventive composition requires adherence to a number of timeframes. 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.

[An application for preventative composition is made by the debtor in terms of article 6 of the Bankruptcy Law setting up the debtor's financial position and proposal for the competition composition. Once the court receives the application, they may grant interim orders to preserve the debtor's current position or request further information. The court must then appoint an expert to prepare a report on the financial position which report must be delivered no later than 20 business days from the date that the expert was instructed in the matter.

The court must then decide on the application within 5 days of the application or within 5 days from the date of the expert's report. Once the application has been accepted, the process for composition begins any trustee is appointed. The trustee must then take inventory of the debtor's assets and produce a report tabulating the assets, as well as the creditors to court in terms of article 22 of the bankruptcy law.

Although the debtor may continue to run its company it must be under the supervision of the trustee and the trustee may direct the debtor to take certain actions in their best interests in order to further the preventative composition process. The trustee must publish a summary of the court's decision to commence preventative composition within 5 days of his appointment in two newspapers in English and Arabic. The notice gives creditors 20 business days to file their claims. Following the expiration of the 20-day period. The trustee must then prepare the list of claimants and end their debts and is required to lodge the list with court within 10 business days from the lodging of claims.

The court must within 10 days determine the application and final list of creditors. Thereafter the trustee must submit a preventative composition scheme to the Court within 45 business days (which can be extended for a further 20 business days) from the date of publication of the notice initiating preventative composition. Once the scheme has been submitted the court must review the scheme within 10 business days and thereafter direct the trustee within 5 business days to issue a notice calling for a creditor's meeting within 15 days to approve the scheme.

Once the scheme has been approved by the creditors, the trustee must submit the final scheme to Court within three days to approve the scheme. Once the Court approves the scheme the trustee is required to publish the scheme within 7 business days. The trustee must then supervise and implement the scheme and is responsible to ensure that the debtor abides by the decisions until the trustee has discharged all its obligations as per the scheme and the Court confirms the complete implementation of the scheme which, must also be advertised.]

Question 4.2 [maximum 5 marks]

Commented [SE18]: 0/5

RZA LLC's creditors rejected the proposed preventive composition scheme after a process of nearly four months. During that time, creditors, including staff, were not paid. The owners consider that without creditor support, restructuring would be impossible and liquidation is the only option available. With specific reference to the facts described above, describe the process that would be followed as part of any liquidation and, in particular, considering who could be appointed as trustee.

Commented [SE19]: This question is asking to describe the liquidation procedures that would be applicable.

[The process in question involves a rescission of the scheme under article 60 of the bankruptcy law. It must be noted that any dispositions made during the scheme are considered to be binding unless challenged in court. Therefore, the amounts owed to creditors and staff are still due, owing and payable. Once the scheme has been formally rescinded by the creditor's application or by the Court as the debtor has been in default for well over 30 days, the debtor is then automatically subject to bankruptcy procedures in terms of article 64.

Once the bankruptcy proceeding has been initiated the preventative composition trustee must be removed unless such trustee is appointed as the bankruptcy trustee. The court does however have a discretion to appoint a different independent expert from its panel of experts in order to reassess the financial condition of the debtor.]

Question 4.3 [maximum 5 marks]

Commented [SE20]: 4/5

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?

[The actions that the VGK creditors may take if they wish to see the company liquidated in the DIFC is either in the form of a voluntary creditors winding up should the company be insolvent or the creditors could apply for the compulsory winding up which will entail an application being brought and an order being made by the DIFC courts, subject to article 51 of the Bankruptcy Law.

Once a resolution has been passed to wind the company up, the winding up procedure commences and the company must stop trading with the director's powers being transferred to the liquidator in terms of article 61 and 70. If the members of the company entered into voluntary winding up proceedings then the director must provide redeclaration as to the solvency of the company in order to determine whether it's able to pay its debts within 12 months from the start of the winding up procedure. Should the liquidator appointed be of the opinion that the company will not be able to pay its debts, then a creditors' meeting must be called, and the process will be shifted to a creditors voluntary winding up.

Should VGK be wound up, the liquidator will be responsible for this winding up process. The creditor must submit a claim for the amount owed together with supporting documents proving the amounts claimed.]

Commented [SE21]: Reference from a previous year?

* End of Assessment *

Commented [SE22]: 37/50. 74%.