



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]: 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 [SE2]: 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 [SE3]: The correct answer is B.

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

Commented [SE4]: 9/10

Question 2.1 [maximum 2 marks]

Commented [SE5]: 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, in the different emirates of the UAE is that in mainland UAE, each emirate maintains its own land registration system,¹ while in the financial free zones, the system for registration of interests in land is based on the Torrens system in Australia. Under the Torrens system, registration in the land registry is the exclusive method of determining interests in land and the rights arising therefrom.² In particular, the registration of security over real property in DIFC is governed by the DIFC Law Number 10 of 2018 (**DIFC Real Property Law**), while the registration of security over real property in ADGM is governed by the ADGM Real Property Regulations 2015.³

The key difference between the sale of mortgaged real property following a debtor default with the real property being in a financial free zone or mainland UAE is the requirement for, or lack of, court involvement. In particular, in mainland UAE, the law provides for the right of a mortgagee to sell the mortgaged property following the debtor's default so long as that right is exercised through the courts.⁴ Once an order for sale is obtained, the court's execution department will then conduct the sale of the mortgaged property.⁵

However, in the financial free zones, if the mortgage contract includes a power of sale in the event of a default by the debtor, the mortgagee is able to enter into possession of the land by providing 60 days' notice to the relevant parties, and without need of a court order. Additionally, the creditor can sell the land, receive rent or profit from the land, and apply any proceeds of sale in payment of the mortgage debt.⁶

Question 2.2 [maximum 4 marks]

Commented [SE6]: 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.

Commented [SE7]: This question refers to the decision on an application, which is the role of the court.

¹ Bill Gambrell, *Module 7E Guidance Text – United Arab Emirates*, September 2022, p 9.

² *Idem*, p 10.

³ *Idem*, p 10 -11.

⁴ *Idem*, p 9.

⁵ *Ibid*.

⁶ *Idem*, p 10.

- For a preventative composition: The debtor;⁷
 - For a restructuring: The debtor if in default of its payment obligations for 30 consecutive days,⁸ or a creditor or group of creditors collectively who are owed more than AED 100,000 and have not been paid within 30 business days following a notice of demand.⁹
- (b) A primary determination as to whether a debtor's proposal should be adopted.
- For a preventative composition: Initially a court must review the draft scheme to confirm it takes into account the interests of all interested parties.¹⁰ Once so confirmed, the creditors will vote on whether the scheme should be approved.¹¹
 - For a restructuring: Similar to the above, the court must first review the proposed scheme to ensure it properly observes all parties' interests,¹² following which the creditors will vote on whether the scheme should be adopted.¹³
- (c) Confirmation of the primary determination as to whether a debtor's proposal should be adopted.
- For a preventative composition: Once the scheme has been approved by the creditors, the court must approve the scheme.¹⁴
 - For a restructuring: Similar to the above, once the scheme is approved by creditors, the trustee must put the scheme before the court for approval.¹⁵
- (d) To supervise the implementation of the insolvency process by the debtor.
- For a preventative composition: The trustee is responsible for supervising the implementation of the scheme.¹⁶
 - For a restructuring: As above, the trustee is responsible for the implementation of the scheme.¹⁷

Question 2.3 [maximum 2 marks]

Commented [SE8]: 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 under the UAE Bankruptcy Law between the circumstances which could give rise to an application to commence preventative composition or an application to commence bankruptcy, for a debtor, is that for bankruptcy proceedings, a debtor is required to initiate the procedure if the debtor is in default of its payment obligations for 30

⁷ *Idem*, p 14.

⁸ *Idem*, p 25.

⁹ *Idem*, p 26.

¹⁰ *Idem*, p 19.

¹¹ *Idem*, p 20.

¹² *Idem*, p 30.

¹³ *Idem*, p 31.

¹⁴ *Idem*, p 20.

¹⁵ *Idem*, p 31.

¹⁶ *Idem*, p 21.

¹⁷ *Idem*, p 32.

consecutive business days.¹⁸ By comparison, a debtor can seek preventative composition as an option, which would then terminate the debtor's obligation to apply to initiate bankruptcy proceedings.¹⁹ Additionally, bankruptcy proceedings can also be initiated by a creditor if the relevant criteria is met.²⁰

Question 2.4 [maximum 2 marks]

Commented [SE9]: 2/2

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

The key difference for a creditor regarding the commencement of preventative composition or bankruptcy of a debtor is that a creditor may initiate bankruptcy proceedings (if owed more than AED 100,000, and the debtor has failed to discharge the debt within 30 business days of being notified thereof), but not a preventative composition, as the option to initiate this is open to the debtor only.²¹

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

Commented [SE10]: 15/15

Question 3.1 [maximum 5 marks]

Commented [SE11]: 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.

Insolvency Laws in mainland UAE remained undeveloped until 2016. Whilst there were provisions in Law Number 18 of 1993, relating to commercial transactions governing a bankruptcy by traders, which provided a basic mechanism for insolvency, these procedures were very rarely used.²²

The issues associated with the UAE's undeveloped insolvency regime were highlighted on an international level in 2009, when Dubai World (an investment company owned by the Dubai Government), was at risk of defaulting on its debt.²³

As a result, the UAE adopted the Federal Decree Law (Number 9) of 2016 relating to bankruptcy (**Bankruptcy Law**), which was subsequently amended in 2019, 2020 and 2021.²⁴ The Bankruptcy Law provides a consolidated insolvency regime for commercial insolvencies in the UAE by drawing on experiences from a number of jurisdictions.²⁵ In addition, the Bankruptcy Law repealed the Law Number 18 of 1993 discussed above.²⁶

¹⁸ *Idem*, p 25.

¹⁹ *Idem*, p 14.

²⁰ *Ibid.*

²¹ *Ibid.*

²² *Idem*, p 6.

²³ *Idem*, p 7.

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ *Ibid.*

Significantly, the Bankruptcy Law does not apply to consumer insolvencies, as these types of insolvencies are governed by Federal Decree Law (Number 19) of 2019 (commonly referred to as Personal Bankruptcy Law).²⁷

The Bankruptcy Law applies to the following entities:²⁸

1. All companies governed by the Commercial Companies Law;
2. Any companies established under any other legislation who by law or voluntarily have submitted to the provisions of the Bankruptcy Law;
3. All free zone companies and establishments which are not governed by other insolvency procedures (except those in financial free zones);
4. Any person who is a trader engaged in commercial activities in a personal capacity; and
5. All licensed civil companies of a professional character.

Generally speaking, the Bankruptcy Law has been well received and considered as necessary progress by the commercial community.²⁹ However, to date only a limited number of cases have been decided under it. As such, it continues to develop and be amended as considered necessary. The most pertinent example of this is a recent amendment of the Bankruptcy Law in 2021, which amended the law to clarify director liability, relevant appeal rights and maximum financial penalties.³⁰ The 2021 amendment was introduced as a result of a judicial decision issued by Dubai courts on director duties. As a result, the Dubai court reconsidered the matter in 2022 and clarified its ruling, thereby demonstrating that as the Bankruptcy Law develops, the court will continue to calibrate its application.³¹

Question 3.2 [maximum 8 marks]

Commented [SE12]: 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.

If a debtor company seeks to enter bankruptcy, the Bankruptcy Law requires the court to be actively engaged in the restructuring part of the bankruptcy process.

Initially, a court is required to determine whether to commence a bankruptcy procedure following receipt of an application per article 79 of the Bankruptcy Law.³² If a court determines that a bankruptcy procedure should be commenced, it must then appoint a trustee, as well as a supervisor if considered necessary (per article 87 of the Bankruptcy Law).³³

Although a court has the initial involvement set out above, it becomes more actively involved once the proceedings get to a stage where the trustee prepares a report on the debtor's

²⁷ *Ibid.*

²⁸ *Idem*, p 11 -12.

²⁹ *Idem*, p 7.

³⁰ *Idem*, p 12.

³¹ *Ibid.*

³² *Idem*, p 26 – 27.

³³ *Idem*, p 27 – 28.

business. Per article 96 of the Bankruptcy Law, this report must address the possibility of restructuring the debtor's business, a statement of the debtor's commitment to continuing the business, and the possibility of selling the debtor's business as a "going concern" in the event the debtor's assets are to be sold.³⁴

A court must then review the report in order to confirm that it takes account of all creditor claims.³⁵

Once this step is complete, a court must direct the trustee to convene a meeting of creditors and, unless the court considers that liquidation is appropriate, direct the trustee to prepare a restructuring scheme.³⁶

Per article 101 of the Bankruptcy Law, the scheme must address the possibility of the business generating profits, how liabilities will be addressed, any business sale proposals, a proposal as to how debtors and collateral will be dealt with, as well as details on any possible conversions of debt to equity.³⁷

A court must then review the proposed scheme within 10 business days of submission, and if not satisfied that the scheme properly observes all parties' interests, can request that the trustee vary the scheme and resubmit it within a further five business days per article 103 of the Bankruptcy Law.³⁸ A court must not approve the proposed scheme unless it appears viable, and the debtor confirms its willingness to continue to carry on business.³⁹

A court would then direct a trustee to issue an invitation to creditors within five business days to attend a creditors' meeting for the purpose of reviewing the scheme.⁴⁰ Additionally, article 104 of the Bankruptcy Law gives the court the power to direct the formation of committees representing classes of creditors, as well as to give directions about the appointment or conduct of any representatives of those classes at the meeting of creditors.⁴¹ Once and if the scheme is approved at the creditor's meeting, the scheme must then be put before the court for approval within three business days. In determining whether or not to approve the scheme, a 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.⁴² Additionally, the court has the power to order the acceleration of payment dates of longer-term debts, so long as that would be in the interests of the success of the scheme.⁴³

A creditor who voted against the scheme may object to the proposed scheme, in which case the court will make a final determination within five business days from the date of the objection being submitted.⁴⁴

Although the trustee is the party responsible for the implementation of the scheme, the court still has some involvement at this stage. In the event a scheme was approved, but a trustee consequently considers that an amendment is required, the court's active engagement is

³⁴ *Idem*, p 29.

³⁵ *Idem*, p 30.

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² *Idem*, p 31.

⁴³ *Ibid.*

⁴⁴ *Ibid.*

further stipulated. In particular, article 114 of the Bankruptcy Law states that following an application for approval of amendment, the court must notify all creditors who voted on the scheme, as well as any other creditors the court considers it necessary to notify, so that those creditors can make an application regarding the proposed amendment within 10 working days of notification.⁴⁵ The court may ultimately approve (wholly or partly) or reject the proposed amendment.⁴⁶

Additionally, a court here has the power to direct that certain assets not be sold due to them being essential to the operation of the debtor's business (per article 112 of the Bankruptcy Law), as well as allow the debtor to take on new finance secured against unencumbered assets with priority over existing debt (per article 181 of the Bankruptcy Law).

Once the obligations provided for in the scheme have been complied with, under article 115 of the Bankruptcy Law, the court must make an order confirming the complete implementation of the scheme (which must be advertised).⁴⁷

Lastly, per article 123 of the Bankruptcy Law, a court may terminate a restructuring and commence liquidation in the following circumstances:⁴⁸

1. On its own initiative;
2. On the application of a creditor; or
3. If the scheme's implementation is impossible.

Question 3.3 [maximum 2 marks]

Commented [SE13]: 2/2

In any insolvency system that involves the forced compromising of individual creditor claims, the requirement for court involvement is to ensure that the rights of all parties, including individual creditors, are being protected. The UAE Bankruptcy Law requires a high degree of court involvement. Briefly describe (100 to 150 words) whether you consider that the level of court involvement in approving a restructuring to be appropriate. Provide reasons for your answer.

The UAE Bankruptcy Law requires a high, and in my view, appropriate, level of court involvement in approving a restructuring to be appropriate. In particular, the court is required to review the initial report by the trustee on the debtor's business, in order to confirm that the report takes account of all creditor claims.⁴⁹ Additionally, even if the scheme is approved by the creditors at the creditors' meeting, the court may only approve the restructuring scheme if it is 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.⁵⁰ Although the system may involve the forced compromising of individual creditor claims, it is difficult to imagine what additional involvement the court could have in order to ensure the rights of all parties are protected. Ultimately, the restructuring scheme will not be approved by the court if liquidation on the date of voting on the scheme would result in a better outcome.

⁴⁵ *Idem*, p 32.

⁴⁶ *Ibid.*

⁴⁷ *Idem*, p 33.

⁴⁸ *Ibid.*

⁴⁹ *Idem*, p 30.

⁵⁰ *Idem*, p 31.

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

Commented [SE14]: 15/15

RZA LLC operates a restaurant chain in various locations in Dubai. It was a thriving and successful business but has been negatively impacted by the increase in global food prices. It has exhausted all available funds and has no cash to pay creditors. RZA LLC owns a restaurant site which is under development, but the development is not expected to be completed for seven months. The site had been purchased by one of RZA LLC's shareholders and was transferred to RZA LLC on the basis that payment for the site would be made by RZA LLC to the shareholder in full in 2024. In the meantime, the shareholder holds a mortgage over the property for the unpaid purchase price.

[Type your answer here]

Question 4.1 [maximum 5 marks]

Commented [SE15]: 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.

Taking into account the assumptions set out in the question (those being that an expert's report is required by the court; there are no disputes about whether a creditor is accepted or not; there are no amendments to the proposed scheme by the court; the scheme is accepted by the creditors without the requirement for any adjournment of the creditors' meeting; the scheme is approved by the court following the meeting; and there are no other extensions), the 10 specific steps that will determine the maximum time taken between making an application for preventive composition and registration the scheme following final approval are as follows:

Step 1: The debtor makes an application for preventative composition by way of court application setting out the debtor's position, the debtor's proposal for preventative composition and the name of the proposed appointee as trustee to oversee the preventative composition.⁵¹

Step 2: Upon receipt of the application, the court will appoint an expert to prepare a report on the financial position of the debtor, which should include the expert's view on whether the debtor has met the criteria necessary to accept the preventative composition application procedure. The report must be delivered no later than 20 business days from the date the expert is instructed to prepare the report.⁵²

⁵¹ *Idem*, p 15.

⁵² *Ibid*.

Step 3: Once the expert report is received, the court has five business days to accept the application, following which the preventative composition procedure commences.⁵³

Step 4: The court must then appoint a trustee, which could be the person nominated by the debtor, or a person enrolled in the table of experts appointed by the Financial Restructuring Committee, who has five business days from appointment to publish a summary of the court's decision to commence the preventative composition procedure. This notice must also invite creditors to file claims within 20 business days from the date of publication.⁵⁴

Step 5: Following the expiry of that lodging period, the trustee is then required to prepare a list of claimants, which must be lodged with the court within 10 business days from the date of the period of the lodging claims.⁵⁵

Step 6: The preventative composition scheme must then be submitted to the court within 45 business days from the date of publication of the decision initiating the preventative composition procedure.⁵⁶

Step 7: The court then has 10 business days from the date of submission of the scheme to review the draft to confirm that it takes into account the interests of all interested parties. Given the assumption that the court is satisfied with the scheme, the court must then direct the trustee to issue invitations within five business days, to be given to the debtor's creditors, for the purpose of attending the creditors' meeting to discuss the proposed scheme.⁵⁷

Step 8: The meeting must be held within 15 working days of the date of direction to invite creditors.⁵⁸

Step 9: Within 3 business days of the scheme being approved by the creditors, the trustee must put the draft scheme before the court for approval.⁵⁹

Step 10: The trustee must then register the scheme within seven business days of the date of approval of the scheme by the court.⁶⁰

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.

Given RZA LLC's creditors rejected the proposed preventative composition scheme, and RZA LLC's owner is of the view that liquidation is the only option, the next step will be for RZA LLC to apply for an order initiating bankruptcy proceedings. In RZA LLC's application, RZA LLC

⁵³ *Ibid.*

⁵⁴ *Idem*, p 15 – 18.

⁵⁵ *Idem*, p 18.

⁵⁶ *Ibid.*

⁵⁷ *Idem*, p 19.

⁵⁸ *Idem*, p 20.

⁵⁹ *Ibid.*

⁶⁰ *Idem*, p 21.

Commented [SE16]: Additional steps include:

- The court is required to review the draft proposed scheme within 10 business days from the date of submission of the scheme;
- If the court confirms it is satisfied with the terms of the proposed scheme, the trustee is to issue invitations for a creditors' meeting within five business days of that confirmation;
- The meeting is to be held within 15 working days of the date of the court's direction to hold a creditors' meeting;
- Once the scheme has been approved, the trustee is required to put the scheme before the court within three business days, for the court either to approve or reject the scheme urgently;
- Within seven business days of the date of approval of the scheme by the court, the trustee is required to register the court's decision confirming the approval in the debtor's governmental corporate register and publish a summary of the scheme.

Commented [SE17]: 5/5

will be required to propose a trustee, who will be required to provide a report on RZA LLC's business, which should address the possibility of restructuring RZA LLC's business. On the assumption that the bankruptcy trustee will agree with the owners' view that liquidation is the only option, that will be reflected in the trustee's report. The court is therefore likely to consider liquidation is appropriate, and will not direct the trustee to prepare a restructuring scheme for creditors to vote on.

Instead, the court will make an order for the bankruptcy of RZA LLC and the liquidation of its assets in accordance with article 124 of the Bankruptcy Law, as the restructuring procedures would be inappropriate.⁶¹

The court will then be required to appoint a trustee to appoint the liquidation. Per article 126 of the Bankruptcy Law, the court has the power to order that the bankruptcy trustee previously appointed (or the bankruptcy expert) continue in office.⁶²

Per article 128 of the Bankruptcy Law, the appointed trustee must then advertise the liquidation order within three business days of the order being made, as well as provide monthly updates to the court with respect to the progress of the liquidation of the relevant assets and other relevant matters (as set out in article 134 of the Bankruptcy Law).⁶³

Following the making of the order, all of RZA LLC's correspondence must state that it is subject to a bankruptcy order in accordance with article 133 of the Bankruptcy Law.⁶⁴

Creditors will then have ten business days from the making of the order to lodge their claims with the trustee, failing which those claims are inadmissible unless the court orders otherwise.⁶⁵ Generally speaking, all debts owed by RZA LLC will fall due upon the order for bankruptcy.⁶⁶ In the event of future debts, those can be adjusted for the amount equivalent to legally payable interest, although the court may suspend interest and other penalties for non-payment at the trustee's request.⁶⁷ Additionally, any foreign currency claims will be converted to UAE currency at the relevant rate applicable at that date.⁶⁸

To the extent RZA LLC has failed to perform its obligations, the other party may then also apply to the court for an order for rescission of the contract given the bankruptcy order does not automatically lead to rescission.⁶⁹

The trustee will then also take steps to liquidate all of RZA LLC's property by public auction under the supervision of the court in accordance with article 132 of the Bankruptcy Law.⁷⁰

Any proceeds will then be distributed as follows:

First, any proceeds from the sale of the restaurant site under development will be paid to the RZA LLC shareholder who holds a mortgage over the property, less the trustee's costs of sale. To the extent there are leftover surplus funds from that sale, they will be returned to RZA LLC to satisfy other outstanding debts.

⁶¹ *Idem*, p 34.

⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*, citing article 129 of the Bankruptcy Law.

⁶⁶ *Ibid.*

⁶⁷ *Idem*, p 33, citing article 163 of the Bankruptcy Law.

⁶⁸ *Idem*, p 34, citing article 135 of the Bankruptcy Law.

⁶⁹ *Ibid.*, citing articles 164 and 165 of the Bankruptcy Law.

⁷⁰ *Ibid.*

Next, court costs will be paid, following which the trustee's costs will be paid.⁷¹ After this, staff will be paid up to three months of their unpaid wages.⁷²

Once the above are paid, any leftover funds must be paid to cover alimony debts, amounts due to governmental bodies as well as costs incurred in supplying RZA LLC with goods and services following the commencement of bankruptcy.⁷³

Once all proceeds are paid as above, the court will make an order confirming the conclusion of the liquidation procedure, which will include a final list of creditors and the amounts remaining unpaid.⁷⁴ That decision will be advertised. The trustee will then return all documents to RZA LLC and any remaining unpaid creditor will have the ability to enforce any remaining debt to the extent there are remaining assets.⁷⁵

RZA LLC will be deemed fully rehabilitated five years after the completion of bankruptcy, or earlier if RZA LLC's debts are discharged prior to this period expiring.⁷⁶

The owners and directors of RZA LLC should be aware of the risk of them also being adjudicated bankrupt in accordance with article 143 of the Bankruptcy Law,⁷⁷ as well as being ordered to pay the debts of RZA LLC in the event the court considers that they were responsible for RZA LLC's losses.⁷⁸

Additionally, the directors and shareholders should be aware of the various bankruptcy offences, as well as the possibility to dispositions being deemed void or set aside.⁷⁹

Question 4.3 [maximum 5 marks]

Commented [SE18]: 5/5

RZA LLC incorporated and registered a fully-owned subsidiary company in the DIFC to operate a restaurant in the DIFC. The subsidiary is called RZA Limited and it is incorporated as a DIFC company. RZA Limited is also unable to pay its debts. What actions can RZA Limited's creditors take if they wish to see RZA Limited liquidated in the DIFC? In particular, who can take such actions and what steps would have to be taken? If the RZA was to be wound up, who would be responsible for it and what process would be adopted for addressing creditor claims in the winding up?

There are several steps RZA Limited's creditors could take. The creditors could either take steps to liquidate RZA Limited by way of creditors' voluntary winding up, or by bringing an application for a compulsory winding up.

With respect to the creditors' voluntary winding up, the creditors will have to pass a resolution to commence the winding up.⁸⁰ RZA Limited's winding up will be deemed to

⁷¹ *Idem*, p 35.

⁷² *Ibid*.

⁷³ *Ibid*, citing article 189 of the Bankruptcy Law.

⁷⁴ *Ibid*.

⁷⁵ *Ibid*, citing article 138 of the Bankruptcy Law.

⁷⁶ *Ibid*, citing articles 142 and 143 of the Bankruptcy Law.

⁷⁷ *Ibid*.

⁷⁸ *Idem*, p 36.

⁷⁹ *Ibid*.

⁸⁰ *Idem*, p 37.

commence at the time of the passing of the resolution to wind up the company.⁸¹ From the time of the passing of the resolution, RZA Limited must then cease to carry on business.⁸²

Whilst RZA Limited may nominate a liquidator, the creditors' choice of liquidator will prevail.⁸³ Once a liquidator is appointed, the powers of RZA Limited's directors will cease. The creditors may then also appoint a liquidation committee at the eventual meeting of creditors, which would exercise the functions conferred on the committee under the DIFC Insolvency Law.⁸⁴

Alternatively, any creditor with a debt of at least USD 2,000 may make an application to the court for a compulsory winding up on the basis that RZA Limited is unable to pay its debts.⁸⁵ The presumption that RZA Limited is unable to pay its debts will be made out if the relevant creditor has made a demand for payment of at least USD 2,000, and that demand remains unsatisfied for a period of more than three weeks.⁸⁶

In the case of a compulsory winding up, the court will appoint a liquidator. Whoever is appointed as liquidator may then either continue as liquidator, or summon a meeting of creditors for the purpose of choosing a liquidator.⁸⁷

Whether or not RZA Limited is wound up by way of creditors' voluntary winding up or a court-order compulsory winding up, the liquidator has the same role and duties. In particular, the liquidator will have wind up the affairs of RZA Limited, realise and distribute its assets, and do anything else that may be necessary for the winding up of RZA Limited's affairs. The liquidator will also have to call for claims by creditors, following with the claims will need to be proved, ranked, and paid.⁸⁸

In addition, the liquidator will have to investigate RZA Limited as well as the cause of its failure, and report his or her findings to the court.⁸⁹

The liquidator will also have the power to challenge any transactions entered into by RZA Limited, and seek corresponding recovery of assets RZA Limited was deprived of in the period prior to winding up. The liquidator may also pursue actions against any of RZA Limited's past or present officers if there are grounds for suspicion that those officers have concealed RZA Limited's property or its true state of affairs with the intention of defrauding creditors.⁹⁰

With respect to addressing creditor claims, each creditor will have to submit a claim in writing to the liquidator and provide supporting information, which will act as the 'proof' of debt. The liquidator will then verify the claim. In the event the debt cannot be ascertained, the liquidator is able to estimate the amount. Additionally, any set-off between the creditor and RZA Limited, as well as interest accrued up to the date of the commencement of the winding up, will be taken into account.⁹¹

⁸¹ *Ibid.*

⁸² *Ibid.*

⁸³ *Ibid.*

⁸⁴ *Idem*, p 38.

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*

⁸⁸ *Idem*, p 39.

⁸⁹ *Ibid.*

⁹⁰ *Idem*, p 40.

⁹¹ *Ibid.*

In the event any of RZA Limited's creditors are secured creditors, those creditors will only be able to submit a proof of debt for the balance of what is owed after the security interest has been realised.⁹²

A liquidator then has the power to either accept or reject a claimed debt. Any creditor dissatisfied with the liquidator's decision may file an application for an appeal with the court within 21 days of receiving notice of the decision.⁹³

To the extent the liquidator of RZA Limited has sufficient funds, he or she may declare a dividend and distribute that amongst RZA Limited's creditors. The liquidator is entitled to retain funds to cover the costs of the liquidation, any disputed claimed, as well as any claims that may still be lodged. All debts will then rank equally, unless they are preferential claims as set out by the Preferential Creditor Regulations 2008 (which are primarily amounts owed to employees).⁹⁴

Subject to there being available funds and all creditors having been paid in full, any remaining assets of RZA Limited will then be paid to shareholders, following which RZA Limited will be wound up.⁹⁵

* End of Assessment *

Commented [SE19]: 47/50. 94%.

⁹² *Idem*, p 41.

⁹³ *Ibid.*

⁹⁴ *Idem*, p 42.

⁹⁵ *Ibid.*