



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.

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.
- (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.

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 disapples 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 Cooperation).
- (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.

Commented [SE3]: The correct answer is B.

(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]

Question 2.1 [maximum 2 marks]

Commented [SE4]: 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?

[As regards the registration of real property interests, including mortgages, in the different emirates of the UAE, the main point to note is that each emirate maintains its own system of land registration, as well as the fact that the registration and enforcement of mortgages may be subject to different procedures depending on the emirate. There are also various types of financing structures available, most of which have their origin in Islamic finance, such as musataha (a long-term right of use), ijara (a form of leasing) and murabaha (instalment sale). In these figures, the debtor "loses" (may lose the faculties to use and dispose, for example) his interest in the asset, while the ownership of the asset is directed mostly to the credit grantor.

Regarding the main difference for selling a mortgaged property after the debtor's default, if that property is in a financial free zone or if the property is in the UAE mainland, we can highlight the role of the court in each of the cases. That is, if the mortgaged property is located in the UAE, the sale of a property by a creditor who holds a mortgage on a property is only possible through proceedings before the court. In addition, there is a discussion about the fact that the mortgagee must first obtain judgment on the mortgage debt before proceeding with the sale. In any event, the general rule is that the creditor can apply to the court for a right of sale order without first obtaining judgment on the debt. Thus, as soon as the court issues an order for sale, the execution department of the court will conduct the sale of the mortgaged property.

On the other hand, a property located in the DIFC will be governed by the DIFC Real Property Law, which provides for a land registration system based on Australia's system, as well as a separate registration system for ownership and other interests in land, including mortgage and other charges. In this case, the free zone legislation, in the event of non-payment by a debtor and considering that by contractual provision the mortgage included a power of sale in the event of default by the debtor, a creditor holding a mortgage over the debtor's land may enter into possession of the land simply by providing 60 days' notice to the relevant parties. Thus, there would be no need to conduct the process through the court. Finally, the legal position in the ADGM is similar to what is explained above about the legislation in the DIFC.

Question 2.2 [maximum 4 marks]

Commented [SE5]: 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.

[Upon receipt of any request for the commencement of insolvency proceedings, whether it is a request for preventive composition or for restructuring, the court will decide on the commencement of the insolvency proceeding. However, the court may appoint an expert to prepare a report on the debtor's financial situation, in which the expert will answer whether the debtor meets the criteria to proceed in the insolvency process and if it is financial capable to support the procedure. This report must be delivered within 20 working days of the expert's appointment. In this second hypothesis, only then the court will issue a decision on the application.]

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

[In both cases (preventive composition or restructuring), the trustee will be responsible for drafting the restructuring plan, assisted by the debtor. Within 10 business days from the date of the submission of the scheme to the court, the court will review the proposed scheme and provide the primary determination as to whether the scheme deals fairly with the interests of all affected parties by the process and, if the court finds it does not, the court may request the trustee to provide amendments to the scheme. In this event, the trustee may return an amended scheme within 10 business days of the court's request. Once the court is satisfied with the preliminary draft of the scheme, the court will direct the trustee to summon the debtor's creditors for attending a creditors' meeting to discuss the scheme.

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

[At the creditors' meeting, the trustee and the debtor will explain the scheme to the creditors and the creditors should confirm if they accept the proposed scheme or if they reject any of its terms. In this case, the creditors may suggest amendments to the scheme at the meeting and the court may grant further meetings to take place in order to discuss the possible amendments. Once the scheme obtains the approval of at least the majority of two-third of the creditors' debtor, the plan is deemed to be approved by the creditors and the trustee is required to lodge the approved scheme to the court, which will then issue a final decision approving or rejecting the scheme.]

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

[If the court accepts the preventive composition procedure, the court must then appoint the trustee, who is either a person nominated by the debtor or enrolled in the table of experts appointed by the Financial Restructuring Committee, which is responsible for "approving" the candidates for the panel of experts available to the court, whose members are appointed by the UAE Minister of Finance. Similarly, if the court accepts the commencement of a bankruptcy procedure, it must appoint a trustee, also being a person nominated by the debtor or qualified in the table of experts appointed by the Financial Restructuring Committee. Finally, it is important to note that in both the preventive composition and the restructuring proceedings the trustee can be either a natural or a legal person, and that up to three trustees can be appointed to act jointly. Also, the trustee cannot be a creditor, a relative or spouse of the debtor, or a person convicted of certain dishonesty offenses, or any person who has prescribed commercial relationships with the debtor in the previous two years. Finally, in both insolvencies process any creditor may challenge the appointment of a trustee within five business days of the date of publication of the appointment, and the objection is made to the court, which is required to rule the issue within a further five business days. Despite of any objection, the insolvency process shall continue during the period the trustee appointment is being challenged.]

Question 2.3 [maximum 2 marks]

Commented [SE6]: 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)?

[A debtor can apply for preventive composition as an option to the formal bankruptcy process (restructuring and liquidation). In addition, under the terms of the Article 6 of Federal Decree Law (Number 9) of 2016 (The Bankruptcy Law), *only the debtor may apply to the Court for preventive composition, if he encounters financial hardships that require assistance to reach a settlement with his creditors*. In the other hand, Restructuring is an alternative to liquidation, which can be initiated by a debtor or a creditor and is as part of the formal bankruptcy process. Furthermore, under Article 68 of the Bankruptcy Law of the UAE mainland, a debtor is required to initiate bankruptcy procedures if the debtor is in default of its payment obligations for 30 consecutive business days, since it is a requirement for the preventive composition application to be accepted, that *the debtor shall not be in default for more than (30)thirty consecutive business days due tohis unstable financial position or in the condition of account receivable*. Thus, if the debtor applies for preventive composition and the process is accepted, this duty ends, considering that it has been verified that the debtor complies with the legal determination. In addition, as aforementioned, preventive composition is a debtor-led process that only the debtor may apply to the court for the commencement. Finally, it can be concluded that the main practical benefit for the debtor seeking preventive composition is that he increases his chances of negotiating his liability through a plan that will be put into effect.]

Question 2.4 [maximum 2 marks]

Commented [SE7]: 2/2

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

[The difference is that only a debtor can seek the initiation of a preventive composition and a creditor is not authorized to make such an application to the court on behalf of the debtor. On the other hand, bankruptcy proceedings can be initiated by creditors, i.e. a creditor - or a group of creditors collectively - who have a claim of more than AED 100,000 (US\$ 27,226) can apply to the court to initiate bankruptcy proceedings. A creditor can file for the debtor's bankruptcy even if they are a shareholder of the debtor.]

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

Commented [SE8]: 15/15

Question 3.1 [maximum 5 marks]

Commented [SE9]: 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.

[The United Arab Emirates (the UAE) is a federation of seven Emirates in the North-East of the Arabian peninsula and until 1971, the constituent emirates of the UAE were parties to a treaty with the United Kingdom, which governed each emirate's foreign affairs. From December 2, 1971, six Emirates got united and the UAE came into existence. In 1972, a seventh emirate joined the federation. Currently the seven Emirates are Abu Dhabi, Ajman, Dubai, Fujairah, Sharjah, Umm al Qywayn and Ras al Khaimah. Under an amendment made to the Constitution in 2004, the Federation can create free zones, and this free zone has the ability to have its own laws and regulations related to corporate and other business structures, especially to stimulate foreign investment. And by federal law, the UAE has established two financial free zones: Dubai International Financial Center (DIFC) and Abu Dhabi Global Market (ADGM). Thus, there are federal legislations, coming from the Mainland UAE and legislations at Emirates level, for example created in the free zones of DIFC and ADGM.

Regarding insolvency legislation, until 2016 insolvency was not so advanced, there were provisions in Law Number 18 of 1993 relating to commercial transactions (The Commercial Transactions Law), which governed bankruptcy by traders. Therefore, the law provided basic insolvency remedies for agents engaged in commerce, which was a procedure to be sought before the court, but seeking this procedure was rare.

The issue of insolvency was raised in 2009, when Dubai World, an investment company owned by the Dubai Government, was at risk of defaulting on its debts, which caused international concern. Although Dubai World was ultimately able to negotiate with its creditors, this brought into focus the need to develop insolvency law in the UAE.

Hence, in 2016 there was the adoption of the Federal Decree Law (Number 9) of 2016 dealing with insolvency, which was amended in 2019, 2020 and 2021 and is commonly referred to as The Bankruptcy Law. With this, The Commercial Transactions Law was revoked and an insolvency regime was put in place with experiences from various jurisdictions through The Bankruptcy Law, which applies to commercial agents in the UAE, but not to consumers. Further ahead, in 2019, the Federal Decree Law (Number 19) of 2019 (Personal Bankruptcy Law) introduced a regime for debtors not covered under the Bankruptcy Law, filling the gap that existed at that stage.

The bankruptcy law brought in a number of court-supervised processes, such as the Preventive Composition and Bankruptcy procedures, which are divided into formal restructuring and liquidation. In addition, the law created the Financial Restructuring Committee, supported by the Minister of Finance, with the function of supervising insolvency practice and procedure in the UAE. Furthermore, although it is a new regime, with the Covid-19 pandemic, section 15 was introduced by the amendment to the Act brought by the Federal Decree Law (Number 21) of 2020, which addresses debtor's financial distress due to an Emergency Financial Crisis. An Emergency Financial Crisis needs to be first delimited by the UAE Cabinet, which will specify when it exists and the period of duration, before a debtor can rely on section 15.

Thus, the Bankruptcy Law in the UAE mainland continues to develop and has been subject to amendments since 2016 to promote this development. However, it appears that the law is still not widely used, although there is no official data on this topic. Another factor that makes the behavior of the law over time difficult is the fact that the UAE legal system does not operate on the model of binding precedent, which means that what happened in one case will not necessarily apply in another in the future. In any case, the application of the law continues to progress in the UAE.]

Question 3.2 [maximum 8 marks]

Commented [SE10]: 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 response was divided into four parts as follows:

- (i) Role of the Court on the commencement of a bankruptcy procedure and on the appointment of trustee

[Initially, the debtor must direct his application to the court, under article 73 of the Federal Decree Law (Number 9) of 2016 (The Bankruptcy Law). Thus, upon receiving the application, the court may require the appointment of an expert from the panel of experts

to assess the financial condition of the debtor (article 77 of the Bankruptcy Law). In addition, under article 79 of the Bankruptcy Law, the court may reject the application if the debtor fails to provide the specified information set out in article 73 and article 74 of the Law, such as a description of its financial position and designation of a trustee nominated by the debtor to handle the procedures. Continuously, when judging the application, the court may request further information from certain persons to assist the court with reasonable information related to the application (article 80), and the court may join other parties to the proceedings and may issue interim orders in respect of the debtor's property, according to article 81 of the Bankruptcy Law. The expert, in turn, will be in charge of reporting on the debtor's financial condition and giving his opinion on whether the debtor can successfully overcome the restructuring. The court will then have 5 five business days of the application or of the expert's reports, if applicable, to determine on the commencement of the restructuring, according to article 78 of the Bankruptcy Law.

Once the bankruptcy procedure is initiated, the debtor cannot dispose of its assets or pay its creditors without doing so under the terms of the Bankruptcy Law. In addition, the commencement of the procedure starts a period of suspension of actions against the debtor until the approval of the restructuring plan (article 162 of the Bankruptcy Law). Regarding secured creditors, they can ask the court to enforce their securities and the court will have 10 business days of the application to determine it. The court must assess whether there has been no collusion between debtor and secured creditor and, if the security is subject to several security interests, must determine the degree of priority between the security interests. The court's decision will be subject to appeal. The court must assess whether there has been no collusion between the debtor and the secured creditor and, if the security is subject to several security interests, must determine the degree of priority between the security interests (Article 162 of the Bankruptcy Law).

Also, if the bankruptcy proceeding is initiated, the court must appoint a trustee, either a person nominated by the debtor or a person entered in the table of experts appointed by the Financial Restructuring Committee. The trustee may be a natural or legal person and up to three may be appointed to act jointly. Within five business days of the publication of the appointment of the trustee, any creditor may challenge the appointed trustee and the court must also decide, within 5 business days of the application, the request made to challenge the appointed trustee, on a final basis. In any event, the bankruptcy procedure continues despite the challenge to the appointment of the creditor (Article 82 of the Bankruptcy Law).

The court must decide on the trustee's requests regarding the hiring of services and products that assist him to perform his or her task, according to article 83 of the Bankruptcy Law. Furthermore, the court may replace the trustee either of its own volition or upon application of the debtor, according to article 86 of the Bankruptcy Law. The court must also stipulate the trustee's fees, according to article 85 of the Bankruptcy Law. Finally, the court may appoint supervisors, as creditors or representatives of classes of creditors, but as a rule they do not receive any remuneration (Article 87 of the Bankruptcy Law).

There will then be a period of 20 business days (notified by the trustee via official publications, at least one newspaper publishing in English and one in Arabic) to invite creditors to file claims. Creditors will also be notified by the trustee within this period (Article 88 of the Bankruptcy Law)). At the end of this time, the trustee will prepare a list of claimants and submit it to the court within 10 business days and then he must advertise the list within 3 business days of the submission of the list to the court (Article 93 of the Bankruptcy Law).

Debtor or any creditor may object to the list by application to the court within 7 business days from the publication of the list, according to article 94 of the Bankruptcy Law. The court will judge the application within 10 business days of the application and the decision may be appealed. A court must then determine the final list of creditors, according to article 94 of the Bankruptcy Law.

The court can also suspend interest and other penalties for non-payment to the creditor at the request of the trustee, according to Article 163 of the Bankruptcy Law. In the case of executory contracts, the other party can apply to the court for an order terminating the contract, according to Article 164 of the Bankruptcy Law. The same is also true for the case where a landlord applies to the court for an order to terminate a lease agreement if the default continues for more than 3 months after the commencement of insolvency proceedings, pursuant to article 166 of the Bankruptcy Act. Finally, the *Court may terminate the effective employment contracts between the debtor whose properties are subject to restructuring or whose bankruptcy is declared and any of his employees, if required, irrespective of the provisions contained in such contracts*, under article 167 of the Bankruptcy Act.

During the proceeding, the trustee's must prepare a report on the debtor's restructuring procedure the possibility of restructuring the business of the debtor (article 96 of the Bankruptcy Law). The court, in turn, must review the report *within (10) ten business days from the date of submission to verify that the report includes all claims* (article 97 of the Bankruptcy Law).

Upon submission of the report, the court orders the trustee to arrange a meeting of creditors to take place within 10 business days from the provision of the trustee's report. If liquidation is not the case, the court orders the trustee to provide for a restructuring scheme, which cannot be authorized by the court without the debtor's willingness to continue the business and without the appearance that the scheme is feasible, according to article 98 of the Bankruptcy Law. The time limit for developing the plan is 3 months, under article 99 of the Bankruptcy Law. The implementation time of the scheme cannot be longer than 5 years, although it can be extended for another 3 years with the consent of two-thirds of the creditor's debtor, by article 102 of the Bankruptcy Law.

With the scheme finished, the trustee submits it to the court and the court reviews it within 10 business days of submission. The court may request modifications to the plan if it believes that it does not address the rights of all parties, according to article 103 of the Bankruptcy Law. After this review, the court asks the trustee to arrange a meeting of creditors to discuss the plan, which must take place within 15 business days of the invitation.

The Court may also establish committees representing classes of creditors and may also provide guidance about the appointment of any representatives of those classes at the meeting of creditors, according to article 104 of the Bankruptcy Law.

(ii) Court approval or rejection of the scheme

If a creditor suggests amendments to the scheme, the court may authorize further meetings to discuss them (article 105 of the Bankruptcy Law). In addition, only creditors with listed claims may vote, unless the court finds otherwise and authorizes voting by creditors admitted on an interim basis (article 106 of the Bankruptcy Law). If the scheme is approved by a majority of creditors holding two-thirds of the debts, the trustee takes the scheme to court within 3 business days, for the court to approve or reject it. The creditor who voted against the scheme can object to the scheme within 5 business days of submission to the court and the court must decide on a further 5 business days of the objection and this decision will be final. (Article 108 of the Bankruptcy Law).

In addition, The Court shall verify that the scheme secures that all affected creditors receive at least the amounts they would have received, if the properties of the debtor are liquidated on the date of voting on the scheme, as evaluated by the Court for such properties. (Article 108 of the Bankruptcy Law).

If the court chooses to reject the plan, it goes back to the trustee for amendments and then returns to the court, which must decide whether to approve it or to declare the commencement of the debtor's bankruptcy and the liquidations of the debtor's assets, according to article 109 of the Bankruptcy Law.

(iii) Implementation of the scheme

If approved by the court, the trustee will supervise the fulfillment of the scheme and must inform the court of any failure of implementation and report to the court every 3 months in any event, under article 114 of the Bankruptcy Law. If the trustee realizes that amendments are necessary in the course of implementation and considering that this will affect party's rights, it will be necessary to obtain court approval for the amendment. The court must notify all creditors who voted on the scheme and may then approve in whole or in part or reject the proposed amendment, according to article 114 of the Bankruptcy Law.

The court will be responsible for authorizing the debtor, upon request of the trustee or debtor, to take new financing with priority over existing debt and to allow that financing to be secured against unencumbered assets, according to article 181 of the Bankruptcy Law.

(iv) Court role on the completion of the scheme or termination of the restructuring

If the scheme is finalized by payment of all debts, the court will issue an order to confirm the completion of the procedure, which will be advertised, according to article 115 of the Bankruptcy Law. However, the court may terminate a restructuring and commence liquidation of debtor's assets (on its own initiative or by application of the creditor), if it finds

irregularities in the course of the plan, such as in the case of failure or execution of voidable transactions by the debtor, or terminate the scheme if its implementation is impossible, under article 123 of the Bankruptcy Law.

Question 3.3 [maximum 2 marks]

Commented [SE11]: 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.

[As can be noted from the answer to question 3.2, the level of involvement and participation of the court in the restructuring procedure is high, under the provisions of the Bankruptcy Law. That is, the court does not act as a mere responsible for ensuring legality, that is, assessing whether public order is being preserved and ensuring that the basic premises of an insolvency proceeding, such as equality between creditors within the same class are being preserved (the pari passu principle). The court's role appears to be shifting away from the minimal role of ensuring that the principles for effective insolvency and creditor/debtor regimes are met, to a more active role of effectively assessing the debtor company's restructuring scheme, and the court may even make suggestions to the scheme, which should be incorporated into the scheme by the trustee. This level of interference by the court may reveal that the Government Authorities are not comfortable with letting economic agents to act freely in the private market, and, this discourages debtors and creditors from pursuing this type of restructuring, as the risk increases as the level of subjectivity that the court can impose on the scheme is unpredictable. This decreases the legal certainty of the insolvency system and discourages foreign investment.]

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

Commented [SE12]: 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 [SE13]: 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.

[For visualization of the time-frames of the process of preventive composition, it is possible to identify the following Steps:

1. Debtor make an application to the court for commencement of a preventive composition procedure.
2. Upon receipt of the preventive composition application, the court - in this particular case - will appoint an expert to prepare a report on the financial conditions of the debtor, which should include a statement by the expert whether the debtor's application met the necessary criteria for the preventive composition to move on. The report must be delivered no later than 20 business days from the date of the report's request by the court.
3. Upon receipt of the expert's report, the court is required to decide on the preventive application within 5 business days. In this case, it is assumed that the application is granted by the court. And if the court accepts the preventive composition procedure, it will immediately appoint a trustee, that can be either a person nominated by the debtor or a person enrolled in the panel of experts appointed by the Financial Restructuring Committee (there are further requirements, that have already been addressed previously in this assessment and will not be again mentioned, since the scope of the question is to highlight the time-frame of the preventive composition).
4. Then, the trustee is entitled to publish a summary of the court's decision to commence the preventive composition procedure, within 5 business days of the trustee's appointment (the advertisements and publications of notifications by the trustee must be done on two widely-read newspapers, and one must be published in English and the other in Arabic). This notice will also invite creditors to provide documents to prove their claims before the trustee, within 20 business days from the date of the publication of the notice.
5. Then, the trustee must prepare a list of claimants, which must be presented to the court within further 10 business days from the date of the period for lodging claims.
6. Assuming that there are no disputes about whether a creditor is accepted or not, the court will issue an order determining the list of creditors.

7. In the Meanwhile, the trustee - assisted by the debtor- must lodge the preventive composition scheme to the court within 45 business days from the date of publication of the decision of commencement of the preventive composition procedure.
8. Assuming that no motion for extend this period is made by the trustee or debtor, within 10 business days from the date of submission of the scheme, the court will review the proposed scheme to confirm that it guarantees the interests of all related parties and - in this particular case - will issue an order approving the proposed scheme. The order will require the trustee to issue invitations to the creditors, within 5 business days, for the purpose of attending a creditors' meeting to discuss the scheme, that shall be held within 15 business days of the date of direction to invite creditors.
9. Assuming that at the creditors' meeting the proposed scheme is approved by creditors holding two-thirds of debtor's debts without the requirement for any adjournment of the creditors' meeting, the trustee is required to lodge the scheme to the court within 3 business days.
10. Finally, the scheme is deemed to be approved by the court, in this particular case, following the meeting.]

Question 4.2 [maximum 5 marks]

Commented [SE14]: 5/5

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

[If, after the plan was approved, there was no support from the creditors and liquidation followed because the plan became impossible, the appointment of the trustee for the preventive composition ends, but the same trustee can be appointed as the bankruptcy trustee. Therefore, it is possible for the court to appoint the previously trustee of the preventive composition to continue in office during the liquidation. Upon nomination, the trustee must advertise his appointment within 3 business days, the debtor's correspondences must indicate that he is subject to a bankruptcy order and the trustee must report monthly to the court on the progress of the liquidation of the debtor's assets and other bankruptcy matters. Under article 129 of the Bankruptcy Law, creditors must submit their claim to the trustee within 10 business days from the date of the bankruptcy order and the trustee is obliged to consider them, unless the debtor's assets are insufficient to pay the legal fees and secured creditors. In addition, all debts of the debtor fall due upon the bankruptcy judgment. Furthermore, under article 132 of the Bankruptcy law, the trustee must initiate the liquidation of all the debtor's properties, under the supervision of the court.

In addition, under section 131 of the Bankruptcy law, the trustee can apply to the court to make the debtor in charge of trying to sell the business for a period of 6 months (extendable

for a further 4 months), provided that it is in the public interest and the interest of all creditors to do so.

In the event of proposals to purchase the debtor's business, the trustee must notify the court, any supervisors and the debtor of the content of the proposal. And if any interested party objects to the proposal, the court will rule on such objection pursuant to Article 134 of the Bankruptcy Law. It is important to note that the debtor and persons related to the debtor, according to Article 136 of the Bankruptcy Law, cannot offer proposals for the acquisition of the debtor's assets.

Pursuant to Article 137 of the Bankruptcy Law, the proceeds from the sale of the debtor's assets are distributed by the trustee to the creditors, based on the priorities among the creditors in accordance with Chapter 6 of Section 5 of the Bankruptcy Law, after approval by the Court. In regular situations, the proceeds from the sale of assets subject to security interest are used to pay the secured creditor (there is an exception to this particular case, that is addressed below, because the security created by the debtor is null under article 168 of the Bankruptcy Law), discounting the trustee's fees in conducting the sale. Finally, Article 137(7) of the Bankruptcy Law provides that the trustee shall turn over to the debtor any surplus amounts in the liquidation, after the discharge of all its obligations.

Regarding the Rehabilitation of the Declared Bankrupt Debtor, by articles 217, 218 and 219 of the Bankruptcy Law, the debtor is considered rehabilitated after the expiration of the five-year period from the date of the conclusion of the bankruptcy. However, the debtor may accelerate this period if he settles all his debts, reaches an agreement with his creditors and satisfies the agreement. *or If the creditors evidently discharged the debtor of all debts that remained outstanding, after the completion of bankruptcy and liquidation procedures.*

Giving the above description of liquidation procedure under the Bankruptcy Law, in this particular case we should note that the Court, before allowing the beginning of the liquidation of RZA LLC's assets, must declare the non-enforcement of the security created by RZA LLC to one of its shareholders. That is, RZA LLC owed a restaurant site which was under development, but the development was not expected to be completed for seven months. Therefore, the facts above described that RZA LLC was under financial distress when the site had been purchased by one of RZA LLC's shareholders and was transferred on the basis that payment for the site would be made by RZA LLC to the shareholder in full in 2024. In exchange, the shareholder was going to hold a mortgage over the property for the unpaid purchase price.

However, this security interest created in favor of one of the debtor's shareholders within two years before the date of initiating the bankruptcy procedure is non enforceable, which means is null and void before the bankrupt estate, unless the Court approves the enforcement of such dispositions in observation of public interest or good faith third party, which apparently is not the case. Article 168 of the Bankruptcy Law set forth that is non enforceable any kind of new guarantee created on the debtor's properties to guarantee the payment of a previous debt. Assuming that RZA LLC could not pay for the completion of the site under development, the debtor disposed of one of its properties in exchange for

fresh cash from its shareholders and, in return, mortgaged the property to the buyer. By doing so, RZA LLC put its shareholder in a much better position in a bankruptcy proceeding by elevating the buyer to a secured creditor, to the detriment of RZA LLC's creditors (especially the unsecured ones). Therefore, this provision should be declared null and void under section 168 of the Bankruptcy Act.]

Question 4.3 [maximum 5 marks]

Commented [SE15]: 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?

[The action that RZA Limited's creditors can take if they wish to see RZA Ltd liquidate is through a winding up process, under the DIFC Insolvency Law (Law No. 1 of 2019).

In addition, such action could also be taken by a Court order (compulsory winding up), by resolution of the company's shareholders (voluntary winding up), or by a creditors' voluntary winding up (also a form of voluntary winding up). About this point, Article 51 of DIFC Insolvency Law (Law No. 1 of 2019) set forth the aforementioned alternative modes of winding up, stating that the winding up of a Company may be either voluntary or ordered by the Court.

For both forms of voluntary winding up (creditors' voluntary winding up and members' voluntary winding up), the process is deemed to commence at the moment is passed a resolution to wind up the company (Article 56 of the DIFC Insolvency Law: *A voluntary winding up is deemed to commence at the time of the passing of the Resolution for Voluntary Winding Up.*) The company has to cease its activities since the passing of the winding up resolution, despite of continuing to exist (having legal personality) during the winding up process (article 58 of the DIFC Insolvency Law).

In the case of a member's voluntary winding up, the directors must provide a statutory declaration of solvency whereby they confirm the company is able to pay its debts within 12 months from the commencement of the winding up (article 59 and 60 of the DIFC Law). It is worth mentioning that a failure by the company in paying its debts within 12 months creates a presumption that the director did not have reasonable grounds for his/her opinion and therefore commits a contravention and is liable to a fine (article 59 of the DIFC Law).

The creditors' voluntary winding up occurs when the liquidator concludes that the company will not be able to pay its debts and, therefore, call a meeting of creditors. From the moment creditors nominate a Liquidator under article 64 of the DIFC Law or the procedure by which the Company's creditors were to have made such a nomination concludes without a

nomination having been made, the winding up becomes a Creditors' Voluntary Winding Up.

In the case of a court-ordered winding up (compulsory winding up), the court may order so in the event the company has passed a resolution to that effect, if the company is unable to pay its debts (most common reason), if a moratorium under a Company Voluntary Arrangement has ended without the approval of an arrangement, if the court considers just and equitable the winding up of the company, or under other provision of the DIFC Law (especially set forth in article 81 of the Law).

The presumption that the company is unable to pay its debts is set forth in article 82 of the DIFC Law (Definition of inability to pay debts). Basically, when (i) a creditor demand for payment of a debt of more than USD 2,000 and the demand has been unsatisfied for a period of more than 3 weeks, (ii) any enforcement proceeding against the debtor is returned unsatisfied; (iii) it is proved to the satisfaction of the Court that the Company is unable to pay its debts as they fall due, (iv) it is proved that the debtor's assets value is lower than the company's liabilities, including any prospective and contingent liabilities.

Thus, if RZA Limited's creditors were to fit within one of the article 82 requirements, they would be able to make an application to the court to request the compulsory winding up of the company, to try to liquidate any assets of the debtor.

In addition, an application to request for a winding up court order can be brought by the company itself, its directors, any creditors (including any contingent or prospective creditor or creditors), under article 83 of the DIFC Law. Or the DIFC Authority may apply to the Court for the Company to be wound up and the Court may make such an order if it is of the opinion that it is just and equitable for the Company to be wound up (article 84 of the DIFC Law).

In addition, If RZA would be wound up, the responsible for it would be a liquidator, since the powers of the directors cease upon the appointment of a liquidator during a winding up proceeding, under article 61 and 70 of the DIFC Insolvency Law. The liquidator must be an insolvency practitioner, as provided for in the DIFC Law (Part 10), whose function will be wind up the affairs of the debtor and to gather, realise and distribute among the creditors the company's assets.

Pursuant to the DIFC Insolvency Regulations, the process that would be adopted for addressing creditor claims in the winding up would be throughout the submission of a claim for the amount in writing to the liquidator. This document ledged to the liquidator would be a proof of debt and the creditor has the duty to provide information/documentation to allow the liquidator to verify the claim. If the amount due cannot be determined, the liquidator may estimate the quantum. The proof of debt has to take into account set-off values between creditor and company and will be accrued by interest up to the date of the commencement of the winding up. A creditor may also prove a future debit and a debit in a foreign currency, as long as it is converted into US dollars.

Finally, a secured creditor may only prove the amount due following realization of its security interest.

*** End of Assessment ***

Commented [SE16]: 48/50. 96%. Great job!