



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]: 6/10

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.

Commented [SE3]: The correct answer is D.

Question 1.6

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

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

Question 1.7

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

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

Commented [SE4]: The correct answer is A.

Question 1.8

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

- (a) If a secured creditor, having security over all or substantially all of the assets of a debtor, takes steps to enforce its security.
- (b) If a creditor (or a group of creditors) has given notice to a debtor requiring the debtor to pay a debt of AED 100,000, and the debtor has failed to discharge the debt within 30 business days of that notification.

- (c) Following the annulment or rescission of preventive composition by the court.
- (d) If a debtor is in default of its payment obligations for 30 consecutive business days.

Question 1.9

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

- (a) In order to initiate the rehabilitation process the company is required to make an application to court submitting the rehabilitation plan and nominating the proposed rehabilitation nominee.
- (b) A moratorium comes into effect for an initial 180 days, preventing creditors from commencing or continuing legal action against the company.
- (c) The moratorium 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 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 [SE5]: The correct answer is B.

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

Commented [SE6]: 9/10

Question 2.1 [maximum 2 marks]

Commented [SE7]: 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?

[Since each emirate has its own registration system, registration and enforcement of mortgages is subject to each emirate's legislation.

Unlike in the mainland, sale of the mortgaged property in the financial free zones does not require the court order but only a prior notice.¹]

Question 2.2 [maximum 4 marks]

Commented [SE8]: 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.

[Court]

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

[Trustee]

Commented [SE9]: Unsecured creditors.

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

[Court]

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

[Trustee]

¹ Foundation Certificate in International Insolvency Law, Module 7E Guidance Text, Section 5.1, pages 9-11.

Question 2.3 [maximum 2 marks]

Under the UAE Bankruptcy Law, for a debtor, what is the key difference between the circumstances which could give rise to an application to commence preventive composition or an application to commence bankruptcy (whether leading to restructuring or liquidation)?

[Unlike in preventive composition, in order to commence bankruptcy the debtor should be in default of their payment obligations for 30 consecutive business days.²

Unlike in preventive composition, not only debtor but also creditor or creditors are entitled to file for bankruptcy on condition that they are owed collectively more than AED 100,000 and following a 30 business days' notification.^{3]}

Question 2.4 [maximum 2 marks]

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

[Only a debtor can initiate preventive composition⁴ so that a creditor is only entitled to apply to be included on the list and further participate in the proceedings. In bankruptcy, a creditor can apply for commencement of a procedure.^{5]}

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

Question 3.1 [maximum 5 marks]

Briefly explain the historical background to the introduction of the Bankruptcy Law. Describe which entities the Bankruptcy Law applies to and how it has been received and applied in the UAE.

[Bankruptcy Law was adopted by the Federal Decree Law No 9 in 2016 and subsequently amended in 2019, 2020 and 2021. In 2020, Bankruptcy Law was supplemented by an additional chapter related to the insolvency caused by the "Emergency Financial Crisis" (as a response to COVID-19).

Before Bankruptcy Law, the UAE insolvency legislation was undeveloped and consisted of the bankruptcy provisions of the Commercial Transactions Law dated 1993. The Bankruptcy Law with its detailed and unified regulation was worked out in response to the government company Dubai World being on the verge of default.

² Foundation Certificate in International Insolvency Law, Module 7E Guidance Text, Section 6.4.5, page 25.

³ Foundation Certificate in International Insolvency Law, Module 7E Guidance Text, Section 6.4.5, page 26.

⁴ Foundation Certificate in International Insolvency Law, Module 7E Guidance Text, Section 6.4.1, page 14.

⁵ Foundation Certificate in International Insolvency Law, Module 7E Guidance Text, Section 6.4.5.1, page 25.

Commented [SE10]: 2/2

Commented [SE11]: Yes, mostly. The point here is that the debtor can choose to enter preventive composition but is obligated to commence bankruptcy.

Commented [SE12]: 2/2

Commented [SE13]: 10/15

Commented [SE14]: 3/5

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

Bankruptcy Law regulates commercial insolvencies while the consumer insolvencies are governed by the Personal Bankruptcy Law dated 2019.⁶

Bankruptcy Law applies to (i) all companies governed by the Commercial Companies Law, (ii) companies established under the laws of a foreign legislation who submitted to the Bankruptcy Law, (iii) companies established under the financial free zones legislation companies not governed by any other insolvency procedures, (iv) individual entrepreneurs and (v) licenced companies conducting professional activities.⁷

Question 3.2 [maximum 8 marks]

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

[At the stage of the application for bankruptcy the court:

1. decides whether the debtor meets the requirement for the procedure to be introduced (Art. 78 of the Bankruptcy Law);
2. decides whether secured creditors can enforce their security;
3. appoints a trustee (Art. 82 of the Bankruptcy Law);
4. appoints supervisors (Art. 87 of the Bankruptcy Law).

Upon receiving the trustee's report, the court decides whether restructuring is suitable for the debtor, or the liquidation procedure should be introduced. After the court decided that restructuring is suitable for the debtor, the court reviews the scheme and may instruct the trustee to amend it so that it complies with the debtor's and the creditors' interests (Art. 97 of the Bankruptcy Law).

After review of the scheme, the court instructs the trustee to convene the creditors' meeting and it may form the creditors' classes. After the scheme is approved by the creditors, the court approves or rejects the scheme. In the latter case, the court returns the scheme to the trustee for amendment (Art. 98 of the Bankruptcy Law).

If the scheme requires any further amendment at the stage of implementation it can be amended upon the court's approval (Art. 102 of the Bankruptcy Law).

⁶ Foundation Certificate in International Insolvency Law, Module 7E Guidance Text, Section 4.2.3.1, pages 6-7.

⁷ Foundation Certificate in International Insolvency Law, Module 7E Guidance Text, Section 6.1, pages 11-12.

Commented [SE15]: 5/8.

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

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

The court decides whether the debtor is entitled to take new finance with priority over existing debt.

Upon completion of the restructuring, the court confirms the complete implementation of the scheme by issuing the order (Art. 123 of the Bankruptcy Law).]

Question 3.3 [maximum 2 marks]

Commented [SE16]: 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.

[First, the court is supposed to be more involved in bankruptcy rather than pre-insolvency preventive procedures. Court involvement protects rights of all affected parties and reconciles the debtor and their creditors who could not otherwise come to an agreement out of court. Thus, court involvement is reasonable.

Second, the court involvement at the stage of drafting a restructuring and approval of the restructuring plan seems to me appropriate, because the restructuring plan is more than an agreement between the debtor and the creditor. Restructuring plan is a scheme to satisfy creditors' claims, preserve the affected parties' interests and save the company.

Third, unlike in other countries, the UAE debt enforcement can have criminal law consequences. Insofar as there is a risk of criminal prosecution of the debtor in default, the court as the state authority should be more involved in bankruptcy proceedings to ensure that the public law principles are observed.]

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

Commented [SE17]: 14/15

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 [SE18]: 5/5

The process of preventive composition requires adherence to a number of time-frames. Briefly outline the necessary steps and 10 specific steps that will determine the maximum time taken between making an application (the first step) and the registration of the scheme following final approval (the tenth and final step before its implementation).

Assume that: an expert's report is required by the court; there are no disputes about whether a creditor is accepted or not; there are no amendments to the proposed scheme by the court; the scheme is accepted by the creditors without the requirement for any adjournment of the creditors' meeting; the scheme is approved by the court following the meeting; and there are no other extensions.

[Time-frame of the preventive composition of RZA LLC:

1. Application for preventive composition;
2. The court appoints an expert who delivers the report within 20 business days since the expert is instructed;
3. The court decides on the preventive composition within five business days since the report is ready and appoints a trustee;
5. Within 45 days (the term can be extended up to 20 business days) since commencement of the preventive composition the trustee (assisted by the debtor) should prepare a preventive composition scheme;
6. The court reviews the scheme within 10 business days since the trustee submits it to the court;
7. After the court approves the scheme, it instructs the trustee to convoke the creditors' meeting within five business days since the approval;
8. The meeting shall be held within 15 business days since the instruction;
9. After approval the scheme is submitted to the court for approval within three business days;
10. The court decides on a scheme within five business days since the objection has been submitted;
11. Trustee registers the scheme within seven business days since its approval.]

Question 4.2 [maximum 5 marks]

Commented [SE19]: 4/5.

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.

[Should RZA LLC not receive any investor's contribution, the owners are entitled to apply to annul the preventive composition scheme.⁸ After annulment of the scheme, RZA LLC will be automatically subject to bankruptcy procedures.]

Commented [SE20]: It would still need to apply to commence bankruptcy proceedings.

RZA LLC bankruptcy was caused by the increase in global food prices. If the Cabinet considers this situation as an Emergency Financial Crisis RZA LLC obligation to commence bankruptcy may be suspended for the period designated by the Cabinet. Furthermore, RZA LLC shareholders may apply to the court for a 40-day protection period to allow negotiation of debts with the creditors and to permit RZA LLC to seek the creditors' support.

Should the application for protection be rejected or should settlement fail, RZA LLC will file an application to commence.

The court will issue an order for liquidation and it will appoint a trustee who can be a person either nominated by RZA LLC or the person enrolled in the table of experts designated by the Financial Restructuring Committee. The trustee may be a natural or a legal person and may not be a creditor, RZA LLC related party, a person convicted of dishonesty affairs or a person engaged in commercial relationship with the debtor in the two years preceding liquidation. A trustee can be a person who previously served as expert or trustee in preventive composition.

RZA LLC's shareholder who purchased RZA LLC site can make their claim with the trustee since RZA LLC future debt falls due upon the order of bankruptcy. The shareholders will have their debt satisfied from the mortgaged property proceeds less trustee's cost of sale.⁹]

Question 4.3 [maximum 5 marks]

Commented [SE21]: 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?

⁸ Foundation Certificate in International Insolvency Law, Module 7E Guidance Text, Section 6.4.1, page 22.

⁹ Foundation Certificate in International Insolvency Law, Module 7E Guidance Text, Section 6.4.6, pages 33-36.

[Since RZA Limited is a DIFC-incorporated company it is subject to the DIFC Insolvency Law. Under DIFC Insolvency Law, voluntary or compulsory winding up mechanisms are available to RZA Limited.

Voluntary winding up will involve, RZA Limited will pass a resolution to commence winding up and either appoint the creditors' selected liquidator or designate the liquidator itself.

Compulsory winding up will involve court. Since RZA Limited is already insolvent, RZA Limited, its directors or any of its creditors with the debt over USD 2,000 may apply for the court order on winding up. In the order for winding up, the court will identify the liquidator. Further, the liquidator may choose to continue as liquidator or address the creditors' meeting and debtor's contributories for them to nominate a liquidator.

The liquidator has wide powers to represent RZA Limited, including entering into contracts and challenging transactions, ranking and paying creditors, inspecting the company's financial documents, filing claims against the company's management and shareholders.

Any creditor may submit a claim to the liquidator. The liquidator will decide whether to accept the claim or not and how to rank the claim. The liquidator's decision is subject to appeal.

Further, the liquidator will sell the assets and distribute the proceeds among the creditors according to their rank and priority. Both in voluntary and compulsory winding up, part of the proceeds is allocated to cover the costs of sale.

When the assets have been sold, the liquidator will convene the final creditors' meeting and then seek to have RZA Limited dissolved.¹⁰]

*** End of Assessment ***

Commented [SE22]: 39/50. 78%

¹⁰ Foundation Certificate in International Insolvency Law, Module 7E Guidance Text, Section 6.4.7, pages 36-43.