

2010年12月ACCA考试考官报告(F4)(5) PDF转换可能丢失图片或格式，建议阅读原文

https://www.100test.com/kao_ti2020/645/2021_2022_2010_E5_B9_B412_E6_c52_645764.htm 点击查看：#0000ff>2010年12月ACCA考试考官报告汇总 问题九要求考生处理公司法下与存款规定和法律补救措施相关的法律问题。问题十需要考生处理有关决议批准合并方案的表决要求、信息披露的要求以及处理目标公司债务的方法等法律问题。 Question Nine This question required candidates to deal with the legal issues in relation to the rules of deposit and the legal remedies under the Company Law. Part (a) of this question required candidates to explain the legal nature of the deposit given to Gas Company, and state whether a claim for a refund of twice the amount of the deposit should be supported. With respect to the nature of deposit as a guarantee for performing the contract, most of candidates gave a correct answer, even though some of them failed use an accurate legal term to describe the term “ guarantee ” . If candidates were able to give a correct judgement as to the legal nature of deposit, logically they could give a correct answer as to the claim for a refund of twice the amount of the deposit. Since Gas Company failed to supply the natural gas under the contract, it was a breaching party and should be liable for such breach. However, some candidates held that the claim should not be supported, as Yaowa Company intended further to request for the specific performance of the supply contract. Obviously, it was a misunderstanding of the rules regarding deposit and legal liability for breach of contract. The refund twice the amount of the deposit is a

form of liability for a breaching party to bear if it breaches a contract. Due to Gas Company ' s short supply or sudden stop providing natural gas, Yaowa Company suffered a lot. Therefore, Yaowa was entitled to claim for the refund twice the amount of deposit. Unless otherwise provided for in the contract, Yaowa Company ' s claim for the refund twice did not constitute a statutory obstacle for its claim for the specific performance of contract. Part (b) was relevant to the specific performance as a form of legal remedy. According to the Contract Law, the party who fails to discharge its contractual obligations shall be liable for the breach of contract in various forms, such as specific performance of contract, adopting remedial measures or making compensation for losses, etc. Furthermore, according to Article 110 of the Contract Law, the party who suffered losses due to the other party ' s breach of non-monetary obligations shall be entitled to request for specific performance of the contract, unless under the particular circumstances as provided for by law. In this case Gas Company failed to discharge its obligation to supply certain quantity of natural gas daily, such a breach was a non-monetary breach in nature. In addition, the full supply of gas was also a substantive condition for Yaowa Company to carry out its business operations. Yaowa Company, to some extent, was able to find other substitute supplier for its operation. Hence, the request for specific performance should be supported by the court. The common errors of this part included:

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