Guidance Note: Own S [redacted] ut of Profits, proceeds of a New Issue of S [redacted] f Market Purchase")

There are two types of situatio [redacted] buy its own shares:

- Purchase of own share [redacted]

- Redemption of redeem [redacted]

Generally, a private limited co [redacted] rchase its own shares in order to prevent a shareholder bei [redacted] pany with no way to sell his shares.

Because of the principle of th [redacted] e capital, there are very strict rules that companies must foll [redacted] demption of shares.

This document deals with own [redacted] emption of redeemable shares please see"Redemption out o [redacted] e/Cash- Guidance Notes" and "Redemption out of Capital - G [redacted]

A purchase of own shares is [redacted] hases shares in itself from an existing shareholder and the s [redacted] redeemable shares.

A company can purchase its s [redacted]

- out of profits;
- out of the proceeds of [redacted]
- (in limited circumstanc [redacted]
- out of capital.

This document deals only wit [redacted] t of profits, the proceeds of a new issue of shares or cash [redacted] shares out of capital, please see"Own Share Purchase out [redacted] tes".

It should be noted that the [redacted] must follow for the first three methods areless stringent tha [redacted] llowed for capital.

Please note that both private [redacted] purchase their own shares or redeem redeemable shares, [redacted] es can reduce their capital in order to do so.

This document deals with the [redacted] be followed by private limited companies in order to purcha [redacted] led "off market purchase", and does not deal with public comp [redacted].

In order for a private limited [redacted] ares in itself out of profits, the proceeds of a fresh issue of sh [redacted] fconditions must be met:

Pre-conditions required for [redacted] n shares out of profits,the proceeds of a fresh issue of [redacted]

- The purchase of own [redacted] estricted or prohibited by the Articles of Association. [redacted] oduced by the Companies Act 2006 contain no such r [redacted]
- The shares being purc [redacted] ust be fully paid; and
- As a result of the purc [redacted] he company must continue to have sharesin issue th [redacted] ares.

Financing of the purchase o [redacted]

- The shares may be [redacted] butable profits or out of the proceeds of a new issu [redacted]
- The shares may also [redacted] ciation permit) be purchased using cash, provided t [redacted] l year is the lower of £15,000 or 5% of the company [redacted] nown as the *de minimis* cash exemption, the aim of [redacted] olders to authorise a company to buy back small amo [redacted] er and/or value without being subject to permissible [redacted] ns in Part 18 Chapter 5 of the Companies Act 2006. [redacted] ct 2006 (Amendment of Part 18) Regulations 2015 [redacted] e on 6th April 2015, section 692(1)(b) is moved to [redacted] This new section clarifies that the value of 5% of the [redacted] l will be the nominal value of 5% of its fully paid sha [redacted] ing of the financial year.
  In addition note that w [redacted] 5, any shares purchased from cash using the de mini [redacted] nger be capable of being held in treasury and will the [redacted] ed.
  The 2015 Regulations [redacted] s regards cash and the capital redemption reserve.T [redacted] sections 733 &734 of the Companies Act 2006 [redacted] e under the de minimis cash exemption are to be t [redacted] e way, in accountancy terms, as buybacks made out [redacted]
- Any premium payable [redacted] limited company of its own shares must be paid o [redacted] f the company.
- However, if the share [redacted] e issued at a premium, any premium payable on t [redacted] pany may be paid out of the proceeds of a fresh is [redacted] the purpose of financing the purchase.
- The amount of premiu [redacted] be the lesser of either (i) the aggregate of the pre [redacted] company on the issue of the shares purchased, or ([redacted] the company's share premium account (including any [redacted] ccount in respect of premiums on the new shares).
- The amount of the co [redacted] account will be reduced by a sum corresponding ([redacted] regate corresponding) to the amount of any premiu [redacted]

If the above conditions are sat [redacted] must be taken:

<u>STEP 1 – Board Resolutions</u> [redacted]

- **The board must prop [redacted] n shares.**

The board of directors is respo[redacted]siness of the company, so the decision to purchase own shar[redacted] by the board. The document "Own Share Purchase out of P[redacted]Cash– Board Resolutions" contains the necessary board [redacted]

Use the "Own Share Purchase[redacted]e Issue/Cash – Board Resolution (ESS)" for a decisi[redacted]uybacks for the purposes of an employees' share scheme.[redacted]

Please note that if the shares [redacted]ector of the company, that director must declare his intere[redacted]tted to vote on the board decision depending on the Co[redacted]ciation.

STEP 2 – Contract to purcha[redacted]

- **The contract to purch[redacted]e made available to the shareholders**

See the document "Own Sh[redacted]fits/New Share Issue/Cash – Contract to Purchase".

The contract to purchase ow[redacted] (i) authorised in advance by anordinary resolution or (ii) e[redacted]val is obtained as long as the contract provides that no sh[redacted] until the contract has been authorised by ordinary resoluti[redacted]

From 30 April 2013 shareh[redacted] resolution, approve multiple buybacks in advance, rather[redacted] individual buyback, but only where the buybacks are for th[redacted]ees' share scheme.

For a contract relating to a p[redacted]an employees' share scheme, see "Own Share Purchase [redacted]re Issue/Cash – Contract to Purchase (ESS)".

The shares must be paid f[redacted]r, shares purchased for the purposes of an employees' sh[redacted] for in instalments.

If the "Own Share Purchase[redacted]are Issue/Cash– Contract to Purchase" (or the ESS versi[redacted] a copy of it must be made available to members. If there[redacted]t, then a memorandum of the main contract terms must be [redacted]rs.

If the ordinary resolution is to[redacted] resolution then acopy of the contract to purchase or the m[redacted]t at or before the time that the written resolution is sent to the[redacted]

If the ordinary resolution is to[redacted] then acopy of the contract to purchase or the memorandu[redacted]nspection for at least 15 days before the meeting at which th[redacted]ed and at the meeting itself.

STEP 3 – Shareholder Appro[redacted]

- **The purchase of own [redacted] ved by the shareholders.**

An ordinary resolution to appro [redacted] ct to purchase own shares must be passed by the shareh [redacted]

An ordinary resolution must al [redacted] multiple buybacks for the purposes of an employees' sh [redacted]

The approval may be by way [redacted] te companies only) or by a resolution passed at a shareho [redacted]

In either case, the resolution [redacted] olders who represent more than 50% of the total voting rig [redacted] s who, being so entitled, vote on the resolution at the meetin [redacted] would be entitled to vote on the date when the written reso [redacted]

If a written resolution is used, [redacted] which are to be purchased is not an eligible member and the [redacted] copy of the written resolution.

If a meeting is held, the resolu [redacted] any member holding shares which are to be purchased exe [redacted] f those shares and the resolution is passed because [redacted]

See the document "Own Share [redacted] New Share Issue/Cash– Written Resolution" which can [redacted] olution of the shareholders or "Own Share Purchase out of [redacted] Cash– Minutes" which can be used to record minutes of a m [redacted]

In relation to buybacks for an [redacted] e, see the document "Own Share Purchase out of Profits/ [redacted] ESS) – Written Resolution" or "Own Share Purchase out of [redacted] Cash (ESS) – Minutes".

<u>STEP 4 –Requirements follo [redacted] wn shares</u>

- **The company, within [redacted] ordinary resolution approving multiple b [redacted] es of an employees' share scheme, must send t [redacted] stration a copy of the resolution.**
- **No registration is req [redacted] ordinary resolution approving a single b [redacted]**

Within 15 days after the resolu [redacted] uybacks is passed, the company must deliver to the [redacted] copy of the ordinary resolution.

A covering letter to be delivere [redacted] ogether with the ordinary resolution can be found at "Ow [redacted] Profits/New Share Issue/Cash – Letter to Compa [redacted] tion)".Note that Companies House may require certain do [redacted] digitally. It is advisable to check with Companies House [redacted] r documents.

STEP 5 – Statutory Forms

- **The company must s [redacted] n.**
- **The company may als [redacted] hare cancellation form.**

- The purchase of shar [redacted] duty. HMRC has introduced electronic Stamp Duty [redacted] eir previous physical stamping system. A company s [redacted] nic version of Form SH03 to HMRC and pay the a [redacted] HMRC will then issue a letter confirming payment [redacted] he company should send to Companies House tog [redacted] he letter will not appear on the public register. See bo [redacted] etails and the guidance issued by Companies House [redacted] ere.
- Form SH03 must be fi [redacted] Companies within 28 days of the purchase of own s [redacted] an offence and any officer of the company in default [redacted] guilty.
- If the shares are to [redacted] 06 (Notice of Cancellation of Shares) must be filed [redacted] mpanies within 28 days of the purchase (see "Form S [redacted] ation of Shares"). Failure to do so is an offence and th [redacted] er of the company in default is liable to a fine if found [redacted] 3, shares had to be cancelled following a buyback. H [redacted] be held "in treasury", i.e., kept available for sale to [redacted] he shares were bought using distributable profits or [redacted] discussed above following the implementation of th [redacted] 6 (Amendment of Part 18) Regulations 2015, tha [redacted] s purchased from cash using the de minimis exemp [redacted] be capable of being held in treasury and therefore [redacted]

A covering letter to be delivere [redacted] ogether with the Forms can be found at "Own Share Purchase [redacted] e Issue/Cash–Letter sending Forms to Companies House".**N [redacted] ouse may require certain documents to be uploaded [redacted] to check with Companies House before sending any p [redacted]**

STEP 6 –Matters following th [redacted] ares out of profits/new share issue/cash

A copy of the contract to purc [redacted] e kept available for inspection at the company's registered [redacted] the date of purchase of own shares.

If the shares are cancelled [redacted] he amount of the company's issued share capital is diminis [redacted] of the shares cancelled.

Where the nominal value of sh [redacted] er than the proceeds of a fresh issue of shares made for th [redacted] mption then the capital of the company must be maintained [redacted] & Loss reserves to the capital redemption reserve.

Please note that the procedur [redacted] se of own shares are complex and must be followed carefully [redacted] atutory procedures could result in the purported purchase [redacted] pany and any shareholders considering participating in su [redacted] seek specialist legal and tax advice.