Guidance Note: Own [redacted] Out of Capital ("Off [redacted])

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 follo [redacted] demption of shares.

This document deals with own [redacted] emption of redeemable shares please see "Redemption out [redacted] ssue - 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 circumstance [redacted]
- out of capital.

This document deals only wit [redacted] ut of capital. For purchase of own shares out of profits, the [redacted] of shares or cash, please see "Own Share Purchase out of P [redacted] Cash– Guidance Notes".

It should be noted that the [redacted] must follow for the first three methods are less stringent tha [redacted] followed for the last.

Please note that both private a [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 purchas [redacted] led "off market purchase", and does not deal with public comp [redacted].

In order for a private limited [redacted] shares in itself out of capitala number ofconditions must be [redacted]

Pre-conditions required for t[redacted]ares out of capital

- 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]ital

If the company has distributa[redacted]eds of a new issue of shares made for the purpose of the p[redacted]d the purchase of own shares, the distributable profits or proc[redacted] be used to fund the buy back before capital can be used.Th[redacted]ired is the "permissible capital payment" which must be deter[redacted].

However, note that in accorda[redacted] Act 2006 (Amendment of Part 18) Regulations 2015, which [redacted]April 2015, a private company (where authorised by its artic[redacted]uy backs out of capital in a financial year without being s[redacted] capital payment provisions in Part 18 Chapter 5 of the Com[redacted]means that purchases of own shares out of capital are subje[redacted]*is* annual limits as own shares purchased out of cash, namely[redacted] lower of £15,000 or 5% of the company's share capital. This[redacted]ction 692(1ZA) CA 2006. This new section also clarifies that [redacted]ompany's share capital will be the nominal value of 5% of i[redacted]al as at the beginning of the financial year.

Accounts for the company pre[redacted]3 months up to the date of the Directors' Statement or Sol[redacted]equired for the Directors to determine the permissible ca[redacted]ed not be audited but must be reliable for the purpose.

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 sha[redacted] by the board. The document "Own Share Purchase out of C[redacted]ns" contains the necessary board minutes.

Use the "Own Share Purchase[redacted]Resolution (ESS – Multiple Buybacks)" for a decision to a[redacted]s for the purposes of an employees' share scheme.

Use the "Own Share Purchase[redacted]Resolutions (ESS version of Special Resolution)" for a deci[redacted] the buyback is for the purposes of an employees' sh[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 Shar [redacted] l – Contract to Purchase”. For a contract relating to a purcha [redacted] mployees’ share scheme, see “Own Share Purchase out of C [redacted] hase (ESS)”.

Subject to the exception ment [redacted] t to purchase shares must be either (i) authorised in advan [redacted] tion or (ii) entered into before approval is obtained as lon [redacted] ides that no shares can be purchased until the contract ha [redacted] dinary resolution.

The exception is that from 3 [redacted] s can, by ordinary resolution, approve multiple buybacks [redacted] authorising each individual buyback, but only where the b [redacted] oses of an employees’ share scheme.

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

If the “Own Share Purchase [redacted] ct to Purchase” (or the ESS version) is being used, then a [redacted] available to members. If there is only a verbal contract, the [redacted] main contract terms must be made available to members.

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 3A – Directors’ Statem [redacted] rt

- **Subject to one excep [redacted] make a statement in the prescribed form supp [redacted] eport.**
- **The exception is whe [redacted] t back for the purposes of an employees’ share [redacted] tep 3B should be taken instead.**

The Directors’ Statement is [redacted] vency of the company. The document “Own Share Purch [redacted] ctors’ Statement” contains the required wording.A Directors’ [redacted] made by each of the directors containing the following inform [redacted]

- the amount of the perm[redacted]and

- a statement that, havin[redacted]he affairs and prospects of the company, they have fo[redacted]

  (a) as regards its initial[redacted]lowing the date on which the payment out of cap[redacted]de, that there will be no grounds on which t[redacted]be found unable to pay its debts, and

  (b) as regards its prosp[redacted]ately following that date, that having regard to:

    (i) their intentions [redacted]gement of the Company's business during[redacted]
    (ii) the amount and[redacted]l resources that will in their view be availab[redacted] that year,

  the Company will b[redacted]y on business as a going concern (and will a[redacted] its debts as they fall due) throughout that yea[redacted]

An auditor's report must be a[redacted] Statement and addressed to the directors stating that:

- he has inquired into the[redacted]irs,
- the amount specified i[redacted]ermissible capital payment for the shares in question[redacted]letermined in accordance with sections 710 to 712 of [redacted], and
- he is not aware of an[redacted]the opinion expressed by the directors in their statem[redacted]ll the circumstances.

If the Directors' Statement i[redacted]s without having reasonable grounds for the opinions exp[redacted]director who is in default will have committed an offence a[redacted]ce imprisonment of up to two years or a fine or both.Beca[redacted]alties, it is advisable to seek expert advice.

A copy of the Directors' Staten[redacted]port must be made available to members.

If the special resolution is to b[redacted]resolution then the copy of the Directors' Statement and the [redacted]sent at or before the time that the written resolution is sent t[redacted]s should also emphasise that the written resolution must be[redacted]ys (see Step 4 below) or it will not be valid).

If the special resolution is to b[redacted]hen the copy of the Directors' Statement and the auditor's re[redacted]r inspection at the meeting.

STEP 3B – Solvency Statem[redacted]re scheme purchases only)

- **Where shares are bou[redacted]ses of an employees' share scheme, the requirem[redacted].Instead of a Directors'**

Statement and audito[redacted] need only make a Solvency Statement.

The document “Own Share P[redacted] Solvency Statement for ESS Purchase” contains the requir[redacted] Statement is a statement that each of the directors:

- has formed the opinion[redacted]y's situation at the date of the statement, that there is[redacted] company could then be found to be unable to pay (or[redacted] debts; and
- has also formed the[redacted]any will be able to pay (or otherwise discharge) i[redacted] during the year immediately following that date.

If the Solvency Statement is[redacted]s without having reasonable grounds for the opinions exp[redacted] director who is in default will have committed an offence a[redacted]ce imprisonment of up to two years or a fine or both.Beca[redacted]nalties it is advisable to seek expert advice.

A copy of the Solvency Statem[redacted]able to members.

If the special resolution is to b[redacted] resolution then the copy of the Solvency Statement must be[redacted] that the written resolution is sent to the members. The no[redacted]ise that the written resolution must be passed within 15 days[redacted] will not be valid).

If the special resolution is to b[redacted] then the copy of the Solvency Statement must be available fo[redacted]ng.

<u>STEP 4 – Shareholder Appro[redacted]</u>

- **The contract to purch[redacted]e approved by the shareholders by an o[redacted]**
- **The payment out of c[redacted]roved by the shareholders. A special resolution i[redacted]**
- **The procedure for ap[redacted] of capital is slightly different where the pu[redacted]oses of an employees’ share scheme.**

The contract to purchase own [redacted] by the shareholders of the company by ordinary resolutio[redacted]

A special resolution must then[redacted] use of capital as follows:

- if the purchase of shar[redacted] an employees’ share scheme, a special resolution [redacted] seven days of the Directors’ Statement;
- If the purchase is for th[redacted]yees’ share scheme, a special resolution must be pas[redacted] Solvency Statement.

The approval may be by way o[redacted]ate companies only) or by resolutions passed at a shareh[redacted]

In either case, the special reso [redacted] by shareholders who represent not less than 75% o [redacted] those shareholders who, being so entitled, vote on the s [redacted] meeting on a show of hands or would be entitled to vote on [redacted] n resolutions are circulated.

If written resolutionsare used, [redacted] s which are to be purchased is not an eligible member and th [redacted] copy of the written resolutions.

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

See the document "Own Share [redacted] – Written Resolutions" which can be used as written resoluti [redacted] or "Own Share Purchaseout of Capital – Minutes" which can b [redacted] s of a meeting of shareholders.

In relation to buybacks for the [redacted] es' share scheme, see the documents "Own Share Purch [redacted] en Resolutions (ESS version of Special Resolution)" or "Ow [redacted] Capital – Minutes (ESS version of Special Resolution)' [redacted] in resolutions approving the use of capital.

The documents have been dra [redacted] nary resolution and the special resolution are given to [redacted] roval simultaneously. Each resolution could be voted on s [redacted] resolution to approve the terms of the contract to purcha [redacted] o save the company the expense of producing a Direct [redacted] cy Statement only for the ordinary resolution on the term [redacted] jected.

For an ordinary resolution app [redacted] of shares for the purposes of an employees' share scheme, [redacted] n Share Purchase out of Capital – Written Resolution (E [redacted])" or "Own Share Purchase out of Capital – Minutes (ESS [redacted]

<u>STEP 5 –Requirements follo [redacted] oval</u>

- **The company, within [redacted] ordinary resolution approving multiple bu [redacted] es of an employees' share scheme, must send t [redacted] stration a copy of the resolution. (No regist [redacted] e case of an ordinary resolution approving [redacted] act.)**
- **The company, within [redacted] pecial resolution, must send to the Registrar for re [redacted] e resolution and certain other documents.**
- **The company must a [redacted] he Gazette and a national newspaper (unless th [redacted] urposes of an employee's share scheme).**

For a covering letter to be deliv [redacted] se together with an ordinary resolution authorizing multiple [redacted] es of an employees' share scheme, please see "Own Sha [redacted] al – Letter to Companies House (Multiple Buybacks Res [redacted]

A letter to be sent to Compani[redacted] copy of a specialresolution (and the documents referred t[redacted]Own Share Purchaseout of Capital – 1stLetter to Compani[redacted]ase is for the purposes of an employees' share scheme) "O[redacted]f Capital – 1st Letter to Companies House (ESS)".

Within the week following the[redacted]solution regarding the use of capital (other than a special r[redacted]mployees' share scheme), the company must publish notice[redacted]ent in the Gazette and must either arrange for a similar n[redacted]a national newspaper or give written notice to that effect to[redacted] wording for the notice can be found in "Own Share Purchase[redacted]otice".

Copies of the Directors' State[redacted] must be sent to the Registrar of Companies not later than[redacted]n of the above notices. The "1stLetter to Companies House[redacted]

In the case of a purchase for t[redacted]yees' share scheme, a copy of the Solvency Statement and a[redacted]e "Form SH19 – Statement of Capital") must be sent to t[redacted]ny must also deliver to the Registrar a Statement by the[redacted] the Solvency Statement was made not more than 15 days[redacted]h the resolution was passed, and was provided to membe[redacted] the relevant sections of the Companies Act. See "Stateme[redacted]ection 720B(5)". The "1stLetter to Companies House (ESS)"re[redacted]ts.

The Statement of Capital is n[redacted]must state with respect to the company's share capital as re[redacted]olution:

- the total number of shares of[redacted]
- the aggregate nominal value[redacted]
- for each class of shares:

  (a) prescribed parti[redacted]ed to the shares;
  (b) the total numbe[redacted]
  (c) the aggregate n[redacted]f that class; and

- the amount paid up and th[redacted]d on each share (whether on account of the nominal value o[redacted]premium).

The Registrar must register t[redacted] Statement and Statement of Capital on receipt. The resol[redacted]ct until those documents are registered.

Note that the Companies Act[redacted]rt 18) Regulations 2015 have removed the requirement for [redacted]statement of capital in relation to the cancellation of shares[redacted] under an employees' share scheme where the documen[redacted]icating one already delivered under section 720B(1) Compa[redacted]on of documents for purchase of own shares for the purpose[redacted]loyees' share scheme).

STEP 6 – Statutory Forms

- **The company must c[redacted]ms:**

- The purchase of shar[redacted] duty. HMRC has introduced electronic Stamp Duty [redacted]eir previous physical stamping system. A company s[redacted]ic version of Form SH03 to HMRC and pay the a[redacted]HMRC will then issue a letter confirming payment c[redacted]he company should send to Companies House tog[redacted]he letter will not appear on the public register. See bo[redacted]etailsand the guidance issued by Companies House v[redacted]ere.
- Form SH03 must be fi[redacted] Companies within 28 days of the purchase of own sh[redacted]s an offence and any officer of the company in default[redacted] guilty.
- The shares will be [redacted]and Form SH06 (Notice of Cancellation of Shares[redacted]Registrar of Companies within 28 days of the purch[redacted] - Notice of Cancellation of Shares”). Failure to do[redacted]e company and any officer of the company in default[redacted] guilty.

A covering letter to be delivere[redacted]ogether with the Forms can be found at “Own Share Purchase[redacted] to Companies House”.**Note that Companies House may [redacted]nts to be uploaded digitally. It is advisable to check with [redacted]re sending any paper documents.**

STEP 7 – Mattersfollowing th[redacted]res out of capital

Once all of the above condit[redacted]d then the company can use capital in order to purchase its[redacted]

If the purchase is not connect[redacted]hare scheme, the payment out of capital maybe made no ea[redacted]d no later than seven weeks after approval of the special re[redacted]e of capital.

If the purchase is for the purp[redacted]hare scheme, The Companies Act 2006 (Amendment of Pa[redacted]5 has amended the relevant provisions relating to the ti[redacted] of capital. The April 2013 Regulations omitted to ma[redacted]etween when shares were surrendered and when they v[redacted]suant to an employees’ share scheme. This meant that empl[redacted]surrender their shares at least five weeks in advance of rece[redacted]The 2015 Regulations amend and clarify the position so tha[redacted]rrendered no earlier than five weeks and no later than seven[redacted]at the resolution approving the payment out of capital is passe[redacted]

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

Copies of the Directors’ Sta[redacted]report must be available for inspection for 5 weeks from t[redacted]esolution regarding the use of capital.(There is no such i [redacted] in relation to the Solvency Statement produced in con [redacted] se for the purposes of an employees' share scheme.)

If the permissible capital pay [redacted] ominal amount of the shares purchased, the amount of the [redacted] ferred to the company's capital redemption reserve.

If the permissible capital paym [redacted] nominal amount of the shares purchased, then (i) the amou [redacted] ption reserve, share premium account or fully paid share ca [redacted] d (ii) any amount representing unrealised profits of the com [redacted] standing to the credit of any revaluation reserve maintaine [redacted] be reduced by the balance of the amount by which the perm [redacted] xceeds the nominal amount of the shares.

In either case, where the pro [redacted] re applied by the company in making a purchase of its ow [redacted] a payment out of capital the permissible capital payment [redacted] of that payment and those proceeds.

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