

CompaniesAct2014.com

Share Buybacks

Quick Guide

CompaniesAct2014.com:
Acquisition of Own Shares Helpsheet
Quick Guide

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Definitions & Legislation

Sections covered with the legislation

Section 105, 106, 107 and 110 of Companies Act 2014.

Section 83(1)(3) – Variation of company capital (conversion of shares to redeemable shares)

Section 92 – notice to registrar of certain alterations of capital

Other relevant sections

Section 194 of Companies Act 2014 – unanimous written resolution

Section 181 of Companies Act 2014 – ordinary and special resolutions and consent to short notice

Key definitions

64. (1) *In this Part—*

“capital conversion reserve fund”, in relation to a company, means the amount equivalent to the aggregate diminution in share capital consequential upon renominalisation of share capital under section 26 of the Economic and Monetary Union Act 1998;

“cash” includes funds in any currency or currencies; “company capital”, in relation to a company, means—

- (a) the aggregate value, expressed as a currency amount, of the consideration received by the company in respect of the allotment of shares of the company; and*
- (b) that part of the company’s undenominated capital constituted by the transfer of sums referred to in sections 106(4) and 108(3),*

and subsection (2) supplements this definition;

“employees’ share scheme” means any scheme, for the time being in force, in accordance with which a company encourages or facilitates the holding of shares in, or debentures of, the company or its holding company by or for the benefit of employees or former employees of the company or of any subsidiary of the company including any person who is or was a director holding a salaried employment or office in the company or any subsidiary of the company;

“nominal value”, in relation to a share, means a monetary amount, expressed as an amount, multiple, fraction or percentage of any currency or currencies or combination thereof;

“parent public company” means a public limited company which has one or more private limited subsidiaries;

“private limited subsidiary” means a subsidiary that is a private company limited by shares but, for the purposes of this definition, a company shall not be regarded as a subsidiary if it is such only by virtue of section 7(2)(a)(ii) or (e);

“redeemable shares” includes shares which are liable at the option of the company or the shareholder to be redeemed;

“securities” means—

- (a) *shares in a company;*
- (b) *debentures of a company, including debenture stock, bonds and any other debt instruments of a company whether constituting a charge on the assets of the company or not;*
- (c) *those classes of securities which are negotiable on the capital market, such as:*
 - (i) *shares in bodies corporate and other securities equivalent to shares in bodies corporate, partnerships or other entities, and depositary receipts in respect of shares;*
 - (ii) *bonds or other forms of securitised debt, including depositary receipts in respect of such securities;*
 - (iii) *any other securities giving the right to acquire or sell any such transferable securities or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures with the exception of instruments of payment;*

“share capital”, in relation to a company, means the aggregate amount or value of the nominal value of shares of the company;

“undenominated capital”, in relation to a company, means the amount of the company capital from time to time which is in excess of the nominal value of its issued shares and shall be deemed to include any sum transferred as referred to in sections 106(4) and 108(3).

- (2) *There is included in the definition of “company capital” in subsection (1) any amounts standing, immediately before the commencement of this section, to the credit of—*
 - (a) *the company’s share premium account (within the meaning of the prior Companies Acts);*
 - (b) *its capital redemption reserve fund (within the meaning of those Acts); and*
 - (c) *its capital conversion reserve fund.*
- (3) *For the purposes of this Part a share in a company shall be taken to have been paid up (as to its nominal value or any premium on it) in cash or allotted for cash if the consideration for the allotment or the payment up is—*
 - (a) *cash received by the company; or*
 - (b) *a cheque received by the company in good faith which the directors have no reason for suspecting will not be paid; or*
 - (c) *the release of a liability of the company for a liquidated sum; or*
 - (d) *an undertaking to pay cash to the company on demand or at an identified or identifiable future date which the directors have no reason for suspecting will not be complied with.*
- (4) *In relation to the allotment or payment up of any shares in a company, references in this Act, other than in section 69(12)(c), to consideration other than cash and to the payment up of shares and premiums on shares otherwise than in cash include references to the payment of, or an undertaking to pay, cash to any person other than the company.*

Legislation

102. (1) Subject to the provisions of this Chapter, a company may acquire its own fully paid shares— (a) by transfer or surrender to the company otherwise than for valuable consideration;
- (b) by cancellation pursuant to a reduction of company capital by either of the means referred to in section 84;
- (c) pursuant to an order of the court under section 212;
- (d) where those shares are redeemable shares, by redemption or purchase under section 105;
- (e) by purchase under section 105;
- (f) where those shares are preference shares referred to in section 108, by redemption under that section; or
- (g) pursuant to a merger or division under Chapter 3 or 4 of Part 9.

Acquisition of own shares

105. (1) A company may acquire its own shares by purchase, or in the case of redeemable shares, by redemption or purchase.
- (2) Any such acquisition is subject to payment in respect of the shares' acquisition being made out of—
- (a) profits available for distribution; or
- (b) where the company proposes to cancel, pursuant to section 106, shares on their acquisition, the proceeds of a fresh issue of shares made for the purposes of the acquisition, but subject to the restriction contained in subsection (3) as respects such proceeds being used to pay a premium there referred to.
- (3) Where the shares being acquired were issued at a premium, some or all of the premium payable on their acquisition (being an acquisition to which subsection (2)(b) applies) may be paid out of the proceeds of a fresh issue of shares made for the purposes of the acquisition, up to an amount equal to—
- (a) the aggregate of the premiums received by the company on the issue of the shares acquired; or
- (b) the current amount of the company's undenominated capital (including any sum transferred to its share premium account in respect of premiums on the new shares), whichever is less, and in any such case the amount of the company's share premium account or other undenominated capital shall be reduced by a sum corresponding (or by sums in the aggregate corresponding) to the amount of any payment made by virtue of this subsection out of the proceeds of the issue of the new shares.
- (4) Subject to this Part, the acquisition by a company of its own shares shall be authorised by—
- (a) the constitution of the company;
- (b) the rights attaching to the shares in question; or
- (c) a special resolution.

- (5) A special resolution under subsection (4) shall not be effective for the purposes of this section if any member of the company holding shares to which the resolution relates exercises the voting rights carried by any of those shares in voting on the resolution and the resolution would not have been passed if he or she had not done so.
- (6) With respect to subsection (4) and the matter of passing a special resolution for the purpose thereof by the written means provided for under this Act—
- (a) the procedure under section 193 (unanimous written resolutions) is not available for that purpose;
 - (b) if a resolution referred to in section 194 (majority written resolutions) for the purpose of subsection (4) is signed by a member of the company who holds shares to which the resolution relates, then, in determining whether the requirement under section 194(4)(a)(ii) — that the resolution be signed by the requisite majority — has been fulfilled, no account shall be taken of the percentage of voting rights conferred by the foregoing shares of that member.
- (7) Notwithstanding anything contained in section 189 or in the company's constitution, any member holding one or more shares in the company conferring the right to vote at the meeting concerned may demand a poll on a special resolution under subsection(4).
- (8) Where a purchase of shares is proposed to be authorised by special resolution—
- (a) the proposed contract of purchase or, if the contract is not in writing, a written memorandum of its terms shall be furnished to the members of the company on request or made available for inspection by the members at the registered office of the company from the date of the notice of the meeting at which the resolution is to be proposed and at the meeting itself;
 - (b) any memorandum of the terms of the contract of purchase made available for the purposes of paragraph (a) shall include the names of any members holding shares to which the contract relates, and any copy of the contract made available for those purposes shall have annexed to it a written memorandum specifying any such names which do not appear in the contract itself.
- (9) With respect to the proposed authorisation of a purchase of shares by a resolution referred to in section 194, the requirements of subsection (8) shall also apply but with the modification that in paragraph (a) of that subsection “during the period of 21 days before the date of the signing of the resolution by the last member to sign” shall be substituted for “from the date of the notice of the meeting at which the resolution is to be proposed and at the meeting itself”.
- (10) A company may agree to a variation of an existing contract of purchase authorised pursuant to a special resolution under this section only if the variation is authorised by special resolution of the company before it is agreed to, and subsections (5) to (9) shall apply in relation to that authority, save that a copy or memorandum (as the case may require) of the existing contract shall also be available for inspection in accordance with subsection (8).
- (11) A company shall only make a purchase of its own shares in pursuance of an option if the terms of the option have been authorised by a special resolution of the company in

accordance with subsections (5) to (9) and, for the purposes of this subsection, subsection (8) shall have effect as if the references in it to the contract of purchase were references to the contract under which the option arises.

- (12) In subsection (11) “option” means an entitlement of the company, or an obligation on the part of the company, to purchase any of its shares that may arise under a contract entered into, being a contract that does not amount to a contract to purchase those shares.

Supplemental provisions in relation to section 105

106. (1) Shares acquired by a company under section 105, or otherwise acquired by it under Section 102(1)(a), shall be cancelled or held by it (as “treasury shares”).
- (2) Where a company—
- (a) has acquired, under section 105, shares and cancelled them; or
 - (b) is about to so acquire shares and cancel them upon their acquisition,
- it shall have power to issue shares up to the nominal amount of the shares so acquired, or to be so acquired, as if those shares had never been issued.
- (3) No cancellation of shares under subsection (1) shall be taken as reducing the amount of the company’s authorised share capital (if any).
- (4) Where the shares are—
- (a) under section 105, acquired wholly out of the profits available for distribution; or
 - (b) under section 105, acquired wholly or partly out of the proceeds of a fresh issue and the aggregate amount of those proceeds (disregarding any part of those proceeds used to pay any premium on the acquisition) is less than the aggregate nominal value of the shares acquired (the “aggregable difference”),
- then a sum equal to, in the case of paragraph (a), the nominal value of the shares acquired and, in the case of paragraph (b), the aggregable difference shall be transferred to undenominated capital of the company, other than its share premium account.
- (5) The amount by which the consideration paid for the acquisition of redeemable preference shares allotted before 1 February 1990 exceeds the consideration received by the company on the issue of those shares may be paid from undenominated capital.
- (6) Section 105 shall not apply to the redemption of preference shares referred to in section 108 and no such shares may be the subject of purchase under section 105.

Assignment or release of company’s right to purchase own shares

107. (1) Any purported assignment of the rights of a company under any contract authorised under section 105 shall be void.
- (2) Nothing in subsection (1) shall prevent a company from releasing its right under any contract authorised under section 105 provided that the release has been authorised by special resolution of the company before the release is entered into, and any such purported

release by a company which has not been authorised in that manner shall be void.

- (3) *Subsections (5) to (9) of section 105 shall apply to a resolution under subsection (2) and, for the purposes of this subsection, subsection (8) of section 105 shall have effect as if the references in it to the contract of purchase were references to the release concerned.*

Incidental payments with respect to acquisition of own shares

110. (1) *Any payment made by a company in consideration of—*

- (a) acquiring any right with respect to the purchase of its own shares in pursuance of a contract authorised under section 105;*
- (b) the variation of a contract authorised under section 105; or*
- (c) the release of any of the company's obligations with respect to the purchase of any of its own shares under a contract authorised under section 105,*

shall be unlawful if any such payment is made otherwise than out of distributable profits of the company or, in the circumstances in which the proceeds of such an issue are permitted to be used by this Part for the purpose of the purchase of the shares, the proceeds of a new issue of shares.

(2) *If the requirements of subsection (1) are not satisfied in relation to a contract—*

- (a) in a case to which paragraph (a) of that subsection applies, no purchase by the company of its own shares in pursuance of that contract shall be lawful under this Part;*
- (b) in a case to which paragraph (b) of that subsection applies, no such purchase following the variation shall be lawful under this Part; and*
- (c) in a case to which paragraph (c) of that subsection applies, the purported release shall be void.*

Variation of company capital

83. (1) *Save to the extent that its constitution otherwise provides, a company may, by ordinary resolution, do any one or more of the following, from time to time—*

- (a) consolidate and divide all or any of its shares into shares of a larger nominal value than its existing shares;*
- (b) subdivide its shares, or any of them, into shares of a smaller nominal value, so however, that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;*
- (c) increase the nominal value of any of its shares by the addition to them of any undenominated capital;*
- (d) reduce the nominal value of any of its shares by the deduction from them of any part of that value, subject to the crediting of the amount of the deduction to undenominated*

capital, other than the share premium account;

- (e) convert any undenominated capital into shares for allotment as bonus shares to holders of existing shares;*
 - (f) in the case of a company whose constitution states an authorised share capital (in addition to its power to do any of the foregoing things)—*
 - (i) increase its share capital by new shares of such amount as it thinks expedient; or*
 - (ii) cancel shares of its share capital which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.*
- (2) A cancellation of share capital under subsection (1)(f)(ii) shall be deemed not to be a reduction of company capital within the meaning of this Act.*
- (3) Save to the extent that its constitution otherwise provides, a company may, by special resolution, and subject to the provisions of this Act governing the variation of rights attached to classes of shares and the amendment of a company's constitution, convert any of its shares into redeemable shares.*
- (4) Such a conversion shall not have effect with respect to any shares, the holder of which notifies the company, before the date of conversion, of his or her unwillingness to have his or her shares converted but, subject to that and the other provisions of this section, the conversion shall have effect according to its terms.*
- (5) Subsection (4) shall not, where a shareholder objects to a conversion, prejudice any right he or she may have under this Act or otherwise to invoke the jurisdiction of the court to set aside the conversion or otherwise provide relief in respect of it.*
- (6) A company shall deliver particulars, in the prescribed form, of any resolution referred to in subsection (1) to the Registrar within 30 days after the date of its being passed by the company.*
- (7) If a company contravenes subsection (6), the company and any officer of it who is in default shall be guilty of a category 3 offence.*

Notice to Registrar of certain alterations of share capital

92. (1) *If a company has—*

- (a) consolidated and divided its share capital into shares of larger amount than its existing shares; or*
- (b) converted any shares into stock; or*
- (c) reconverted stock into shares; or*
- (d) subdivided its shares or any of them; or*
- (e) redeemed any redeemable shares; or*
- (f) redeemed any preference shares; or*

(g) *cancelled any shares, otherwise than in connection with a reduction of company capital referred to in section 84,*

it shall, within 30 days after the date of so doing, give notice thereof to the Registrar specifying, as the case may be, the shares consolidated, divided, converted, subdivided, redeemed or cancelled, or the stock reconverted.

(2) *If a company contravenes this section, the company and any officer of it who is in default shall be guilty of a category 3 offence.*

Majority written resolutions

194(1) *Notwithstanding any provision to the contrary in this Act, a resolution in writing—*

(a) *that is—*

(i) *described as being an ordinary resolution, and*

(ii) *signed by the requisite majority of members of the company concerned, and*

(b) *in respect of which the condition specified in subsection (7) is satisfied,*

shall be as valid and effective for all purposes as if the resolution had been passed at a general meeting of the company duly convened and held.

(2) *For the avoidance of doubt, the reference in subsection (1) to a provision to the contrary includes a reference to a provision that stipulates that the company in general meeting, or the members of the company in general meeting, must have passed the resolution concerned.*

(3) *In subsection (1) “requisite majority of members” means a member or members who alone or together, at the time of the signing of the resolution concerned, represent more than 50 per cent of the total voting rights of all the members who, at that time, would have the right to attend and vote at a general meeting of the company (or being bodies corporate by their duly appointed representatives).*

(4) *Notwithstanding any provision to the contrary in this Act, a resolution in writing—*

(a) *that is—*

(i) *described as being a special resolution, and*

(ii) *signed by the requisite majority of members, and*

(b) *in respect of which the condition specified in subsection (7) is satisfied,*

shall be as valid and effective for all purposes as if the resolution had been passed at a general meeting of the company duly convened and held.

(5) *For the avoidance of doubt, the reference in subsection (4) to a provision to the contrary includes a reference to a provision that stipulates that the company in general meeting, or the members of the company in general meeting, must have passed the resolution concerned.*

(6) *In subsection (4) “requisite majority of members” means a member or members who alone*

or together, at the time of the signing of the resolution concerned, represent at least 75 per cent of the total voting rights of all the members who, at that time, would have the right to attend and vote at a general meeting of the company (or being bodies corporate by their duly appointed representatives).

(7) The condition referred to in subsections (1)(b) and (4)(b) is that all members of the company concerned entitled to attend and vote on the resolution referred to in subsection (1) or (4), as the case may be, have been circulated, by the directors or the other person proposing it, with the proposed text of the resolution and an explanation of its main purpose.

(8) A resolution passed in accordance with subsection (1) or (4) may consist of several documents in like form each signed by one or more members.

(9) Without prejudice to section 195(5), a resolution passed—

(a) in accordance with subsection (1), shall be deemed to have been passed, subject to subsection (10), at a meeting held 7 days after the date on which it was signed by the last member to sign, or

(b) in accordance with subsection (4), shall be deemed to have been passed, subject to subsection (10), at a meeting held 21 days after the date on which it was signed by the last member to sign,

and where the resolution states a date as being the date of his or her signature thereof by any member the statement shall be prima facie evidence that it was signed by him or her on that date.

(10) Without prejudice to section 195(5), if—

(a) a date earlier than that referred to in subsection (9)(a) or (b) (not being earlier than the date on which the resolution was signed by the last member to sign) is specified in the resolution referred to in subsection (1) or (4) as the date on which it shall have been deemed to have been passed,

(b) all members of the company concerned entitled to attend and vote on that resolution state, in a written waiver signed by each of them, that the application of subsection (9) is waived, and

(c) there accompanies the delivery to the company under subsection (3) of section 195 of the documents referred to in that subsection that written waiver (which may be so delivered to the company by any of the means referred to in that subsection),

then the resolution shall be deemed to have been passed on the date specified in it.

(11) A written waiver under subsection (10) may consist of several documents in like form each signed by one or more members.

OmniPro commentary

Interpretation

A company can only acquire its own shares by purchase or where the shares are redeemable in nature by redemption or purchase. In addition a share buyback/redemption can only be carried out where:

- 1) There are profits available for distribution i.e. there are sufficient distributable reserves. It is imperative that an entity carefully assess the reserves figure to ensure that the profit and loss reserves included the trial balance only relate to realised profits. Before any buyback is attempted the distributable reserves must be ascertained. The profit and loss reserves themselves may not always be fully distributable as it will depend on what has been recognised in profit in the past. An example would be investment property fair values (other than where marketing and negotiation has occurred and the legal documentation happens shortly afterwards) being recognised in the profit and loss account which ultimately may be shown in profit and loss reserves in the balance sheet unless the entity in the past has had the presence of mind to strip out such movements separately.
- 2) The share buyback/redemption is made out of the proceeds from a fresh issue of shares made for the purposes of the acquisition. Where it is funded from the fresh issue of shares the amount that can be bought back is limited to the total amount of proceeds received from the shares issued.

Where the shares being acquired were previously issued at a premium and credited to a share premium account, the max amount that can be set against the share premium account/ (debited) is the lesser of the amount originally credited to the share premium account on issue of the shares being redeemed or the current amount of the un-denominated capital (which is effectively all types of capital the company holds which is in excess of the nominal value of the company's shares issued). Any balance imposed by this restriction is debited with the balance of the proceeds taken out to redeem the shares.

Section 106(4) requires a capital redemption reserve to be created where a buyback has been financed from profits available for distribution so as to maintain the capital of the company. Where the buyback is financed from the fresh issue of shares in whole or in part and the proceeds on the issue of the new shares is less than the total nominal value of the shares acquired then the balance is recognised in a capital redemption reserve fund. Where share capital is redeemed this has no impact on the authorised share capital of the company.

Any incidental costs incurred on the acquisition of own shares must be paid out of profits available for distribution or from the proceeds from the fresh issue of shares (Section 110(1))

The company can only have the authority to acquire its own shares if:

- o It is permitted by the constitution of the company; or
- o It is permitted by the rights attached to the shares concerned; or
- o A special resolution has been passed (Section 105(4)).

If the special resolution as detailed in the third point above is passed as a result of the member exercising his voting rights to which the resolution for the buyback for those shares relate, then the buyback of the shares is not deemed to be approved if this resolution had not been passed if that member had not voted (Section 105 (5)). For the other points, when determining whether the requisite majority has been passed and the member to which the shares relate has signed the special resolution in writing then his interest is ignored in determining whether the majority resolution has been passed.

The best course of action to ensure a valid special resolution is passed is to ensure that the member to which the buyback relates does not vote on the resolution itself.

Where redemption is to be utilised to effect the acquisition of own shares and the shares are currently non-redeemable the company will need to pass a special resolution to provide the company with the power to redesignate/convert those shares to redeemable shares and the power to redeem those shares.

Application and opportunities

This section is a very beneficial section within the Act especially when combined with the tax legislation assuming there are distributable profits available or there is proceeds available from the fresh issuance of shares so that the buyback/redemption can be carried out lawfully. It gives a great opportunity to companies in the following situations:

- 1) Provides a greater ability to get access to funds on retirement especially where the remaining management team/shareholders do not have the financial capacity to buy the shares from the exiting shareholder so instead the company purchases the shares from the retiring shareholder.
- 2) Where there is a disagreement between the shareholders over the management of the company and that disagreement is having or is expected to have an adverse effect on the company's trade; or
- 3) The purpose is to ensure that an unwilling shareholder who wishes to end his/her association with the company does not sell the shares to someone who might not be acceptable to the other shareholders. Examples of where this could be useful are:
 - o An outside shareholder who has provided equity finance and wishes to withdraw that finance;
 - o A controlling shareholder who is retiring as a director and wishes to make way for new management;
 - o Personal representatives of a deceased shareholder where they wish to realise the value of the shares
 - o A legatee of a deceased shareholder, where she/he does not wish to hold shares in the company.

Note the commentary below assumes that the amount being paid by the company for the shares is in excess of the amount the shareholder subscribed for the shares originally. Where this is not the case it is more than likely no tax consequences arise.

In close companies, any distribution made by a close company to its shareholders is normally treated as an income distribution and is liable to income tax/ PRSI/USC in the hands of the shareholders. This includes a situation where the company uses its existing funds to buyback/redeem shares from the shareholders.

The excess of the payment to the shareholders over and above the amount originally subscribed for the shares is treated in the same way as an ordinary dividend and is therefore within the remit of income tax. An exception to this rule is provided for in Section 176 TCA, 1997. That Section provides that, subject to meeting certain conditions, the payment may be treated as a capital payment. That is, the payment received from the company is treated in the same way as if the shares had been sold. Any gain arising over and above the amount originally subscribed for the shares is treated for tax purposes as a capital gain and benefits from CGT treatment. One of the advantages of CGT treatment is that a relief known as 'retirement relief' may be available (see below).

The conditions which must be met for CGT treatment to apply to a share buyback as stated in Section 177-186 of TCA 1997 are as follows:-

1. The shareholder whose shares are being bought back/redeemed must be resident and ordinarily resident in Ireland for the tax year in which the purchase is made.
2. The shares must have been owned by the shareholder for a period of at least 5 years.
3. The shareholders interest in the company immediately after the purchase/redemption must be substantially reduced (generally this means that the shareholders interest in the company in all respects must be reduced by at least 25% - i.e. entitlement to dividends and assets on a winding up are reduced by at least 25%).
4. The company must be an unquoted trading company.
5. The redemption/buyback of shares is made wholly or mainly for the purpose of benefiting the trade carried on by the company. Tax briefing 25 provides further instructions on what is deemed to benefit the trade and is discussed further in the step action plan below.
6. The redemption does not form part of a scheme or arrangement, the main purpose or one of the main purposes of which is to enable the owner of the shares to share in the profits of the company without receiving a dividend.
7. The shareholder must no longer be connected with the company (after the buyback the shareholder and his/her associates must own less than 30% of the capital (both shares capital and loan capital) of the company. An associate includes a spouse and minor children).

If the above conditions are met any amount provided in excess of the par value will be liable to capital gains tax. As it is within the remit of CGT, there are two further reliefs that can be claimed which will reduce the amount of CGT payable where certain conditions are met, those being:

- 6) Retirement relief
- 7) Entrepreneurial relief

The above reliefs are outside the scope of this help sheet but can be very worthwhile if they apply.

Pitfalls

Implementing a share buyback/redemption of shares where the company neither has profits available for distribution nor has issued new shares to cover the cost of the share buyback thus making the buyback illegal and exposing the directors to a penalty under company law.

Incorrectly assuming where the shares are redeemed at an amount equal to their original subscription price, that the requirements to have profits available for distribution is not applicable when in fact it is.

Not performing a formal valuation on the company prior to the buyback and therefore incorrectly placing too high a value on the shares being redeemed, therefore exposing the company and the shareholders whose shares were redeemed to income tax issues and exposure the company to dividend withholding tax liabilities.

Assuming the buyback qualified for capital gains tax treatment (i.e. all of the conditions stated in Section 176-186 of Tax Consolidated Act 1997) when in fact the requirements/conditions for the capital gains tax treatment had not been met so therefore any excess paid above original subscription price should have been subject to income tax as a distribution.

Incorrectly assuming that by issuing shares to a new shareholder or shareholders other than the shareholder who is disposing of his/her shares at less than market value that this creates no capital tax issues. In reality by taking this course of action this triggers a capital gains tax event for the existing shareholder whose shares are to be redeemed and creates gift tax issues for the receivers of those new shares as effectively it has resulted in a deemed disposal and receipt of a gift respectively.

Where there is only a small numbers of shares in issue and further shares are needed in order to allow the share buyback to proceed, the directors incorrectly issue new shares to the shareholder whose shares are to be bought back or they offer a rights issue which results in the required ownership of 5 years as mentioned in condition 2 above not being met.

Incorrectly allowing the amount payable on the buyback to be deferred and paid in instalments, resulting in the 30% test mentioned in point 7 above not being met.

Step Plan / Action Help Sheet

Name of procedure: Share buyback/redemption

Sectional references – Section 105 & section 106 (acquisition of own shares), Section 110 (incidental costs on acquisition of own shares), Section 83 (Variation of share capital – redemption/sub-division of shares), Section 92 (Notice to registrar of certain alterations of share capital), Section 181 (notice of general meetings), Section 193 (unanimous written resolution) & Section 194 (majority written resolution) of CA 2014

Step	Commentary	Legislative Reference	Done
1	Assess whether the company has distributable reserves to allow the share buyback or alternatively is the entity going to receive proceeds from the fresh issue of shares to fund the buyback. If the answer to both of the aforementioned questions is no then the share buyback/redemption cannot proceed.	S.105(1) CA 2014	
2	Is the amount expected to be paid to the shareholder on redemption/buyback to exceed the amount originally subscribed for those shares? If not then there will be no taxation implications of the transaction for the person who the shares are expected to be acquired from. If it is then review step 3 below.	S.176 – 186 TCA 1997	
3a	Where the amount expected to be paid by the company is expected to exceed the amount originally subscribed for those shares, then is the person who the shares is expected to be acquired from expecting to have the proceeds treated as a capital gain. If the conditions of Section 176-186 of TCA 1997 are not met then the amount by which the amount paid exceeds the amounts subscribed is subject to income tax and the company is obliged to withhold 20% dividend withholding tax. See below all the conditions required to be met in order for the capital gains tax treatment to apply. All of the conditions from (a) to (g) must be met.	S.176 – 186 TCA 1997	
3b	The shares must have been owned by the shareholder for a period of at least 5 years.		
3c	The shareholders interest in the company immediately after the purchase/redemption must be substantially reduced (generally this means that the shareholders interest in the company in all respects must be reduced by at least 25% - i.e. entitlement to dividends and assets on a winding up are reduced by at least 25%).		
3d	The company must be an unquoted trading company.		
3e	The redemption/buyback of shares is made wholly or mainly for the purpose of benefiting the trade carried on by the company. If in doubt in relation to whether it benefits the trade an advance opinion can be obtained from revenue. Revenue have confirmed in tax briefing 25, the below instances would benefit the trade:		
3e(i)	There is a disagreement between the shareholders over the management of the company and that disagreement is having or		

	is expected to have an adverse effect on the company's trade and where the effect of the transaction is to remove the dissenting shareholder.		
3e (ii)	<p>ii. The purpose is to ensure that an unwilling shareholder who wishes to end his/her association with the company does not sell the shares to someone who might not be acceptable to the other shareholders. Examples of this would include:</p> <ol style="list-style-type: none"> 1. An outside shareholder who has provided equity finance and wishes to withdraw that finance; 2. A controlling shareholder who is retiring as a director and wishes to make way for new management; 3. Personal representatives of a deceased shareholder where they wish to realise the value of the shares 4. A legatee of a deceased shareholder, where she/he does not wish to hold shares in the company. <p>The buyback should not place huge financial strain on the company as if this arises it is unlikely that the transaction is benefiting the trade.</p>		
3f	The redemption does not form part of a scheme or arrangement, the main purpose or one of the main purposes of which is to enable the owner of the shares to share in the profits of the company without receiving a dividend.		
	The shareholder must no longer be connected with the company (after the buyback the shareholder and his/her associates must own less than 30% of the capital (of share capital and loan capital) of the company. An associate includes a spouse and minor children. Where points 1 to 4 in step 3(e) above apply, revenue have stated that they would expect the party from which the shares were acquired from would no longer have any interest in or association with the company other than; 1) where a controlling shareholder in a family company is selling his/her shares to allow control to pass to his/her children but remains on as a director for a specified period purely because his/her immediate departure from the company at that time would otherwise have a negative impact on the company's business; or 2) for sentimental reasons a retiring director of a company wishes to retain a small shareholding in the company.		
4	If there is doubt as to whether the buyback benefits the trade seek advance revenue approval prior to undertaking the transaction.		
5	Perform a valuation of the company so that market price is paid for the shares (it would be good practice to do up a formal valuation as revenue are likely to review the transaction in the future).		

6	<p>Where there is only one shareholder or two shareholders and the two shareholders shares are being acquired by the company ensure that shares are issued to at least one other shareholder prior to the buyback (consideration should be given to the tax implications of issuing shares where the shares are issued for below market price). In order to reduce the price per share consideration could be given to sub-dividing the shares currently in issue or issuing bonus shares.</p> <p>Alternatively shares could be transferred to another party by the shareholders who are having the shares bought back/redeemed rather than further shares being issued (e.g. non-minor children). The tax consequences of this transfer should also be considered.</p>		
	Procedures to be performed where a redemption is used to effect the acquisition of the company's own shares (if the acquisition is to be completed by purchase of own shares as opposed to redemption please proceed to step 10)		
7	Assess if the shares which are the subject of the buyback/redemption are currently redeemable. If the shares are currently redeemable move to step 9	S.83 (3) CA 2014	
8	If the shares are not currently redeemable pass a special resolution by performing the following steps (Section 83(3)):	S.83(3), S.193(1), S.194, S.181, S.231, CA 2014	
8a	Where the resolution is by way of a unanimous written resolution passed in writing in accordance with Section 193(1), no set period of notice is required. Instead this written resolution should be signed by all members entitled to vote as detailed in point (f) below.	S.193 (1) CA2014	
8b	Where a unanimous written resolution is not utilised and instead the resolution is to be passed by way of votes at a meeting or alternatively by majority written resolution (Section 194 CA 2014), ensure all members entitled to attend and vote at the meeting/on the written majority resolution have been informed of the meeting within the required notice period. The required notice period of not less than 21 clear days' notice should be given unless a consent to short notice is obtained from all its members/shareholders and auditor where applicable in which case a shorter period can be given as dictated by Section 181 of CA 2014.	S181 & 194 CA 2014	
8c	Hold a board meeting of directors whereby they decide to recommend to the members to approve by special resolution:		
8c (i)	the re-designation and conversion of the ordinary/preference shares in question detailing the number, nominal value and class of shares being re-designated and converted; and		

8c (ii)	the alteration of the company's existing Constitution/Memorandum & Articles of Association to alter the share capital clause for the existing shares and the new redeemable shares and amend the articles to permit the redemption and buyback of shares including the rights attached to the redeemable shares;		
8c (iii)	the adoption of the new constitution for the amendments referred to in step 8(c)(i) and 8(c)(ii) above		
8d	Ensure the minute details:		
8d (i)	the name of the company		
8d (ii)	the date, location and time of the meeting and the members present at the meeting		
8d (iii)	details of who was appointed chairman of the meeting		
8d (iv)	the exact wording of the resolutions mentioned in step 8(c)(i)(ii)(iii) which can be included in the written resolution in step 8(f) below;		
8d (v)	that the directors have disclosed their interest in the decisions been taken under Section 231 of CA 2014 and that this should be noted in the statutory register; Note that notwithstanding the disclosures, the directors were pursuant to the companies Constitution, entitled to vote and be counted in the quorum in relation to any matter in which he/she has an interest. Confirm the required quorum is present if the Constriction details this	S.231 CA2014	
8d (vi)	Ensure and state the fact that at least one director is a resident in the European Economic Area as required by Section 137 CA 2014 and that no director presently holds more than 25 directorships for the purposes of and in accordance with Sections 228 and 229 CA 2014.	S.137, S.228, S.229 CA2014	
8d (vii)	Ensure that it records (and ensure it is a fact) the fact that no director is restricted from acting as a director as detailed in Section 819, 839, 840 841, 842 and 828 of CA 2014.	S.819,839, 840,841, 842, 828 CA2014	
8d (viii)	the fact that the secretary/director was instructed to: 1. arrange for the passing of the necessary resolutions of the members pursuant to section 193(1) (where unanimous written resolution is obtained) or Section 194 (where majority written resolution is obtained) of CA 2014 and file the Form G1 or where any extraordinary general meeting is utilised request that the notice be given to the shareholders of this meeting together with the proposed resolutions to be passed; 2. cancel the share certificate previously issued to the member for which the shares were converted and the reissuance of the new share certificate to that shareholder and that the share certificate be signed by two directors or one director and secretary and the common seal be affixed thereto. The Register of Members should also be updated for this change.	S.193 (1), S.194 CA2014	

8e	If approved ensure the minutes are signed and dated by the chairperson and inserted into the minute book of the company.		
8f (i)	Draft the written resolution based on the resolutions discussed in the board meeting above at the step 8(i)(ii)(iii) and have this resolution signed by all members entitled to vote at the meeting where a unanimous resolution has been passed in accordance with Section 193(1) CA 2014. Ensure the company name and number is included at the top of this resolution and the narrative at the top specifically states that they are special resolutions and pursuant to S193(1) of CA 2014 for all purposes be as valid and effective as if a general meeting had been convened. Where a written majority resolution has been passed ensure this resolution is signed by the required majority of members and it refers to S194 with wording similar to the aforementioned. If a written majority resolution is used then give the required notice detailed below	S.193 (1) and S.194 CA2014	
8f (ii)	Where a written resolution is not utilised there is no need for the resolution to be signed. In addition it should not refer to Section 193/194 in any way and nor should it contain the wording in relation to it being valid and effective as if a general meeting had been convened because effectively a meeting has to be convened for a resolution that is not written. Ensure all members entitled to attend and vote at the meeting/on the written majority resolution have been informed of the meeting within the required notice period (this is also applicable for a majority written resolution). The required notice period of not less than 21 clear days' notice should be given unless a consent to short notice is obtained from all its members and auditor where applicable in which case a shorter period can be given as dictated by Section 181 of CA 2014.	S.193, S194, S.181 CA2014	
8f(iii)	Where an extraordinary meeting is held (as opposed to a written resolution), draft the minutes of the extraordinary general meeting with the usual requirements as detailed in step 8d(i) to 8(d)(iii) in addition to detailing the approval by the members at that meeting of the special resolution including the exact resolution passed as detailed in step 8(i)(ii)(iii). Also ensure it refers to all members giving the consent to short notice for the meeting if this short notice period was utilised. Ensure the minutes are signed by the chairperson.		
8g	Obtain a letter from the shareholders whose shares are to be redeemed that they are agreeable to the redemption (if unanimous written resolution is not obtained but still a special resolution is passed – not required where unanimous resolution is obtained).		
8h	Issue the share certificate to the shareholders with the new redeemable shares and cancel the old shares. Obtain the old share certificate from the shareholder.		

8i	Draft Form G1 (notice of resolution) to notify the CRO of the special resolution passed to amend the Constitution/Memorandum & Articles of Association and then:	S.191 CA 2014	
8i (i)	in the effective date on the G1, date this the date the written resolution was dated in step 8(f) above. Include the company number and Company name on page one of Form G1		
8i (ii)	In the resolution category section select 'shares'		
8i (iii)	In the resolution details section of the Form G1, insert 'other'		
8i (iv)	In the resolution type and the resolution filled category, insert 'Special Resolution' and 'G1 special resolution – Alteration of Constitution' respectively		
8i (v)	type the resolutions passed into the resolution text area on the form G1 which is an exact replicate of the resolution prepared at step 8(f) above or alternatively attach a copy of the resolution prepared in step 8(f) above and state 'see resolution attached'.		
8i (vi)	In the resolution passed section of the Form G1, insert 'In writing' or if by majority written resolution select that option. Alternatively if it is done by meeting select the general meeting option as appropriate.		
8i (vii)	In the writing type section of the Form G1, insert 'Pursuant to section 193(1) (unanimous written resolution) or is if done by majority resolution insert 'Pursuant to S194'. If done by meeting select the extraordinary general meeting option.		
8i (viii)	Attach the updated constitution to the Form G1.		
8i (ix)	In the section 'particulars of persons verifying the contents of the form', under revenue online section include 'No' (applicable where form is being filed on CORE)		
8i (x)	Complete the information of the person/director that will sign the signature page at step 8(xiii) or 8(xii) below in the remaining part of the section "particulars of persons verifying the contents of the form' of the Form G1		
8i (xi)	Include details of the agent presenting/filing the From G1 in the detail of presenter section of the Form G1		
8i (xii)	File the Form G1 on CORE or send the completed Form G1 together with fee and amended constitution to the CRO		
8i (xiii)	Arrange for a director to sign the electronic G1 signature page once filed on core and send this to the CRO.		
9	Redeem members shares on the same date but no earlier than the date of conversion above	S.92, S.193, S.194, S.181, S.105, S.231 CA 2014	
9a	Hold a board of directors meeting where it is agreed to recommend to the members to passing of an ordinary resolution for the redemption of the members shares and the subsequent	S.92, S.193, S.194,	

	cancellation of those shares (Section 92/193 or 194 or 181) subject to conditions contained in the Constitution. See step 9(d) for the minutes to be included in relation to the documentation of this meeting	S.181 CA 2014	
9b	Where the resolution is by way of a unanimous written resolution passed in writing in accordance with Section 193(1), no set period of notice is required. Instead this resolution should be signed by all members entitled to vote.	S.193 (1) CA2014	
9c	Where a unanimous written resolution is not utilised and instead a majority written resolution is utilised or the resolution is to be passed by way of votes at an extraordinary general meeting ensure all members entitled to attend/vote at the meeting have been informed of the meeting within the required notice period. The required notice period is not less than 7 clear day's notice should be given unless a consent to short notice is obtained from all its members and auditor where applicable in which case a shorter period can be given as dictated by Section 181 of CA 2014.	S.181 CA2014	
9d	Hold a board of directors meeting to inform the board of the fact that the members had approved the following and document the ratification of this decision by the board of directors:		
9d (i)	the redemption of a set number of redeemable shares of a particular class, detailing the nominal value per share including the name of the shareholder/member; and		
9d (ii)	the cancellation of those shares once redeemed.		
9e	ensure the minute details:		
9e (i)	the name of the company		
9e (ii)	the date, location and time of the meeting and the members present at the meeting		
9e (iii)	details of who was appointed chairperson of the meeting		
9e (iv)	provide details of the redemption of a set number of redeemable shares of a particular class detailing the nominal value per share for a set market price from a member to include detailing the premium given on redemption of each share and the total amount given for the redemption.		
9e (v)	specifically state that the redemption of the shares mentioned in (i) above are being redeemed in accordance with the Articles of Association/constitution of the company and Section 105 of the Companies Act 2014 to include detailing how the redemption is being financed e.g. by way of distributable profits of the company or by way of a fresh issue of shares.	S.105 CA2014	

9e (vi)	Where the redemption is funded out of distributable profits reference should be made to the latest management accounts confirming there were sufficient distributable profits to allow for the redemption.		
9e (vi)	Where the redemption is to be funded specifically from the proceeds of a fresh issue of shares, this fact should be stated. A separate resolution should be passed to approve the allotment of the shares and the minutes of the meeting for that allotment should specifically state that the shares were allotted for the purposes of redeeming shares. See separate help sheet on the allotment of shares.		
9e (vii)	Specifically detail the shareholders/members from whom the shares are redeemed, the number of shares being redeemed and the amount per share.		
9e (viii)	the cancellation of the shares on redemption		
9e (ix)	and the need for the issuance of the notice of redemption to the member		
9e (x)	that the directors have disclosed their interest in the decisions been taken under Section 231 of CA 2014; Note that notwithstanding the disclosures, the directors were pursuant to the companies Constitution, entitled to vote and be counted in the quorum in relation to any matter in which he/she has an interest. Ensure the required quorum for the meeting is present where this is stated in the constitution.	S.231 (CA 2014	
9e (xi)	Ensure and state the fact that at least one director is a resident in the European Economic Area as required by Section 137 CA 2014 and that no director present holds more than 25 directorships for the purposes of and in accordance with Sections 228 and 229 CA 2014.	S.137, S.228 and S.229 CA 2014	
9e (xii)	Ensure that it records (and ensure it is a fact) the fact that no director is restricted from acting as a director as detailed in Section 819, 839, 840 841, 842 and 828 of CA 2014.	S.819, S.839, S.840, S.841, S.841, S.828 CA2014	
9e (xiii)	the fact that the secretary/director was instructed/authorised to: 1. issue the appropriate redemption notice to the member whose shares are to be redeemed detailing the number of shares being redeemed and the amount they are redeemed for.	S.194, S181 of CA2014	

	<p>2. arrange for the passing of the necessary resolutions of the members pursuant to section 193(1) or S194 of CA 2014 and file the Form G2 and Form B7 once the transaction has completed; Where a majority written resolution under S194 CA 2014 or the resolution is to be passed by extraordinary general meeting advise the secretary to provide the members with the required statutory notice of the meeting together with the proposed resolutions to be passed.</p> <p>3. cancel the share certificate previously issued to the member for which the shares were redeemed and update the register of members to reflect this cancellation.</p>		
9f	If approved ensure the minutes in step 9(e) are signed and dated by the chairperson and inserted into the minute book of the company.		
9g	Issue notice to the member concerned of the Company's intention to redeem the shares held in that members name. Ensure this letter:		
9g (i)	is issued on Company headed paper with the registered office		
9g (ii)	is dated and signed by the secretary/director of the company.		
9g (iii)	provides details of the number, nominal value and redeemable share class of the shares being redeemed		
9g (iv)	details the total amount for which the shares were redeemed including the premium per share.		
9g (v)	Informs the member that he/she will be paid the redemption price on presentation of the share certificate to the company.		
9h(i)	Draft the written ordinary resolution based on the resolutions approved in the board meeting above at step 9(d)(i)(ii) and have this resolution signed by all members entitled to vote at the meeting where a unanimous resolution has been passed in accordance with Section 193(1) CA 2014. Ensure the company name and number is included at the top of this resolution and the narrative at the top specifically states that it is an ordinary resolution and pursuant to S193(1) of CA 2014 for all purposes be as valid and effective as if a general meeting had been convened. There is no requirement to include the premium or total amount for which they were redeemed in this resolution nor is there a requirement to name the shareholder.	S.193(1) CA2014	
9h(ii)	Where a written resolution is not utilised there is no need for the resolution to be signed. In addition it should not refer to Section 193/194 in any way and the wording in relation to it being valid and effective as if a general meeting had been convened should not be included because a meeting has to be convened for a resolution that is not written.	S.181, S194 CA2014	

	<p>Ensure all members entitled to attend and vote at the meeting/on the written majority resolution have been informed of the meeting within the required notice period (this is also applicable for a majority written resolution). The required notice period of not less than 21 clear days' notice should be given unless a consent to short notice is obtained from all its members and auditor where applicable in which case a shorter period can be given as dictated by Section 181 of CA 2014. This notice should include: the date, time, location of the meeting, give details of the special resolutions to be considered for approval, the fact that a proxy can be utilised which does not have to be a member and the date by which the member must notify the company of a proxy being used. A consent to short notice should be signed by all members including the auditor (if applicable) where less than the statutory notice is provided which is a signed confirmation from all parties that they consent to the short notice.</p>		
9h(iii)	<p>Where an extraordinary meeting is held (as opposed to a written resolution), draft the minutes of the extraordinary general meeting with the usual requirements as detailed in step 8d(i) to 8(d)(iii) in addition to detailing the approval by the members at that meeting of the ordinary resolution to approve the redemption and cancellation of the shares using the exact wording as per step 9(d)(i)(ii). Also ensure it refers to all members giving the consent to short notice for the meeting if this short notice period was utilised.</p> <p>Ensure the minutes are signed by the chairperson.</p>		
9i	Draft Form G2 (notice of ordinary resolution) to notify the CRO of the ordinary resolution passed to cancel the shares and then:	S191 CA 2014	
9i (i)	in the effective date on the Form G2, date this the date the (written/non-written) resolution was dated in step 9(h) above. Include the company number and Company name on page one of Form G2		
9i (ii)	In the resolution details section of the Form G2, specifically for the resolution category insert 'shares'		
9i (iii)	In the resolution type and the resolution filled category, insert 'Ordinary Resolution' and 'G2F Ordinary resolution – redeeming and cancelling of issued shares' respectively		
9i (iv)	type the resolutions passed into the resolution text area on the form G2 which is an exact replicate of the resolution prepared at step 9(h) above or alternatively attach a copy of the resolution prepared in step 9(h) above and state 'see resolution attached'.		

9i (v)	In the resolution passed section of the Form G2, insert 'In writing' or if by majority written resolution select that option. Alternatively if it is done by meeting select the general meeting option as appropriate.		
9i (vi)	In the writing type section of the Form G2, insert 'Pursuant to section 193(1) (unanimous written resolution) or is if done by majority resolution insert 'Pursuant to S194' (majority resolution). If done by meeting select the extraordinary general meeting option.	S.193 (1) CA 2014	
9i (vii)	In the section 'particulars of persons verifying the contents of the form', under revenue online section include 'No'		
9i (viii)	Complete the information of the person/director that will sign the signature page at (xi) below in the remaining part of the section "particulars of persons verifying the contents of the form'.		
9i (ix)	Include details of the agent presenting/filing the From G2 in the detail of presenter section of the Form G2		
9i (x)	File the Form G2 on CORE or send the hard copy form and to the CRO		
9i (xi)	Arrange for a director to sign the electronic G2F signature page once filed on core and send this to the CRO of CORE is used to file Form G2		
9j	File form B7 – variation of company capital, informing the CRO of the redemption and cancellation of the redeemable shares. In the form B7:	S.92 CA 2014	
9j (i)	Include the company number on the top right of the form in the space provided		
9j (ii)	Include the company name in the space provided		
9 j(iii)	In the 'description of change' include a narrative within the space provided or include an attachment and instead include the wording 'See attached'. The wording should detail the number of shares, nominal value per share, the class of shares, the holder of the shares and the date they were redeemed.		
9j (iv)	Include the effective date in the space provided, which should be the date the shares were redeemed		
9j (v)	In the certification section, tick the secretary or director as appropriate		
9j (vi)	In the 'Presenter details' section include the agent that filed the return.		

10	Procedure where the buyback is carried out by way of a contract for purchase of its own shares as opposed to redemption		
10 (1A)a	Step 1A: Where the constitution does not currently allow, hold a board meeting to propose a resolution to insert in the constitution, permission for the company to purchase or redeem its own shares. If the constitution already allows then this step is not applicable so move to step 10 2A below. Ensure the minute details:	S.231, S.193, S.194, S.181 CA 2014	
10 (1A) a(i)	the name of the company and the company number		
10 (1A) a(ii)	the date, location and time of the meeting and the members present at the meeting		
10 (1A) a(iii)	details of who was appointed chairman of the meeting		
10 (1A) a(iv)	that the directors have disclosed their interest in the decisions been taken under Section 231 of CA 2014; Note that notwithstanding the disclosures, the directors were pursuant to the companies Constitution, entitled to vote and be counted in the quorum in relation to any matter in which he/she has an interest.	S.231 CA2014	
10 (1A) a(v)	Ensure and state the fact that at least one director is a resident in the European Economic Area as required by Section 137 CA 2014 and that no director present holds more than 25 directorships for the purposes of and in accordance with Sections 228 and 229 CA 2014.	S.137, S.228, S.229 CA2014	
10 (1A) a(vi)	Ensure that it records (and ensure it is a fact) the fact that no director is restricted from acting as a directors as detailed in Section 819, 839, 840 841, 842 and 828 of CA 2014.	S.819, S.839, S.840, S.841, S.842, S.828 CA2014	
10 (1A) a(vii)	the recommendation to the shareholders through special resolution to amend the current constitution to allow for the insertion of a clause to allow the company to purchase or redeem its own shares and to update the constitution for this change and adopt the updated constitution in substitution for and to the exclusion of all existing constitutions.	S.193 (1), S.194, S181 CA2014	
10 (1A) a(viii)	the fact that the secretary/director was instructed to arrange for the passing of the necessary resolutions of the members pursuant to section 193(1) of CA 2014 if done by unanimous resolution or by S194 if done by majority written resolution or alternatively to notify the shareholders to approve the resolution if done by extraordinary general meeting in accordance with Section 181 of CA 2014 and file the Form G1;		

	If approved ensure the minutes are signed and dated by the chairperson and inserted into the minute book of the company.		
10 (1A) b	Draft the written resolution based on the resolutions detailed in the board meeting at step 10 1A(a)(vii) and have this resolution signed by all members entitled to vote at the meeting where a unanimous resolution has been passed in accordance with Section 193(1) CA 2014. Ensure the company name and number is included at the top of this resolution and the narrative at the top specifically states that they are special resolutions and pursuant to S193(1) of CA 2014 for all purposes be as valid and effective as if a general meeting had been convened. Where a written majority resolution has been passed ensure this resolution is signed by the required majority of members and it refers to S194 with wording similar to the aforementioned. If the majority written resolution is used then give the required notice detailed below	S.193 (1), S194 CA2014	
10 (1A) B b(i)	Where a written resolution is not utilised there is no need for the resolution to be signed. In addition it should not refer to Section 193/194 in any way and nor should it contain the wording in relation to it being valid and effective as if a general meeting had been convened because effectively a meeting has to be convened for a resolution that is not written. Ensure all members entitled to attend and vote at the meeting/on the written majority resolution have been informed of the meeting within the required notice period (this is also applicable for a majority written resolution). The required notice period of not less than 21 clear days' notice should be given unless a consent to short notice is obtained from all its members and auditor where applicable in which case a shorter period can be given as dictated by Section 181 of CA 2014.	S194, S.181 CA2014	
10 (1A) B b(ii)	Where an extraordinary meeting is held (as opposed to a written resolution), draft the minutes of the extraordinary general meeting with the usual requirements as detailed in step 8d(i) to 8(d)(iii) in addition to detailing the approval by the members at that meeting of the special resolution to approve the amendment of the Constitution to allow for the buyback of shares using the exact wording as per step 10 1A(a)(vii). Also ensure it refers to all members giving the consent to short notice for the meeting if this short notice period was utilised. Ensure the minutes are signed by the chairperson.		
10 (1A) c	Draft Form G1 (notice of resolution) to notify the CRO of the special resolution passed to amend the Constitution/Memorandum & Articles of Association and then:	S183 CA 2014	

10 c(i)	(1A)	in the effective date on the G1, date this the date the written resolution was dated in step 10(b) above. Include the company number and Company name on page one of Form G1		
10 c(ii)	(1A)	In the resolution category section select 'shares'		
10 c(iii)	(1A)	In the resolution details section of the Form G1, insert 'other'		
10 c(iv)	(1A)	In the resolution type and the resolution filled category, insert 'Special Resolution' and 'G1 special resolution – Alteration of Constitution' respectively		
10 c(v)	(1A)	type the resolutions passed into the resolution text area on the form G1 which is an exact replicate of the resolution prepared at step 10 1A(b) above or alternatively attach a copy of the resolution prepared at step 10 1A(b) above and state 'see resolution attached'.		
10 c(vi)	(1A)	In the resolution passed section of the Form G1, insert 'In writing' or if by majority written resolution select that option. Alternatively if it is done by meeting select the general meeting option as appropriate.		
10 c(vii)	(1A)	In the writing type section of the Form G1, insert 'Pursuant to section 193(1) (unanimous written resolution) or is if done by majority resolution insert 'Pursuant to S194' (majority resolution). If done by meeting select the extraordinary general meeting option.		
10 c(viii)	(1A)	Attach the updated constitution to the Form G1 or send to CRO with the G1 where the hard copy option is utilised.		
10 c(ix)	(1A)	In the section 'particulars of persons verifying the contents of the form', under revenue online section include 'No'		
10 c(x)	(1A)	Complete the information of the person/director that will sign the signature page at step 10 1A(c)(xiii) below in the remaining part of the section "particulars of persons verifying the contents of the form' of the Form G1		
10 c(xi)	(1A)	Include details of the agent presenting/filing the From G1 in the detail of presenter section of the Form G1		
10 c(xii)	(1A)	File the Form G1 on CORE or send the hard copy form together with the amended Constitution to the CRO.		
10 c(xiii)	(1A)	Arrange for a director to sign the electronic G1 signature page once filed on core and send this to the CRO		

10 (2A)	Step 2A: Draft an agreement for the purchase of own shares by the company. This should include:		
10 (2A)(i)	<ul style="list-style-type: none"> The date 		
10 (2A)(ii)	<ul style="list-style-type: none"> the parties to the contract specifically detailing who is the vendor and who is the purchaser 		
10 (2A)(iii)	<ul style="list-style-type: none"> the fact that the company is incorporated and the date it was incorporated 		
10 (2A)(iv)	<ul style="list-style-type: none"> the issued and authorised share capital of the company 		
10 (2A)(v)	<ul style="list-style-type: none"> a confirmation that the vendor is the beneficial owner of the shares subject to the purchase 		
10 (2A)(vi)	<ul style="list-style-type: none"> stating that the agreement is made by the company pursuant to Part 3 Chapter 6 of Companies Act 2014 and by the constitution of the company. 		
10 (2A)(vii)	<ul style="list-style-type: none"> a statement detailing the fact that the terms of the agreement were authorised by a special resolution of the company and the date this was passed (which will be the same date as the EGM below or written resolution where it is done by written resolution) 		
10 (2A)(viii)	<ul style="list-style-type: none"> document in the agreement that the vendor is selling and the company is purchasing the shares in question detailing the number of shares and the nominal value of those shares and confirming that they are free from all charges, liens, encumbrances and claims. 		
10 (2A)(ix)	<ul style="list-style-type: none"> Provide details of the purchase price for the shares and the fact that the shares are payable in cash/cheque including details of when the payment can be made. 		
10 (2A)(x)	<ul style="list-style-type: none"> Detail the place and when the completion will take place (which will be the same day as the EGM) 		
10 (2A)(xi)	<ul style="list-style-type: none"> Detail the fact that vendor must deliver to the company the share certificate in respect of the shares that form part of the agreement so that they can be cancelled or where the share certificate is lost, confirmation that the vendor will provide an indemnity as required by the company 		
10 (2A)(xii)	<ul style="list-style-type: none"> Detail the fact that the agreement is governed by the laws in the Republic of Ireland and that the agreement constitutes the whole agreement between the parties 		
10 (2A)(xiii)	<ul style="list-style-type: none"> Provide a section for the signature of the director and secretary whereby they sign on behalf of the company 		

	and include a space for a witness and a space for the company seal to be applied.		
10 (3A)	Step 3A: Hold a board of directors meeting to consider and if thought fit recommend to the members to pass an ordinary resolution:	S.231, S.193, S.105, S.181 CA 2014	
10 (3A) a(i)	- That a set number of shares of a particular class be bought back by the company detailing the nominal value per share including the name of the shareholder/member they are to be bought back from and the amount it is proposed that they will be purchased for;		
10 (3A) a(ii)	- The cancellation of the shares once they have been bought back.		
10 (3A) b	The board minute should detail:		
10 (3A) b(i)	the name of the company		
10 (3A) b(ii)	the date, location and time of the meeting and the members present at the meeting		
10 (3A) b(iii)	details of who was appointed chairman of the meeting		
10 (3A) b(iv)	that the directors have disclosed their interest in the decisions been taken under Section 231 of CA 2014; Note that notwithstanding the disclosures, the directors were pursuant to the companies Constitution, entitled to vote and be counted in the quorum in relation to any matter in which he/she has an interest. Confirm the required quorum if stated in the constitution is present	S.231 CA2014	
10 (3A) b(v)	Ensure and state the fact that at least one director is a resident in the European Economic Area as required by Section 137 CA 2014 and that no director present holds more than 25 directorships for the purposes of and in accordance with Sections 228 and 229 CA 2014.	S.137, S.228, S.229 CA2014	
10 (3A) b(vi)	Ensure that it records (and ensure it is a fact) the fact that no director is restricted from acting as a directors as detailed in Section 819, 839, 840 841, 842 and 828 of CA 2014.	S.819, S.839, S.840, S.841, S.842, S.828 CA2014	
10 (3A) b(vii)	detail the fact that the articles allows the director to vote and form part of the quorum in relation to any matter in which he is interested.		
10 (3A) b(viii)	provide details of the shares to be bought back including the number and class of shares, the nominal value per share, the total amount that the shares are proposed to be bought back for	S.105 CA2014	

		pursuant to Section 105 of Companies Act 2014 and the name of the shareholder the shares are being bought back from		
10 (3A) b(ix)		Include the resolutions to be put to the shareholders for approval. The wording for these should be the same as the wording in step 10 3A(a)(i)(ii)		
10 (3A) b(x)		refer to draft contracts between the company and the shareholder/member covering the off market purchase of those shares being produced at the meeting;		
10 (3A) b(xi)		detail the discussion on the contract and the decision to convene an extraordinary general meeting to propose the special resolution to amend the Constitution/Memorandum & Articles of Association and to approve the purchase by the company of the shares (if a meeting is to be held where the company chooses to hold a meeting of members as opposed to a written resolution). Where a written resolution is instead utilised, the extraordinary meeting will not be required instead the minutes will refer to the secretary arranging for the written resolution to be signed).		
10 (3A) b(xii)		include the exact wording to be included in the notice to the members about the extraordinary meeting/written resolution (where majority written resolution is utilised under S194 CA 2014). This wording should state that: 1) the contracts between the company and the vendor covering the off market purchase of the shares is for the benefit of the company in the capital of the company as laid before the meeting (if a meeting is to be held) and is initialled by the chairman for the purpose of identification is approved subject to it being signed and sealed on behalf of the company by at least one director; 2) that the number of shares and the nominal value pursuant to the off-market purchase by special resolution be cancelled following purchase.		
10 (3A) b (xiii)		specifically state that the buyback of the shares mentioned in step 10 3A (b)(viii) above are being bought back in accordance with the Articles of Association/constitution of the company and Section 105 of the Companies Act 2014 to include detailing how the buyback is being financed e.g. by way of distributable profits of the company or by way of the proceeds from a fresh issue of shares.	S.105 CA2014	
10 (3A) b (xiv)		Where the purchase is funded out of distributable profits reference should be made to the latest management accounts confirming there were sufficient distributable profits to allow for the buyback		
10 (3A) b (xv)		Where the purchase is funded from the proceeds of a fresh issue of shares, document this fact. A separate minute and process would have to be performed to approve the allotment of the new shares. See the help sheet for the procedures to be performed for the allotment of shares for further details. This minute should make specific reference to the shares being issued to fund the buyback of shares.		
10 (3A) c		If approved ensure the minutes are signed and dated by the chairperson and inserted into the minute book of the company.		

10 (3A) d	Where a written ordinary resolution (unanimous resolution) as defined in S.193 of CA 2014, there is no requirement to provide notice of the meeting or give a consent to short notice.		
	Where a majority written resolution (under S194) is utilised or an extraordinary meeting is held, issue the notice of the extraordinary general meeting/resolution to all members (the resolutions are the wording as detailed in step 10 3A(b)(ix) entitled to vote in compliance with Section 181 of CA 2014. This notice should include: the date, time, location of the meeting, give details of the special resolutions to be considered for approval (which are effectively a replica of the resolutions in the board minute determined in (b)(x) above), the fact that the purchase agreement is available on request, the fact that a proxy can be utilised which does not have to be a member and the date by which the member must notify the company of a proxy being used. A consent to short notice should be signed by all members including the auditor (if applicable) where less than the statutory notice is provided which is a signed confirmation from all parties that they consent to the short notice.	S.194, S.181 CA2014	
10 (4A)	Step 4A: Where the extraordinary meeting option has been taken (as opposed to the written resolution option which is dealt with in step 10 (5A) below) hold an extraordinary general meeting at less than the statutory notice where a consent to short notice or a written resolution is obtained (otherwise 21 says notice required). This minute of the meeting should detail:	S.105 CA 2014	
10 (4A) i	the name of the company		
10 (4A) ii	the date, location and time of the meeting and the members present at the meeting		
10 (4A) iii	details of who was appointed chairperson of the meeting		
10 (4A) iv	provide details of the shares to be bought back including the number and class of shares, the nominal value per share, the total amount that the shares are proposed to be bought back for pursuant to Section 105 of Companies Act 2014 and the name of the shareholder the shares are being bought back from	S.105 CA 2014	
10 (4A) v	where the shares are being bought back from the profits available for distribution, the minutes should document the fact that the meeting had reviewed the latest set of financial statements and management accounts and confirmed there was sufficient distributable reserves to allow for the lawful buyback.		
10 (4A) vi	Where the purchase is funded from the proceeds of a fresh issue of shares, document this fact.		
10 (4A) vii	refer to draft contracts between the company and the shareholder/member covering the off market purchase of those shares being produced at the meeting;		
10 (4A) viii	give details of the special resolutions which were passed by the members at the meeting (which are effectively a replica of the resolutions in the board minutes determined in step 10 3A(b)(ix) above)		

10 (5A)	Step 5A: If the extraordinary general meeting option in step 10 (4A) above is not utilised, draft the written resolution based on the resolutions detailed in the board meeting at step 10 3A(b)(ix) and have this resolution signed by all members entitled to vote at the meeting where a unanimous resolution has been passed in accordance with Section 193(1) CA 2014. Ensure the company name and number is included at the top of this resolution and the narrative at the top specifically states that they are ordinary resolutions and pursuant to S193(1) of CA 2014 for all purposes be as valid and effective as if a general meeting had been convened. Where a written majority resolution has been passed ensure this resolution is signed by the required majority of members and it refers to S194 with wording similar to the aforementioned.	193 (1), 194 CA 2014	
10 (6A)	Step 6A: Arrange for signing of the purchase contract.		
10 (7A)	Step 7A: Obtain the share certificates from the previous shareholder in relation to the shares bought back. Where the share certificate is lost obtain an indemnity from the seller of the shares.		
10 (8A)	Step 8A: Hold a meeting of the board of directors to note the buyback of the shares. The minutes of this meeting should record among the normal items as detailed in steps 10 3A(b)(i) to (b)(vii) above:		
10 (8A) i	the fact that an EGM had been held/written resolution has been signed where the purchase of the company's own shares had been approved and special resolution passed		
10 (8A) ii	details of the number of shares bought back, the name of the shareholder they were bought back from and the total amount payable		
10 (8A) iii	provide detail of when the payments are to be made		
10 (8A) iv	document the cancellation of the shares subject to the buyback		
10 (8A) iiv	instruct the secretary to arrange for filing of all relevant forms and to update the register of members accordingly.		
10 (9A)	Step 9A: Draft Form G2 (notice of ordinary resolution) to notify the CRO of the ordinary resolutions and then:	S.193 of CA 2014	
10 (9A) i	in the effective date on the G1, date this the date the ordinary resolution was dated. Include the company number and Company name on page one of Form G1		
10 (9A) ii	In the resolution details section of the Form G1, insert 'other'		
10 (9A) iii	In the resolution type and the resolution filled category, insert 'Ordinary Resolution' and 'G2 ordinary resolution – redeeming and cancelling of issued shares' respectively		
10 (9A) iv	type the resolutions passed into the resolution text area on the form G2 which is an exact replicate of the resolution prepared at step 10 (4A) or step 10 (5A) above or alternatively attach a copy of the resolution prepared in 10 (4A) or step 10 (5A) above and state 'see resolution attached'		

10 (9A) v	In the resolution passed section of the Form G1, insert 'In writing' if done by a written resolution as opposed to by a formal meeting. If by meeting select the meeting option.		
10 (9A) vi	In the writing type section of the Form G1, insert 'Pursuant to section 193(1) (unanimous written resolution) if it is done by written resolution under S193 CA 2014. If it is done by majority written resolution in S194, then include wording 'Pursuant to Section 194 (majority written resolution). If it is passed by meeting then selected the extraordinary general meeting option.	S.193 of CA 2014	
10 (9A) viii	In the section 'particulars of persons verifying the contents of the form', under revenue online section include 'No' (where forms are filed on the CRO)		
10 (9A) ix	Complete the information of the person/director that will sign the signature page at step 10 9A(xii) below in the remaining part of the section "particulars of persons verifying the contents of the form' of the Form G2		
10 (9A) x	Include details of the agent presenting/filing the Form G1 in the detail of presenter section of the Form G2		
10 (9A) xi	File the Form G1 on CORE or if done in hard copy send this to the CRO		
10 (9A) xii	Arrange for a director to sign the electronic G1 signature page once filed on core and send this to the CRO		
10 (10A)	Step 10A: File the form B7 on core for the cancellation of the shares as detailed in step 9(j) above and therefore has not been replicated here.		
10 (11A)	Step 11A: Draft and file a form H5 with the CRO– return by a company purchasing its own shares (S.116/S.1079 CA 2014). Provide details of the number of shares, the nominal value of the shares and the date the shares were purchased by the company.	S.116, S.1079 CA 2014	
10 (12A)	Step 12A: Where there is a requirement for the member who had the shares bought back to retire as director (in order to break the link from the company completely so as to meet the share buyback tax legislation requirements), file the form B10 with the CRO and create a minute in relation to the change in director. Ensure a letter of resignation is obtained from the previous director which confirms his/her resignation and confirms they have no further claims against the company.		
11	Ensure the company files the form AOS1 (acquisition of a company of its own shares) with revenue at the time of filing the company's corporation tax computation for the accounting period ended in which the buyback/redemption took place and the favourable CGT treatment applied (i.e. within 9 months of the accounting period end).	TCA 1997	
12	Where the capital gains tax treatment applies to the transaction and capital gains tax is payable on the transaction ensure the		

	shareholder who disposed of his/her shares files in Form CGT Payslip A or Form CGT Payslip B and pays over any tax to the revenue within the required deadline depending on when the buyback took place (if disposal took place between 1 January and 30 November, the due date for payment is 15 December (use Form CGT Payslip A); where disposal took place between 1 December and 31 December, due date for payment is 31 January of the following year (use Form CGT Payslip B). If no tax is payable then this step is not required.		
13	Where the capital gains tax treatment applies to the transaction ensure the shareholder who disposed of his/her shares files with the revenue a Form CG1 if the shareholder is not registered for self-assessment for income tax purposes or where the person is registered for income tax self-assessment; include details of the disposal on the Form 11. Within these forms if applicable to the transaction, fill in the information in the section of the form informing the revenue that the person has availed of retirement relief on the disposal.		
In my professional opinion in my capacity as partner for the provision of professional services the share buyback/redemption has been carried out in accordance with company law and tax legislation.			
Signed:		Date:	

Forms

Form G1

Form B7

Form G2

Form H5

Form AOS1

CGT 1

CGT payslip