ACQUISITION OF OWN SHARES

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COMPANY BUYING BACK ITS OWN SHARES UNDER MALTESE LAW

The procedure which a company must necessarily undertake in order to validly buy back its own shares is outlined in Articles 106 and 107 of the Companies Act (Chapter 386 of the Laws of Malta)

There are certain conditions which need to be met:

- Firstly, a company may only commence the buyback procedure if provision has been made in its Memorandum & Articles of Association ("**M&A**") authorising the company to acquire its own shares.
- Another prerequisite is that the company's net assets, as set out in the annual accounts of its last accounting period, are not or would not become less than the company's issued share capital together with any non-distributable reserves following the acquisition.
- Moreover, a buyback must necessarily be made from the proceeds of a fresh issue of shares or out of distributable profit.

Provided that the above conditions are met, shareholder authorisation must then be obtained by means of an extraordinary resolution taken in accordance with the provisions of the Companies Act, which shall also include the terms of the buyback namely:

- The number of shares to be acquired, the nominal value of which, in addition to any other of its own shares which have already been acquired by the company, may not exceed fifty percent of the issued share capital. It is also stipulated by the Companies Act that any shares bought back by the company must be fully paid up.
- The duration of the authorisation to acquire the shares which may not exceed eighteen months; and
- The maximum and minimum consideration where the acquisition is one for a valuable consideration.

Upon completion, a copy of the said resolution must then be delivered to the Malta Business Registry for registration. However, the law fails to provide a time limit for the filing of such resolution.

In terms of Maltese Company law, the cancellation of shares is tantamount to a reduction in share capital and the provisions of the CA regulating such a reduction will be applicable. Indeed, pursuant to applicable laws relating to such a reduction, creditors of the company have the right to object to the said reduction within a period of three months and this right is naturally applicable here as well.