



AILMC

“Mergers and Acquisitions”

In Collaboration With **HHP Law Firm**

Collection of Award-Winning Legal Memorandum

Table of Contents

01 Case Position



02 Legal Memorandum Champion
Jasminarayi Anargya Prijamboko



03 Legal Memorandum Runner-Up
Stefani Oentario Wijaya



04 Legal Memorandum Second Runner-Up
Ulfa Siti Zahra





CASE POSITION

“Acquisitions on Mining Company”

Prepared and Developed by **HHP Law Firm**

CASE POSITION

ALSA INDONESIA LEGAL MEMORANDUM COMPETITION 2025

A. FACT :

1. PT XYZ ("Company") is a nickel mining company holding a Mining Business License (Izin Usaha Pertambangan or "IUP"), established on 1 January 2008, and operating in Indonesia. It commenced production operations on 1 January 2010. The Company conducts nickel mining activities using the open pit mining method (pertambangan dengan metode terbuka) within its licensed mining area (Wilayah Izin Usaha Pertambangan or "WIUP").
2. The Company is currently classified as an Indonesian Investment Company (Perusahaan Penanaman Modal Dalam Negeri/PMDN) with the following shareholding composition:
 - a. PT BCD owns 9,900 shares in the Company (99%).
 - b. PT JKL owns 100 shares in the Company (1%). PT JKL is an affiliate of PT BCD.(PT BCD and PT JKL are hereinafter referred to as the "Sellers").
3. The Company does not hold any shares or other forms of equity participation in any other company. The Company solely engages in mining activities and does not conduct any other business operations (e.g., consultancy, operation of ports, smelting, etc.).
4. The Company's Articles of Association explicitly state that members of the board of directors and members of the board of commissioners must be Indonesian individuals, and foreign ownership is not permitted.
5. PT PQR ("Purchaser"), a foreign investment company (Perusahaan Penanaman Modal Asing/PMA) wishes to purchase some of the Company's shares from the Company's shareholders (PT BCD and PT JKL). The shareholding composition of the Purchaser is as follows:
 - a. PQR Pte. Ltd. owns 49 shares in the Purchaser (98%)
 - b. PQR S.A. owns 1 share in the Purchaser (2%)

6. The Purchaser owns the following assets in Indonesia:
 - a. Right to Build (Hak Guna Bangunan or HGB) over two plots of land;
 - b. Bank account at Bank 'ABCD';
 - c. Insurance policies;
 - d. Factory machinery; and
 - e. Receivables.
7. The details of the proposed share acquisition transaction by the Purchaser are as follows:
 - a. The Purchaser plans on purchasing 5,000 shares held by PT BCD and 100 shares held by PT JKL. The Sellers and the Purchaser agree that the purchase price for the transaction is IDR 100 million per share. The shareholding composition of the Company after the proposed transaction will be as follows:
 - a) 51% Purchaser
 - b) 49% PT BCD
 - b. The Purchaser is unable to pay the full purchase price in a one-time-payment at the time of the transaction and the Purchaser will only pay the Sellers 60% of the consideration on completion. The remaining amount (i.e., 40% of the consideration) will be recorded as indebtedness owed by the Purchaser to the Sellers, which the Purchaser undertakes to pay to the Sellers two years after the effective date of the acquisition.
 - c. The parties agree that the settlement of the transaction will not be delayed and will not be carried out in stages (tranches) due to the inability of the Purchaser to pay the full purchase price amount, but rather all of the shares will be transferred immediately upon signing of the relevant deeds.

B. ISSUE

1. Can the proposed share acquisition transaction be legally carried out:
 - a. From a regulatory perspective, considering that the Company conducts mining business activities?
 - b. From a corporate perspective, considering that the Company's Articles of Association prohibit foreign shareholding?

If the transaction cannot be carried out in its current condition, please elaborate how the parties could proceed with the transaction, or any other actions or structures that the parties could consider.

2. Based on the facts above, to secure the payment of the remaining purchase price by the Purchaser to the Sellers, what legal measures can the Sellers take?
3. What rights can be proposed or requested by the minority shareholder in the Company regarding the management of the Company post-transaction?
4. If the transaction is legally permissible and subject to your answers in questions number 1, 2 & 3, what documents must be signed by the parties (the Sellers, the Purchaser and/or the Company) to implement the transaction? Please provide the brief purpose of each document.

AILLMC

COLLECTION OF AWARD-
WINNING LEGAL MEMORANDA

ALSA Indonesia
Legal Memorandum Competition 2025
In Collaboration with HHP Law Firm



Jasminarayi Anargya Prijamboko
Universitas Katolik Parahyangan
Legal Memorandum Champion

 academic@alsaindonesia.org  alsa-indonesia.org

CASE POSITION
ALSA INDONESIA LEGAL MEMORANDUM COMPETITION
2025

Written by Jasminarayi Anargya Prijamboko
Universitas Katolik Parahyangan

HEADING

To : ALSA National Chapter Indonesia
From : Jasminarayi Anargya Prijamboko
Subject : Case Position ALSA Indonesia Legal Memorandum
Competition 2025
Date : 5 December 2025

STATEMENT OF ASSIGNMENT

This memorandum analyzes the legal feasibility of PT PQR (“**Purchaser**”) acquisition of PT XYZ (“**Company**”). The assignment includes: (1) Validity of the transaction under Indonesian mining and investment law. (2) Assess the restriction in the Company Article of Association (“**AoA**”). (3) Provide recommendations of transaction structures and security mechanisms to protect the Purchaser's interest.

LEGAL ISSUE

Based on the Case Position, the following legal issues arise for analysis:

1. Legality of the Acquisition: Can the proposed share acquisition transaction be legally carried out:
 - a. Regulatory: From a regulatory perspective, considering that the Company conducts mining business activities?
 - b. Corporate: From a corporate perspective, considering that the Company's Articles of Association prohibit foreign shareholding?
 - c. If the transaction cannot be carried out in its current condition, please elaborate how the parties could proceed with the transaction, or any other actions or structures that the parties could consider.
2. Security of Payment: Based on the facts, what legal measures can the Sellers take to secure the payment of the remaining purchase price by the Purchaser to the Sellers?

3. Minority Shareholder Rights: What rights can be proposed or requested by the minority shareholder in the Company regarding the management of the Company post-transaction?
4. Transaction Documentation: If the transaction is legally permissible and subject to the answer above, what documents must be signed by the parties (the Sellers, the Purchaser and/or the Company) to implement the transaction, and what is the brief purpose of each document?

BRIEF STATEMENT

1. The proposed 51% acquisition is legally invalid. Mining divestment regulations cap foreign ownership at 49% for mines operational for over 15 years. Additionally, the transaction triggers a mandatory status conversion from PMDN to PMA and violates current corporate restrictions from PMDN to PMA.
2. To secure the IDR 204 billion remaining obligation, PT BCD should require a Share Pledge over the shares, Fiduciary Security over operational assets like machinery and receivables to allow continued business use, and a Mortgage over the Right to Build (HGB) land titles.
3. PT BCD should negotiate a Shareholders Agreement (SHA) to secure board seats, veto rights on “Reserved Matters”, and supermajority quorum requirements to prevent exclusion from decision making.
4. Completing an Indonesian mining acquisition requires executing transactional agreements like the CSPA and SHA to transfer control, establishing financial security through the Deed of Acknowledgement of Indebtedness and asset pledges, and finalizing regulatory compliance via government approvals and statutory notifications.

STATEMENT OF FACTS

Under “COMPANY”

1. The Company is an Indonesian nickel mining company that holds a Mining Business License (IUP). It was established on 1 January 2008, and operations since 1 January 2010.
2. The Company uses the open pit mining method within its licensed mining area. Its operations are strictly limited to mining activities, as it refrains from engaging in other business operations, such as consultancy, operation of ports, smelting, etc. Hence, the Company does not hold any shares or other forms of equity participation in other companies.

3. The Company is classified as an Indonesian Investment Company with a shareholding composition, referred to as the “Sellers”, namely: PT BCD, which owns 99% of the shares (9.900 shares). Meanwhile, PT JKL, an affiliate of PT BCD, which owns 1 % of their shares (100 shares).
4. The Company’s Article of Association (“AoA”) explicitly prohibits foreign ownership. It also stipulates that all members of the Board of Directors (“BOD”) and the Board of Commissioners must be Indonesian citizens.

Under “THE SELLERS AND PURCHASE”

1. The Purchaser is classified as a Foreign Investment Company.
2. The Purchaser’s foreign shareholding composition is: PQR Pte. Ltd owns 98% of the shares (49 shares) and PQR S.A. owns 2% of the shares (1 share).
3. The Purchaser owns several assets within Indonesia, including the Right to Build over two land plots, a bank account at Bank “ABCD”, insurance policies, factory machinery, and receivables.
4. The Purchaser proposed to acquire a majority stake in the Company from the current shareholders, PT BCD and PT JKL (“Sellers”).
5. The Purchaser plans on purchasing 5,000 shares owned by PT BCD and all 100 shares owned by PT JKL, for IDR 100 million per share. The Company’s shareholding after the proposed transaction will change the shareholding structure to 51% for the Purchase and 49% for the Seller, PT BCD.
6. The Purchaser's inability to pay full price in a one-time payment at the time of transaction, they will be paying the Sellers 60%. Hence, the remaining 40% will be recorded as indebtedness owed to the Sellers, which the Purchase undertakes to pay two years after the effective date of the acquisition.
7. The parties agreed that the settlement of the share transfer will not be delayed or carried out in stages, instead, all shares are to be transferred immediately upon signing of the relevant deeds.

ANALYSIS/DISCUSSION

1. LEGALITY OF THE PROPOSED ACQUISITION

The proposed 51% acquisition structure is legally non-compliant. Given the mine’s 15 year operational history, GR 96/2021 strictly caps foreign equity at 49%. Moreover, the transaction forces a status conversion to PMA (BKPM Reg. 5/2021), effectively mandating compliance with higher investment minimums and requiring immediate AoA amendments under the Company Law.

A. Regulation Perspective:

1. Change of Status (PMDN to PMA): The Company's status converted from PMDN to PMA via the OSS system. This triggers the financial requirements of Article 227(6). Consequently, the Company must inject capital to meet the minimum investment value of IDR 10 billion.
 2. Divestment on Mining Shares: The transaction faces a statutory bar on ownership percentage. The Company is in its 15th year of non-integrated open-pit mining operations. Under GR 96/2021, this triggers a mandatory divestment of 51% to Indonesian entities. Since the Purchaser is a PMA, it is capped at 49% ownership. Therefore, acquiring 51% is a direct violation of the divestment schedule.¹
- B. Corporate Perspective:** There are significant legal restrictions in the Company's current AoA. The attempted transfer of shares by the Sellers as a PMDN, to a PMA Purchaser directly violates the Company's existing AoA, which prohibits foreign ownership and mandates that all members of the BOC and BOD must be Indonesian citizens. However, legally, this is an internal restriction, not a statutory prohibition. The AoA acts as a temporary binding agreement between shareholders. To proceed, the AoA must first be amended, an action that requires an Extraordinary General Meeting ("EGMS"), specifically referring to Articles 19 of Law No. 40 of 2007 to remove the foreign restriction and approve the new shareholder (Purchaser).²
- C. Alternative Transaction**
- Regulatory obstacles, including AoA restrictions and mining divestment caps, prevent immediate foreign ownership. Therefore, executing an immediate Deed of Transfer poses significant legal risk. The parties should instead enter into a Conditional Share Purchase Agreement ("CSPA"). This secures the commitment now but delays the transfer until compliance is achieved via Conditions Precedent ("CP").

¹ Schinder Law Firm, 'Divestment on Mining Shares in Indonesia' (Blog, 2023) <https://schinderlawfirm.com/blog/divestment-on-mining-shares-in-indonesia/> accessed 5 December 2025.

² Undang-Undang Republik Indonesia Nomor 40 Tahun 2007 Tentang Perseroan Terbatas [Law of the Republic of Indonesia Number 40 of 2007 Concerning Limited Liability Companies].

- a. AoA Amendment: Obtaining shareholder and the Ministry of Law and Human Rights (MOLHR) approval for amendment of the AoA to permit foreign ownership.
- b. Investment Status Conversion: Finalizing the status conversion of the Company's status from PMDN to PMA via the OSS system, which includes verifying the IDR 10 billion investment, under BKPM Regulation No. 5 of 2025.³
- c. Mining Regulation: Securing the required approval or notification from the Ministry of Energy and Mineral Resources ("ESDM") regarding the change in shareholding. If these conditions are met, the acquisition remains legally valid and compliant with the rules. The proposed acquisition cannot proceed as an immediate 51% transfer. To legally effectuate the deal, they need to reduce to 49% to comply with mining divestment laws, parties must sign a CSPA rather than an immediate Deed of Sale, and the actual transfer can only occur after the AoA is amended, the status is converted to PMA, and ESDM approvals are secured.

2. SECURITY OF PAYMENT

To secure the delayed payment, PT BCD must apply a better security structure. First, a Pledge of Shares (Art. 1150 Civil Code; Art. 60 Law 40/2007) is legally superior to Fiduciary Security for the acquired stake. A Pledge mandates physical delivery of certificates to PT BCD to prevent resale while explicitly preserving the Purchaser's voting rights absent default. Second, Fiduciary Security (Law 42/1999) must be applied to operational assets such as machinery, receivables, and bank accounts. Unlike a pledge, this allows the Purchaser to retain possession essential for business continuity. Finally, a Mortgage (Hak Tanggungan) is mandatory to secure the HGB land titles.

³ HSF Kramer, 'New Indonesian Investment Rules 2025' (Insights, November 2025) <https://www.hsfkramer.com/insights/2025-11/new-indonesian-investment-rules-2025> accessed 5 December 2025.

3. **MINORITY SHAREHOLDER RIGHTS**

Under Law No. 40 of 2007, PT BCD is a minority shareholder. However, its 49% stake positions it as a 'strong minority.' To avoid risks like exclusion or mismanagement, PT BCD must negotiate a Shareholders Agreement (SHA). Unlike public Articles, the SHA is a private contract. This ensures any violation by the majority is enforceable as a breach of contract.

1. Contractual Rights

A. Board Representation Rights: To ensure and monitor the Company's internal management security and supervision, PT BCD shall request for the right to nominate members to the Company's organs, to ensure that it retains the right to be involved in decision making and is able to obtain access to information. Specifically, SHA must grant PT BCD the privilege to nominate:

- Board of Commissioners: At least one member of BOC, Ideally the President Commissioner.
- BOD: At least one member of BOD.

B. Veto Right on Reserved Matters: To protect PT BCD's investment value without impeding the Company's daily operations, PT BCD shall request a specific veto right strictly limited to fundamental strategic decisions ("Reserved Matters"). These actions cannot be executed without affirmative approval of PT BCD. This list must include:

- Fundamental Corporate Action: Such as Merger
- Constitutional Changes: Amendment of AoA.
- Legal Status: Filing for Bankruptcy or Suspension of Debt Payment Obligations.
- Asset Transfers: Transfer, disposal or pledging of substantial company assets.
- Related Party Transactions (RPTs): Transaction involving an affiliate of the Purchase or Majority Shareholder, unless such transaction is conducted on standard market terms.
- Operational Control: Approval of the annual work plan and budget

C. Strict Quorum Requirements: To prevent the majority shareholder from holding a GMS without PT BCD's

knowledge or participation, the SHA must tighten the quorum requirements beyond the standard provisions on Limited Liability Companies.⁴

- Attendance Quorum: The GMS shall only be valid if attendance by the representative of PT BCD. This effectively forces the majority to invite and secure PT BCD's presence for the meeting to proceed.
- Supermajority Voting: The SHA shall secure at least three quarters (75%) supermajority voting threshold for "Reserved Matters," to explicitly cover daily operational decisions such as the approval of the annual budget to effectively veto power over management decisions.⁵

D. Pre-emptive Rights (Anti-Dilution): To protect PT BCD's percentage of ownership from being diluted in the future, the SHA must reaffirm pre-emptive Rights. If the Company issues new shares, PT BCD must be offered the right to purchase these shares proportionally before they are offered to other parties.⁶

E. Information and Inspection Rights: To complement the limited disclosure requirement of the Companies Act, the SHA shall grant PT BCD full inspection rights, including access to monthly financial statements and balance sheet, to ensure PT BCD does not miss all required annual reports.⁷ Hence, requiring Purchaser to disclose its Ultimate Beneficial Ownership structure to prevent hidden conflicts of interest.⁸

2. Statutory Enforcement Rights

⁴ Apri Sya'bani, 'Minority Shareholders' Protection in the Indonesian Capital Market' (2014) 4 Indon L Rev 114

https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/indolawrev4§ion=8&casa_token=enDdgF0jnDMAAAAA:LiFjBdB8ZVt12g5tSnrF4Gsj3op7SL2IXZh6IvQ2r29do659amEjlbFWTGytpgyWSQJdb_I1s accessed 5 December 2025.

⁵ Gannon's, 'Shareholder Rights: Minority Shareholders' (Webpage, 2023) <https://www.gannons.co.uk/shareholder-rights/minority-shareholders/> accessed 5 December 2025.

⁶ *Ibid*

⁷ *Ibid*

⁸ *Ibid*

As PT BCD holds 49% of the Company's shares (significantly larger than 10% of the shares) it has powerful enforcement tools under Law No. 40 of 2007. These rights function as a pragmatic solution to address disputes when internal governance fails or Majority shareholders engage in bad faith.

- A. Rights to Request Examination: If there is a justifiable suspicion that the Company, the BOD, or the BOC has engaged in illegal activity or led to unfair acts to shareholders, PT BCD is entitled to petition the District Court to appoint an expert for inspecting the Company's data and financial records under Article 138 of Law No. 40 of 2007.⁹
- B. Derivative Action: In case of the Company's incurs losses due to the management fault or negligence, PT BCD has the rights to file a lawsuit on behalf of the company against:
 - Members of the BOD for misconduct or negligence under Article 97(6) of Law No. 40 of 2007.
 - Members of the BOC for failure to supervise under Article 114(6). This ensures that Purchaser's appointed management cannot act with impunity.

4. TRANSACTIONAL DOCUMENTATION

1. Main Transaction Documents

- CSPA: Functions as the foundational binding document in Indonesian mining acquisition transactions. It establishes the commercial terms of the deal, such as purchase price and number of shares, before the official change of ownership occurs. Its primary role is to manage the period between signing and closing since under Mining Law No. 3 of 2010 and MEMR Regulations No. 7 of 2020, the transfer cannot happen until specific conditions are made, most importantly approval from the MEMR is fulfilled.¹⁰
- Shareholder Agreement (SHA): Since the Company will be jointly owned 51% foreign, a SHA is essential to complement

⁹ Apri Sya'bani

¹⁰ Clara Vinky Hellanda, Ni Made Jaya Senastri and Made Setiasa, 'Legal Protection of Shareholders in the Sale and Purchase of Limited Liability Companies Engaged in the Business of Coal Mining' (2025) 3(3) Journal of Political and Legal Sovereignty 387.

the Company's AoA to provide protection outside the general Company Law. Specifically, it protects the Minority Shareholders (PT BCD) from oppression, dilution, or exclusion from management. While enabling the Majority Shareholders (Purchaser) to maintain operational control and establish a clear exit pathway.¹¹

- Deed of Share Transfer: is the execution document signed on the Closing Date that legally transfers ownership of the shares from the Sellers to the Purchaser. It functions as the legal proof.¹²

2. Financial and Security Documents

- Deed of Acknowledgement of Indebtedness: To properly secure the remaining 40% payment, it is best to execute a separate Deed of Acknowledgement of Indebtedness. If the Deed is drafted as "Grosse Deed" the document holds the same enforceability as a final court judgement. Allowing Seller to enforce the debt immediately without going through lengthy lawsuits if the Purchaser fails to pay.¹³
- Deed of Granting Mortgage: To use the two plot land held under Right to Build. Under Indonesian Law No. 4 of 1996, this is the only form of legal method that recognized securing land and buildings. Other forms of security, such as charges or liens are invalid for land.¹⁴

¹¹ Dewi Savitri Reni and Vinka Damiandra A Larasati, 'Indonesia' in *Chambers Joint Ventures 2025 Global Practice Guide* (Chambers and Partners 2025) <https://practiceguides.chambers.com/practice-guides/joint-ventures-2025/indonesia> accessed 5 December 2025.

¹² Kusuma & Partners Law Firm, 'How to Buy Back Shares from Local Partners in PT PMA' (*Kusuma Law Firm*, 2 August 2025) <https://kusumalawfirm.com/article/how-to-buy-back-shares-from-local-partners-in-pt-pma/> accessed 5 December 2025.

¹³ Dewi Savitri Reni and Vinka Damiandra A Larasati, 'Indonesia' in *Chambers Joint Ventures 2025 Global Practice Guide* (Chambers and Partners 2025) <https://practiceguides.chambers.com/practice-guides/joint-ventures-2025/indonesia> accessed 5 December 2025.

¹⁴ Freddy Karyadi and Nina Cornelia Santoso, 'Lending and Taking Security in Indonesia: Overview' (*Practical Law Country Q&A*, 2020) https://www.abnrlaw.com/files/document/Lending_and_taking_security_in_Indonesia_overview_2020_163.pdf accessed 5 December 2025.

- Deed of Fiduciary Security: To secure assets such as Factory Machinery, receivables, and insurance policy, a Fiduciary Security Deed is required. According to Indonesian Law No. 42 of 1999 on Fiduciary Security, this is the standard legal mechanism for securing moveable assets (such as equipment) and intangible rights (such as company receivables or money owed to the company) as collateral.¹⁵
- Pledge of Bank Account Agreement: To use the Bank account at Bank “ABCD” as collateral, the parties must need a Pledge Agreement. Under the Indonesian Civil Code Article 1150, a pledge generally requires physical delivery to the lender. Since a bank account cannot be physically delivered, common market practice addresses this by combining a pledge agreement with specific control mechanisms to ensure the lender has authority over the account funds.¹⁶
- Pledge of Shares Agreement: To secure the remaining payment, the parties should need a Pledge of Shares Agreement over the 51% of the shares in the Company being acquired by the Purchaser. It is a standard practice in M&A transactions for the Sellers to demand a pledge over the very shares that are being sold to serve as collateral. This pledge remains in effect until the Purchaser has fully paid the price.¹⁷

3. Compliance Documents

- GMS Documents: To establish the corporate approvals needed for the transaction to proceed. The target Company requires a notarized shareholders meeting (EGMS) to legally approve the change in ownership, conversion to foreign ownership (PMA), and appointment of new management. Simultaneously, the Buyer and Sellers issue internal written resolutions to legally authorize their directors to sign the agreement and use assets as security.¹⁸

¹⁵ *Ibid*

¹⁶ *Ibid*

¹⁷ DLP Law Offices, 'Pledge of Shares under Indonesian Law' (undated) <https://dlplawoffices.com/upload/files/news7.pdf> accessed 5 December 2025.

¹⁸ Alfa Dewi Setiawati, 'Indonesia' in Thomas Mellor (ed), *The International Comparative Legal Guide to: Lending & Secured Finance 2023* (11th edn, Global Legal Group 2023) 312.

- **Public and Employees Notifications:** To Comply with Article 127 of Law No. 40 of 2007 of the Company Law, the BOD must publish a summary of the acquisition in a national newspaper at least 30 days before the GMS. This publication opens a 14 day period for creditors to file objections. At the same time, a written announcement from the Directors must be informed to the employees for any potential severance rights arising from the change in control.¹⁹
- **ESDM Approval:** According to Law No. 3 of 2020 share transfers in IUP Companies are not legally valid unless MEMR approval. The application is made through an online website MinerbaOne and perizinan.esdm.go.id systems.
- **MOLHR and OSS Documents:** To complete the conversion from a Domestic Company (PMDN) to a Foreign owned (PMA), a Notarial Deed amending AoA is executed immediately after GMS and submitted to Ministry of Law (*SK Menkumham*) to obtain the official approval of the new ownership. Following this, the company must update its Business Identification (NIB) in the OSS system to formally register its new PMA status.

CONCLUSION

Therefore, we could conclude that the proposed acquisition of 51% shares is legally invalid under Indonesian mining divestment regulations, which cap foreign ownership at 49% for mines operational for over 15 years, and triggers a mandatory status conversion from PMDN to PMA. Consequently, the parties must restructure the transaction to acquire a maximum of 49% equity through a CSPA, delaying the transfer until the AoA are amended and ESDM approvals are secured. To mitigate risks regarding the remaining payment, PT BCD must enforce a security structure involving a Share Pledge, Fiduciary Security over operational assets, and a Mortgage on land titles, supported by Deed of acknowledgement of Indebtedness. Furthermore, to protect its post-transaction interests, PT BCD should execute a SHA securing board representation and veto rights on reserved matters, ensuring the transaction is commercially secure and regulatory compliant.

¹⁹ Nainggolan & Partners, 'General Procedures for Acquisition of a Company' (6 March 2024) <https://nnplawfirm.com/general-procedures-for-acquisition-of-a-company> accessed 5 December 2025.

AILLMC

COLLECTION OF AWARD-
WINNING LEGAL MEMORANDA

ALSA Indonesia
Legal Memorandum Competition 2025
In Collaboration with HHP Law Firm



Stefani Oentario Wijaya
Universitas Airlangga
Legal Memorandum Runner-Up

 academic@alsaindonesia.org  alsa-indonesia.org

LEGAL MEMORANDUM ON THE PROPOSED ACQUISITION OF SHARES IN PT XYZ BY PT PQR

Written by Stefani Oentario Wijaya
Universitas Airlangga

To: ALSA National Chapter Indonesia

From: Stefani Oentario Wijaya

Re: Legal Memorandum on the Proposed Acquisition of Shares in PT XYZ by PT PQR

Subject: Legal Memorandum On The Proposed Acquisition Of Shares In Pt Xyz:
Conditions Precedent, Deferred Payment Security, And Minority Governance
Structure.

1. STATEMENT OF ASSIGNMENT

- 1.1. PT PQR has asked us to consider whether PT PQR (a PMA company) may legally acquire 51% of the shares in PT XYZ, an Indonesian nickel mining company holding an IUP for open-pit nickel mining. PT XYZ was incorporated as a PMDN entity and its AoI currently prohibits foreign shareholding.
- 1.2. This request arises in the context of a proposed transaction where PT PQR intends to purchase 5,100 shares (51%) from PT BCD (99% shareholder) and PT JKL (1% shareholder). The agreed purchase price is IDR 100 million per share. PT PQR can only pay 60% of the purchase price on completion; the remaining 40% will be treated as indebtedness payable two years after closing. The parties intend for all shares to be transferred immediately on signing, despite the deferred payment

2. ISSUES

- 2.1. The following question for the share acquisition are as follows:
- 2.2. Whether the proposed share acquisition can legally proceed, from:
 - 2.2.1. From a regulatory (mining & investment law) perspective, and

- 2.2.2. From a corporate law perspective, considering the AoI prohibition on foreign shareholders.
- 2.3. What form of legal measures can the Sellers take to secure the 40% deferred payment from the Purchaser to the Sellers?
- 2.4. What rights can be proposed or requested by the minority shareholder (PT BCD, 49%) in the Company regarding the management of the Company post-transaction?
- 2.5. What documents must be signed by the parties to move forward with the transaction?
- 2.6. This memo sets out our preliminary analysis based on the known facts. Further steps may be required to confirm assumptions and regulatory constraints.

3. BRIEF ANSWERS

- 3.1. **The acquisition cannot lawfully proceed without prior approval from the Ministry of Energy and Mineral Resources¹, completion of the Foreign Investment Company conversion through the Online Single Submission Risk-Based Approach system, and subsequent amendment of the Mining Business License. From a corporate perspective, a prior amendment to the AoI through a GMS is mandatory². The Sellers are entitled to comprehensive layered security protection for the deferred payment, critically including a Hak Tanggungan (HT) Mortgage and a Corporate Guarantee, alongside the share pledge and fiduciary security. PT BCD is entitled to veto rights through special share classification. The transaction must be implemented through a Conditional Share Purchase Agreement, supported by GMS resolutions and all required regulatory filings.**
- 3.2. The detailed legal analysis supporting the above conclusions is set out in the following Sections:

¹ Law No 3 of 2020 (Indonesia) art 93A.

² Law No 40 of 2007 concerning Limited Liability Companies, art 21.

- 3.2.1. Statements of Facts (Section 4);
- 3.2.2. Analysis and Discussions (Section 5);
- 3.2.3. Conclusion (Section 6);
- 3.2.4. Recommendations (Section 7).

4. **STATEMENT OF FACTS**

- 4.1. PT XYZ (“Company”) is an Indonesian limited liability company established on 1 January 2008 and engaged in nickel mining operations under a valid Mining Business License. The Company has been in the production stage since 1 January 2010. PT XYZ is currently classified as a Domestic Investment Company. Its AoI expressly prohibits foreign shareholding and requires that all members of the Board of Directors and Board of Commissioners be Indonesian individuals.
- 4.2. The Company’s shareholding is held by two Indonesian shareholders: PT BCD, holding 9,900 shares (99%), and PT JKL, an affiliate of PT BCD, holding 100 shares (1%).
- 4.3. PT PQR (“Purchaser”) is a Foreign Investment Company owned by foreign shareholders. The Purchaser intends to acquire 5,100 shares (51%) of the Company, consisting of 5,000 shares from PT BCD and 100 shares from PT JKL, at a price of IDR 100,000,000 per share. Following completion, PT BCD will retain 49% of the shares.
- 4.4. The Purchaser will pay 60% of the purchase price at closing, while the remaining 40% will be treated as deferred payment, payable two years after the effective date. Notwithstanding the deferred payment, the parties intend for all shares to be transferred immediately upon execution of the transaction documents.
- 4.5. The Purchaser possesses the following material assets: the Right to Build (Hak Guna Bangunan or HGB) over two plots of land; a bank account maintained at Bank ‘ABCD’; several material insurance policies; factory machinery; and commercial receivables.

5. ANALYSIS / DISCUSSION

5.1. **Conditions Precedent of the Proposed Transaction**

The proposed acquisition cannot be lawfully implemented until three mandatory conditions precedent are satisfied, as they constitute fundamental legal barriers to the share transfer:

- 5.1.1. **Mining Law Approval (MEMR):** Pursuant to Article 93A(1) of Law Number 3 of 2020, any change in the shareholding of a Mining Business License holder requires mandatory prior approval from the Minister of Energy and Mineral Resources (MEMR). Failure to obtain this prior approval renders any share transfer legally invalid under public regulatory law and exposes PT XYZ to severe administrative sanctions, including suspension or revocation of the Mining Business License (Article 151, Law No. 3/2020)³.
- 5.1.2. **Corporate Law Amendment (AoI):** The AoI of PT XYZ expressly prohibits foreign shareholding. As the AoI constitutes the company's binding internal constitution (Article 15, Law No. 40/2007), a transfer violating this restriction cannot be legally implemented or recorded in the Shareholders Register (Article 57(1)). Therefore, a prior GMS resolution amending the AoI to remove the foreign ownership restriction is mandatory.
- 5.1.3. **Investment Law Conversion (PMA):** The entry of PT PQR, a Foreign Investment Company, results in the automatic conversion of PT XYZ from a Domestic Investment Company (PMDN) into a PMA company (Articles 1 and 5, Law No. 25/2007). The transaction value of IDR 510,000,000,000 for 5,100 shares fully satisfies the minimum investment threshold for PMA companies. This conversion must be completed through the Online Single Submission Risk-Based Approach

³ SSEK Indonesian Legal Consultants, *Mining in Indonesia*.

(OSS-RBA) system concurrently with all other required ministerial approvals.

5.2. Mandatory Regulatory Compliance: Divestment Risk

Once the CPs are met, PT XYZ will be subject to ongoing compliance with the mandatory divestment regime. Since the Company has been producing for over 15 years, it is subject to divestment under PP 96/2021 Article 147 and Permen ESDM 7/2020. While foreign ownership is allowed at 51% for the next five years, it must be capped at 40% by year 20⁴.

As part of the ministerial approval process under Article 93A, PT PQR is required to submit a divestment roadmap that identifies qualified Indonesian buyers. Priority must be accorded to existing Indonesian shareholders, specifically PT BCD, through a right of first refusal at fair market value. Non-compliance with the divestment mandate exposes the Company to administrative fines, suspension of activities, and revocation of the Mining Business License. Therefore, legal due diligence must secure regulatory compliance warranties, including future divestment protection and tag-along rights for PT BCD.

5.3. The Deferred Payment Obligation and Risk Profile

5.3.1. The Deferred Payment Obligation and Risk Profile

The purchase price structure creates a material deferred obligation of IDR 204,000,000,000 (40% of the total IDR 510,000,000,000), payable two years post-closing (IDR 200B owed to PT BCD and IDR 4B to PT JKL). Since the parties intend for all shares to be transferred immediately, this arrangement exposes the Sellers to significant risks of

⁴ Ida Sumarsih, 'Challenging Nominee Agreements in the Mining Industry: Between Constitutional Mandates and Legal Evasion' (2025) 15(1)

non-payment and enforcement difficulty. Mitigation is essential to prevent the Sellers from becoming mere unsecured creditors should the Purchaser default.

5.3.2. Deficiency of the Share Pledge in Insolvency

The primary intended mechanism, a Share Pledge (*gadai saham*) over the acquired shares, is legally recognized under Article 60 of Law No. 40 of 2007 and grants the Sellers a preferential right over the asset (Article 1150 of the Civil Code). However, for an asset-heavy enterprise, this security is economically insufficient in the event of bankruptcy (Law No. 37 of 2004). Under Indonesian insolvency doctrine, shareholders are treated as residual claimants with rights only to the remaining assets after all secured and unsecured creditors have been fully satisfied. Consequently, while the share pledge formally persists, the pledged shares often become economically worthless in liquidation, undermining the pledgee's ability to recover the debt through execution of the collateral⁵.

5.3.3. Structuring a Comprehensive Legal Measures

Given that the core value of PT XYZ resides in land and immovable assets under HGB certificates, the Sellers must mandate a layered package that secures every asset class and extends recourse beyond the Purchaser:

- 5.3.3.1. **Hak Tanggungan/Mortgage:** HT provides the superior form of security over land, as regulated by Law No. 4 of 1996. It grants the Sellers separatist creditor priority and a strong executorial title, which allows for direct public

⁵ Sinaga, "The Rights of Creditors of Guarantee Pledge of Shares in Bankrupt PT," Journal Article (Semantic Scholar, 2022)

auction of the land upon default, preserving collateral integrity⁶.

5.3.3.2. Fiduciary Security (Movable Assets): To secure operational assets like machinery, receivables, and insurance claims, Fiduciary Security must be obtained (Law No. 42 of 1999). Registration grants the Sellers a priority claim over these key movable assets.

5.3.3.3. Pledge of Bank Account (Liquid Assets): A direct Pledge or Assignment agreement must be executed with Bank 'ABCD' over the Purchaser's bank account is critical as it secures the company's most liquid asset, providing the Sellers with immediate, high-priority access to cash funds for repayment

5.3.3.4. Corporate Guarantee (Personal Security): A Corporate Guarantee (*borgtocht*) from the Purchaser's parent company should be secured. This mechanism extends legal recourse, bringing the parent's financial stability to support the obligation⁷⁸.

5.3.4. Documentation of the Principal Debt and Security Linkage

This layered approach, combining real security (HT, Fiduciary, Pledge) with personal security (Corporate Guarantee), maximizes the Sellers' enforceability and recovery prospects. The entire deferred obligation must be formally documented in a Promissory Note or Deferred Payment Agreement. This instrument serves as the principal debt title, clearly defining the amount, maturity, default interest, and enforcement rights, to which all the ancillary security agreements are legally attached

⁶ SSEK/Allen & Gledhill, "Taking Security under Indonesian Law" (2025)

⁷Kitab Undang-Undang Hukum Perdata [Indonesian Civil Code] arts 1820–1850.

⁸ IJERSC, "Responsibility of Holding Company Towards Bankrupt Subsidiaries

5.4. Protection Of The Minority Shareholder's Rights In The Post-Transaction Management Structure

5.4.1. Assessment of Minority Shareholder Vulnerability

Following the proposed transaction, PT BCD will hold 49% of the shares in PT XYZ, being PT XYZ's minority shareholder. This exposes PT BCD to the risk of control dilution and potential abuse by the controlling shareholder. Accordingly, it is legally necessary for PT BCD to secure enhanced statutory and structural protections to preserve its economic and governance interests in the Company.

5.4.2. Statutory and Corporate Governance Minimums

Minority shareholders are afforded several mandatory statutory protections under Law Number 40 of 2007. These include:

5.4.2.1. Exit Rights: Article 62 entitles dissenting shareholders to require the Company to repurchase their shares at a fair value in the event of fundamental corporate actions (e.g., mergers, acquisitions, AoI amendments). This serves as a primary exit-protection mechanism.

5.4.2.2. Judicial Recourse: Article 61 grants any shareholder the right to bring a claim against the Company where corporate actions are deemed unfair or without valid justification.

5.4.2.3. Management Representation: Articles 94 and 111 allow shareholders to determine the composition of the BoD and BoC. PT BCD should secure the right to nominate at least one director and one commissioner as a minimum safeguard for representation and supervisory oversight.

5.4.2.4. Information Rights: Shareholders are entitled to access the Company's annual reports⁹. This right should be expanded through the AoI to permit periodic financial

⁹ Law No 40 of 2007 on Limited Liability Companies (Indonesia) Art. 100(3).

reporting, independent audits, and inspection of operational records for effective monitoring.

5.4.3. Implementation of Structural Governance through Dual-Class Shares

The most robust mechanism for safeguarding PT BCD's minority position is the implementation of a dual-class share structure, formalized within the AoI. This structure involves classifying shares into two distinct types, typically Series A Shares (allocated to PT BCD) and Common Shares (allocated to the majority Purchaser). Pursuant to Article 53 of Law Number 40 of 2007, Series A Shares may lawfully be granted special, differentiated rights concerning voting, management nomination, and economic interests¹⁰.

The primary advantage of the Series A classification is the grant of Veto Rights over specific Reserved Matters. These veto rights must cover strategic decisions critical to the Company's value and PT BCD's interest, including amendments to the AoI, issuance of new shares, disposal of material assets, approval of mining operational plans, and merger or liquidation resolutions. Critically, unlike purely contractual arrangements, special share classifications bind the Company itself and are enforceable *erga omnes* (against the whole world), making this mechanism structurally superior to purely contractual minority protections. Furthermore, the Series A Shares must incorporate explicit economic safeguards, including mandatory pre-emptive rights to subscribe for newly issued shares¹¹ to prevent equity dilution, guaranteed dividend policy safeguards, and effective deadlock

¹⁰ M P Yova, *Perlindungan Hukum Bagi Pemegang Saham Publik Pada Emiten Yang Menerapkan Struktur Dual Class Shares Dengan Mekanisme Hak Suara Multipel* (Skripsi, Universitas Gadjah Mada 2023).

¹¹ Law No 40 of 2007 on Limited Liability Companies (Indonesia) art 43.

resolution mechanisms to ensure corporate continuity and prevent economic oppression.

5.5. Required Transactional and Regulatory Instruments

The lawful implementation of the proposed acquisition necessitates a coordinated set of corporate, transactional, security, and regulatory documents. Any defect in these instruments may render the transaction ineffective, unenforceable, or administratively non-compliant.

5.5.1. Corporate Governance and Authorization Documents

These instruments effect the necessary internal corporate changes and authorize the transaction:

5.5.1.1. GMS Resolutions: Required from PT XYZ to approve the amendment of the AoI and the entry of the new controlling shareholder. Separate GMS resolutions are required from PT BCD and PT JKL to approve the disposal of shares and the deferred payment structure to prevent ultra vires acts.

5.5.1.2. Deed of Amendment to the AoI: Executed before a notary, this deed removes the prohibition on foreign shareholding (per Section 5.1) and incorporates the dual-class share structure and veto rights necessary for minority protection (per Section 5.3). This deed requires final approval from the Ministry of Law and Human Rights.

5.5.2. Principal Transactional Contracts

These documents govern the commercial and legal transfer of shares:

5.5.2.1. Conditional Share Purchase Agreement (CSPA): This constitutes the principal commercial contract governing the purchase price, deferred payment structure, and representations and warranties. It must clearly list the

Conditions Precedent (CPs): ministerial approval, PMA conversion, and AoI amendment.

5.5.2.2. Deed of Share Transfer: Executed before a notary at closing, this formal instrument effects the legal transfer of ownership. Legal title arises only upon its registration in the Shareholders Register.

5.5.2.3. Promissory Note or Deferred Payment Agreement: This evidences the Purchaser's obligation to pay the deferred forty percent of the purchase price, including maturity date, default interest, acceleration clauses, and enforcement provisions, forming the principal debt title (per Section 5.2).

5.5.3. Security and Collateral InstrumentsAs detailed in Section 5.2, a comprehensive package is required to convert the Sellers into secured creditors:

5.5.3.1. Share Pledge Agreement: Based on Art. 60 of Law No. 40/2007The pledge must be recorded in the Company's Shareholders Register (PT XYZ).

5.5.3.2. Corporate Guarantee: Must be made in writing and signed by the authorized representatives of the Guarantor (the Purchaser's parent company).

5.5.3.3. Deeds of Mortgage (Hak Tanggungan): The legal validity and perfection of a Deed of Mortgage (Hak Tanggungan or HT) over the land assets require two mandatory steps under Law Number 4 of 1996. First, the security instrument must be formally executed via a Notarial Deed of Granting Hak Tanggungan (APHT), a specialized deed that must be prepared and signed before a certified Land Deed Official (PPAT). Second, the APHT must then be registered with the National Land Agency (Badan Pertanahan Nasional or BPN). This registration is

critical as it formally creates the Hak Tanggungan right and grants the creditor (the Sellers) the necessary priority status for enforcement against third parties.

5.5.3.4. Fiduciary Security Deeds: The validity and perfection of a Fiduciary Security Deed are governed by Law Number 42 of 1999 and require two non-negotiable legal steps. First, the security agreement must be executed in the form of a Notarial Deed. Second, and critically, this deed must be registered with the Fiduciary Registration Office (a process now commonly completed via the Online Single Submission or OSS system). This registration is mandatory for the legal creation of the fiduciary transfer and is the sole mechanism by which the secured party (the Sellers) achieves priority creditor status against third parties.

5.5.3.5. Pledge/Assignment Agreement: The perfection of the Pledge or Assignment of the Bank Account requires adherence to the rules governing the transfer of intangible claims under the Indonesian Civil Code (KUHPerdata). Specifically, the transfer of the creditor's rights must be formally documented, notified to, and explicitly acknowledged by, the debtor, which in this case, is Bank 'ABCD'. This notification and acknowledgement are mandatory to perfect the transfer of the bank account balance to the Sellers, ensuring the security is legally binding and enforceable against the bank.

5.5.4. Regulatory and Post-Closing Filings

These filings are necessary to achieve regulatory validity and complete the PMA conversion:

5.5.4.1. Online Single Submission (OSS-RBA) Filings: Required to convert PT XYZ into a Foreign Investment Company

(PMA) and update the shareholder and capital structure (per Section 5.1).

5.5.4.2. Ministerial Approval and Mining Business License Amendment: The application for approval of the share transfer must be submitted to the Ministry of Energy and Mineral Resources (MEMR), followed by the amendment of the Mining Business License (IUP) to reflect the new foreign-controlled structure and maintain regulatory validity.

6. CONCLUSION

The proposed acquisition of shares in PT XYZ by PT PQR cannot yet be lawfully implemented due to mandatory regulatory approval requirements and the foreign ownership prohibition in the AoI. These obstacles may be resolved through ministerial approval, Foreign Investment Company conversion, and amendment of the AoI. The deferred payment structure further requires robust security arrangements, and PT BCD must be afforded minority protection rights. Accordingly, although the transaction is not presently executable, it remains legally feasible if all regulatory, corporate, and contractual requirements are fully satisfied.

7. RECOMENDATIONS

To ensure a lawful closing and safeguard post-transaction interests, both parties must execute critical verification steps. The Purchaser must conduct a comprehensive L on PT XYZ to verify all representations and warranties and mitigate inherited liabilities. Concurrently, a targeted Mining Compliance Audit is essential to assess the risk of the IUP's validity and ensure regulatory compliance post-acquisition. On the other hand, the Sellers must verify the quality of the collateral backing the deferred payment, including confirming the current selling value of the HGB land to ensure the Mortgage provides sufficient coverage. Furthermore, they must rigorously ensure the perfection of all security instruments (registration/notification) and mandate the implementation of the Dual-Class Share Structure in the AoI to structurally protect PT BCD's continuing minority position.

BIBLIOGRAPHY

WEB SOURCES

SSEK Indonesian Legal Consultants, *Mining in Indonesia – Renewal and Transfer of Mineral Licences* (SSEK, 9 November 2020) <<https://ssek.com/blog/mining-in-indonesia-ai-renewal-and-transfer-of-mineral-licenses>> accessed 5 December 2025.

Pardede G and others, *Taking Security under Indonesian Law: Key Principles, Legal Requirements and Practical Insights* (Agilegal, 22 August 2025) <https://www.agilegal.id/publication/articles/31089/taking-security-under-indonesian-law-key-principles-legal-requirements-and-practical-insights> accessed 5 December 2025.

JOURNALS

Sumarsih I, 'Challenging Nominee Agreements in the Mining Industry: Between Constitutional Mandates and Legal Evasion' (2025) 15(1) *Indonesia Law Review*

Sinaga EP and Maulisa N, 'The Rights of Creditors of Guarantee Holders in a Limited Liability Company Declared Bankrupt' (2022) 4(1) *SIGN Jurnal Hukum* 72–86.

Yova M P, *Perlindungan Hukum Bagi Pemegang Saham Publik Pada Emiten Yang Menerapkan Struktur Dual Class Shares Dengan Mekanisme Hak Suara Multipel* (Skripsi, Universitas Gadjah Mada 2023).

Aryaputra Singgih, J. ., & Azhar Siregar, H. . (2023). The Responsibility Of Holding Company Towards Bankruptted Subsidiaries Based On Law No. 40 Of 2007 About Limited Companies. *International Journal of Educational Research & Social Sciences*, 4(4), 664–670. <https://doi.org/10.51601/ijersc.v4i4.688>

LEGISLATION

Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition (State Gazette of the Republic of Indonesia Year 1999 Number 33, Supplement to the State Gazette Number 3817).

Regulation of the Minister of Finance Number 129/PMK.08/2011 concerning the Use of Projects as a Basis for Issuing State Sharia Securities (State Gazette of the Republic of Indonesia Year 2011 Number 502).

Law Number 40 of 2007 concerning Limited Liability Companies (State Gazette of the Republic of Indonesia Year 2007 Number 106, Supplement to the State Gazette Number 4756).

Law Number 3 of 2020 concerning the Amendment to Law Number 4 of 2009 concerning Mineral and Coal Mining (State Gazette of the Republic of Indonesia Year 2020 Number 147, Supplement to the State Gazette Number 6524).

Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (State Gazette of the Republic of Indonesia Year 2004 Number 133, Supplement to the State Gazette Number 4432).

Law Number 4 of 1996 concerning Hak Tanggungan (Mortgage over Land and Related Objects) (State Gazette of the Republic of Indonesia Year 1996 Number 42, Supplement to the State Gazette Number 3632).

Law Number 42 of 1999 concerning Fiduciary Security (State Gazette of the Republic of Indonesia Year 1999 Number 168, Supplement to the State Gazette Number 3888).

Indonesian Civil Code (KUHPerdara) (Specifically referencing Articles 1150, 1820, and 613, among others, which constitute legal standing for various contractual and security measures).

AILLMC

COLLECTION OF AWARD-
WINNING LEGAL MEMORANDA

ALSA Indonesia
Legal Memorandum Competition 2025
In Collaboration with HHP Law Firm



Ulfa Siti Zahra
Universitas Gadjah Mada
Legal Memorandum Second Runner-Up

**ACQUISITION OF SHARES IN PT XYZ (INDONESIAN
INVESTMENT MINING COMPANY) BY PT PQR
(FOREIGN INVESTMENT COMPANY)**

Written by Ulfa Siti Zahra

Universitas Gadjah Mada

To : ALSA National Chapter Indonesia
From : Ulfa Siti Zahra
Subject : Acquisition of Shares in PT XYZ by PT PQR
Date : 5th of December 2025

A. Statement of Assignment

We prepared this memorandum to respond to the inquiries from PT XYZ and PT PQR regarding the acquisition of shares in PT XYZ by PT PQR. PT XYZ is an Indonesian Investment Company (*Perusahaan Penanaman Modal Dalam Negeri* or “PMDN”) that conducts nickel mining business activities, whereas PT PQR is a Foreign Investment Company (*Perusahaan Penanaman Modal Asing* or “PMA”). We understand that PT PQR (“Purchaser”) intends to acquire 51% of PT XYZ (“Company”) shares, which are currently held by PT BCD and PT JKL (PT BCD and PT JKL are hereinafter referred to as “Sellers”). Additionally, We also note that the Company’s articles of association prohibit foreign ownership, and the Purchaser will only pay the Sellers 60% of the consideration on completion.

B. Issues

Referring to the transaction background, this memorandum shall provide an overview of the following issues.

1. Can the proposed share acquisition transaction be legally carried out:
 - a. From a regulatory perspective, considering that the Company conducts mining business activities?

b. From a corporate perspective, considering that the Company's Articles of Association prohibit foreign shareholding?

If the transaction cannot be carried out in its current condition, what alternative actions or structures can be taken to proceed with the transaction?

2. What legal measures can the Sellers take to secure the payment of the remaining purchase price by the Purchaser to the Sellers?
3. What rights can be proposed or requested by the minority shareholder in the Company regarding the management of the Company post-transaction?
4. What documents must be signed by the Sellers, the Purchaser, and/or the Company to implement the transaction, and what is the purpose of each document?

C. Brief Answer

In response to the issues, We provide the brief answer as follows.

1. Notably, the proposed transaction can be carried out both from a regulatory and corporate perspective. However, several actions must be taken to proceed with the transaction. These include ensuring that all requirements for establishing a PMA have been met and obtaining a decision of the General Meeting of Shareholders/shareholders' resolution regarding the acquisition and the amendment to the Company's articles of association.
2. The legal measures that the Seller can take to secure the payment of the remaining purchase price include entering a direct loan agreement while securing the Purchaser's asset(s), or negotiating with the Purchaser to obtain a credit facility.
3. PT BCD, as the minority shareholder post-transaction, may propose these rights to protect their interests: (a) reserved matters, (b) board representation, (c) anti-dilution protection, (d) right of first refusal, (e) tag along, and (f) exit mechanism (put option).

4. The primary documents that must be signed to implement the transaction consist of transaction documents, corporate documents, loan and security agreements, and supporting documents.

D. Statement of Facts

From those provided conditions, the details of facts in the present case are as follows.

1. The Company is a nickel mining company holding a Mining Business License (*Izin Usaha Pertambangan* or “**IUP**”), established on 1st of January 2008, operating in Indonesia. It commenced production operations on 1st of January 2010, using the open-pit method within its licensed mining area.
2. The Company is currently classified as PMDN with the following shareholding composition:
 - a. PT BCD owns 9.900 shares in the Company (99%).
 - b. PT JKL owns 100 shares in the Company (1%).
3. The Company does not hold any shares or other forms of equity participation in any other company. The Company solely engages in mining activities and does not conduct any other business operations.
4. The Company’s Articles of Association (“**AoA**”) explicitly state that members of the Board of Directors (“**BoD**”) and members of the board of commissioners (“**BoC**”) must be Indonesian individuals, and foreign ownership is not permitted.
5. The Purchaser, a PMA, wishes to acquire the Company. The details of the proposed share acquisition transaction by the Purchaser are as follows:
 - a. The Purchaser plans on purchasing 5.000 shares held by PT BCD and 100 shares held by PT JLK at IDR 100 million per share. Hence, the shareholding composition post-transaction will be 51% held by Purchase and 49% held by PT BCD.

- b. The Purchaser will only pay the Sellers 60% of the consideration on completion. The remaining amount will be recorded as the Purchaser's indebtedness to the Sellers and will be paid 2 years after the effective date of the acquisition.
6. The Purchaser owns several assets in Indonesia, which include the right to build over two plots of land, a bank account at Bank ABCD, insurance policies, factory machinery, and receivables.
7. The parties agree that the transaction will be settled without delay and in a single transaction, with all shares transferred immediately upon signing the relevant deeds.

E. Analysis/Discussion

1. Regulatory and Corporate Perspective of the Proposed Transaction

a. Regulatory Perspective

Article 1(3) and Article 5(3)(b) Law Number 25 of 2007 on Investment, read together, regulate that a company becomes a PMA when foreign investors purchase its shares. In line with the present case, the Company's investment status will be changed from PMDN to PMA as the Purchaser acquires the Sellers' shares. This change is subject to the requirements for establishing a PMA, which needs to be assessed to determine if the proposed transaction can be legally carried out:

Regulation	Analysis	Fulfillment
The company must be in a form of limited liability company. ¹	The Company is in a form of limited liability company.	✓
The company consists of at least two shareholders ² , and the entire or part of the company's capital is	The composition of shareholders post-transaction will consist of the Purchaser	✓

¹ Article 5(2) Law Number 25 of 2007 on Investment.

² Article 7(2) Law Number 40 of 2007 on Limited Liability Companies.

Regulation	Analysis	Fulfillment
sourced from foreign investors. ³	(foreign investor) and PT BCD (local investor).	
The company must be domiciled in Indonesia. ⁴	The Company is domiciled in Indonesia.	✓
The company's business activity(ies) are not restricted for PMA. ⁵	The Company's business activity is classified as KBLI 07295, which is explicitly listed as the allowed business activity for PMA. ⁶	✓
The total investment value must be greater than IDR 10 billion, excluding land and buildings. ⁷	A mining company usually meets these requirements. Nonetheless, to ensure it, further due diligence is required by checking the Company's financial statement and AoA.	✓*
The value of the issued capital is equal to the paid-up capital, which at least IDR 2.5 billion. ⁸		✓*

(✓) = fulfilled ; (✓*) = fulfilled with notes

Additionally, it must be noted that an acquisition requires approval from the relevant authorities. In the mining sector, changes in share

³ Article 1(3) Law Number 25 of 2007 on Investment.

⁴ Ibid.

⁵ Article 12 Law Number 25 of 2007 on Investment *jo*. Article 2 Presidential Regulation Number 49 of 2021 on the amendment of Presidential Regulation Number 10 of 2021 on Investment Business Field.

⁶ Appendix I Number 38 Presidential Regulation Number 49 of 2021 on the Amendment to Presidential Regulation Number 10 of 2021 on Investment Business Field.

⁷ Article 26(2) Regulation of the Minister of Investment and Downstreaming/Head of the Investment Coordinating Board Number 5 of 2025 on Guidelines and Procedures for Implementing Risk-Based Business Licensing and Investment Facilities Through an Electronically Integrated Business Licensing System (Online Single Submission).

⁸ Article 26(10) Regulation of the Minister of Investment and Downstreaming/Head of the Investment Coordinating Board Number 5 of 2025 on Guidelines and Procedures for Implementing Risk-Based Business Licensing and Investment Facilities Through an Electronically Integrated Business Licensing System (Online Single Submission).

ownership for IUP holders require prior approval from MEMR/governor, which must be obtained before submission to the Minister of Law and Human Rights (“MOLHR”).⁹ As the Company holds an operation production IUP, the proposed transaction may only proceed upon obtaining MEMR/governor’s approval (**Appendix**).

b. Corporate Perspective

For a proposed acquisition to proceed, it requires a decision from the existing shareholders. The decision can be obtained through circular resolution or GMS, with the quorum that is stipulated either in a company’s AoA or Law Number 40 of 2007 on Limited Liability Companies (“Company Law”).¹⁰ Notably, the GMS or circular resolution agenda will revolve around the acquisition, along with the AoA amendment.

Given that the current Company’s AoA prohibits foreign ownership and foreign members of the BoD and BoC, the proposed acquisition would necessitate an amendment of the AoA to accommodate the shift to PMA. Moreover, the acquisition may result in changes to the members of the Company’s BoC and/or BoD, who may be replaced by foreign members. Hence, the Company’s AoA must be amended accordingly through the GMS or shareholders’ resolution.

2. Legal Measures for the Sellers to Secure the Payment of the Remaining Purchase Price

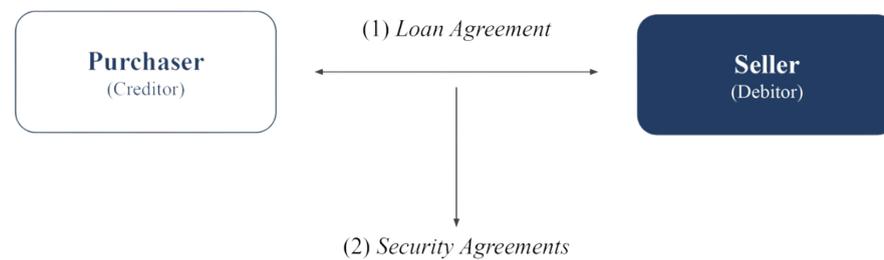
The remaining amount (i.e. 40% of the purchase price) will be recorded as indebtedness owed by the Purchaser to the Sellers, and will be paid 2 years after the effective date of the acquisition. From the Seller’s perspective, this situation may pose a risk of loss due to the Purchaser's

⁹ Article 64 (1) Regulation of the Minister of Energy and Mineral Resources of the Republic of Indonesia Number 7 Of 2020 on Procedures for the Granting of Areas, Licensing, and Reporting in Relation to Mineral and Coal-Mining Business Activities.

¹⁰ Article 89 and Article 91 Law Number 40 of 2007 on Limited Liability Companies.

non-payment of the remaining purchase price. However, there are two legal measures that the Seller can take to prevent the risk.

1) **Direct loan agreement**



First, the indebtedness owed by the Purchaser to the Sellers and the 2-year period can be regulated in a loan agreement, which serves as the underlying agreement. *Second*, the Seller must secure the Purchaser's asset(s) with the accessory agreements using the following instruments:

Purchaser's Asset	Form of Security ¹¹	Legal Basis
Bank account at Bank ABCD	Pledge	Indonesian Civil Code.
The acquired shares [if necessary, the acquired shares by the Purchaser from the Sellers can also be secured]		
Two plots of land	Land Mortgage	Law Number 4 of 1996 on Land Mortgage and Land-Related Objects.

¹¹ Assegaf Hamzah & Partners, 'Guide to Lending Security in Southeast Asia' (Rajah & Tann Asia, 2021) <<https://www.ahp.id/client-update-12-july-2021/>> accessed 1st of December 2025.

Purchaser's Asset	Form of Security ¹¹	Legal Basis
Insurance policies	Fiduciary	Law Number 42 of 1999 on Fiduciary.
Factory machinery		
Receivables		

Whether all these assets need to be secured to cover the full amount of the loan is subject to the value of each asset and to negotiation between the Purchaser and Seller. If the Purchaser fails to pay the remaining purchase price on the maturity date, the Seller may execute its security interests in the secured assets by adhering to applicable laws and regulations.

2) External creditor



The Seller may negotiate with the Purchaser to pay the full amount of the purchase price by acquiring a loan from an external creditor (e.g. credit facility from a bank). This option shall favor the Seller as it will reduce the non-payment risk. However, it is essential to assess the Purchaser's creditworthiness, consider other relevant risks that may disadvantage the Purchaser, and consider the potential for delays in settling the transaction.

3. Rights Can be Proposed by the Minority Shareholder in the Company Post-Transaction

Pursuant to the Company Law, a company must operate following the principles of good corporate governance,¹² which are transparency, accountability, responsibility, independence, and fairness.¹³ One representation of these principles is protecting the rights of minority

¹² Explanation of Article 4 Law Number 40 of 2007 on Limited Liability Companies.

¹³ Nindyo Pramono, *Hukum Persewaan Terbatas*, (Sinar Grafika 2014) [351].

shareholders.¹⁴ In this context, PT BCD, as the minority shareholder post-transaction, may propose these rights to protect their interests:¹⁵

Rights	Purpose
Reserved matters	Ensuring PT BCD to participate in major decision-making, such as capital changes, mergers, acquisitions, etc.
Board representation	Allowing PT BCD to nominate BoD and/or BoC member(s) from their representatives, which implies PT BCD's involvement in the Company's operation.
Right of first refusal	Obtaining a prior offer if the existing shareholder(s) wishes to sell their shares to a third party.
Anti-dilution protection	Protecting the proportion of PT BCD share ownership from decreasing due to the issuance of new shares.
Tag along	Allowing PT BCD to participate in selling their shares if the majority sells shares to a third party.
Exit mechanism (put option)	Allowing PT BCD to sell their shares at a fair price, if they wish to leave the Company, without losing the value of their investment.

Please note that the Company Law does not automatically grant these rights. Therefore, it must be explicitly stated in the Company's AoA and specified in the shareholders' agreement.

¹⁴ Hirman, Yuni Purwati, and Sigit Sapto Nugroho, *Hukum Perseroan Terbatas Prinsip Good Corporate Governance dan Doktrin Piercing the Corporate Veil*, (Pustaka Iltizam 2017) [50—51].

¹⁵ Isabella Leoni Trika A, 'Perlindungan Hukum Pemegang Saham Minoritas dalam Perjanjian Pemegang Saham di Indonesia' (2023) 6 *UNES Law Review* [5144-5156].

4. Documents that Must be Signed by the Parties to Implement the Transaction

a. Transaction Documents

1) Condition of share purchase agreement

Signed by : The Seller and the Purchaser.

Purpose : Governing the condition precedent and condition subsequent of the share sales.

2) Share purchase agreement

Signed by : Executed in a notarial deed.

Purpose : Governing the final share sales terms.

3) Shareholders' Agreement

Signed by : The Company's shareholders (post-transaction).

Purpose : Arranging the shareholders' rights and responsibility.

b. Corporate Documents

1) GMS decision/shareholders' resolution

Signed by : If it is conducted through a circular resolution, then the resolution must be signed by all shareholders.¹⁶ Additionally, GMS decision/resolution concerning AoA amendment must be executed in a notarial deed no later than 30 days after the GMS decision/resolution.¹⁷

Purpose : Approving the transaction and amending the AoA.

2) Decision of BoD/directors' resolution

Signed by : The authorized directors of the Sellers and/or the Purchaser.

¹⁶ Article 91 Law Number 40 of 2007 on Limited Liability Companies.

¹⁷ Article 21(5) and (6) Law Number 40 of 2007 on Limited Liability Companies.

Purpose : The AoA of the Sellers and/or the Purchaser may specify that the company requires BoD approval before undertaking such transactions.

3) Decision of BoC/commissioners' resolution

Signed by : The authorized commissioners of the Sellers and/or the Purchaser.

Purpose : The AoA of the Sellers and/or the Purchaser may specify that the company requires BoC approval before undertaking such transactions.

4) Amended AoA

Signed by : Executed in a notarial deed.

Purpose : Regulating how the company operates post-transaction.

5) Updated shareholders register

Signed by : The authorized director of the Company.

Purpose : The Purchaser will only be considered as the owner of the sale shares if its name has been recorded in the shareholders register.¹⁸

c. Loan and Security Documents

1) Loan agreement

Signed by : The Seller and the Purchaser.

Purpose : Governing the Purchaser's indebtedness to the Seller.

2) Pledge agreement

Signed by : Practically executed in notarial deed.¹⁹

Purpose : Governing the secured assets.

3) Mortgage agreement

¹⁸ Article 52(2) Law Number 40 of 2007 on Limited Liability Companies.

¹⁹ Assegaf Hamzah & Partners, 'Guide to Lending Security in Southeast Asia' (Rajah & Tann Asia, 2021) <<https://www.ahp.id/client-update-12-july-2021/>> accessed 1st of December 2025.

Signed by : Must be executed in a notarial deed.²⁰

Purpose : Governing the secured assets.

4) Fiduciary agreement

Signed by : Must be executed in a notarial deed.²¹

Purpose : Governing the secured assets.

d. Supporting Documents

1) Regulatory filing documents

Signed by : The authorized representative of the Company.

Purpose : Filing the required documents to the relevant regulators (e.g. MEMR, MOLHR).

2) Announcement documents

Signed by : The authorized representative of the Company.

Purpose : The Company Law requires pre-acquisition announcement to the creditors and employees.²²

B. Conclusion

1. From a regulatory perspective, the proposed transaction can be carried out as long as it meets all requirements for establishing a PMA. From a corporate perspective, the proposed transaction can be carried out by obtaining a decision of GMS/shareholders' resolution regarding the acquisition and the amendment to the AoA.
2. There are two options for the Seller to secure the remaining purchase price. *First*, by entering into a direct loan agreement and securing the Purchaser's asset(s). *Second*, by negotiating with the Purchaser to acquire a credit facility.
3. PT BCD, as the minority shareholder post-transaction, may propose these rights: (a) reserved matters, (b) board representation, (c) anti-dilution protection, (d) right of first refusal, (e) tag along, and (f) exit mechanism (put option).

²⁰ Article 10(2) Law Number 4 of 1996 on Land Mortgage and Land-Related Objects.

²¹ Article 5(1) Law Number 42 of 1999 on Fiduciary.

²² Article 127(2) Law Number 40 of 2007 on Limited Liability Companies.

4. The primary documents for implementing the transaction consist of transaction documents, corporate documents, loan and security agreements, and supporting documents.

BIBLIOGRAPHY

Legislation

- Law Number 42 of 1999 on Fiduciary (State Gazette of the Republic of Indonesia Number 168 of 199, Supplement to the State Gazette Number 3889).
- Law Number 25 of 2007 on Investment (State Gazette of the Republic of Indonesia Number 67 of 2007, Supplement to the State Gazette Number 4724).
- Law Number 4 of 1996 on Land Mortgage and Land-Related Objects (State Gazette of the Republic of Indonesia Number 42 of 1996, Supplement to the State Gazette Number 3632).
- Law Number 40 of 2007 on Limited Liability Companies (State Gazette of the Republic of Indonesia Number 106 of 2007, Supplement to the State Gazette Number 4756).
- Presidential Regulation Number 49 of 2021 on the Amendment to Presidential Regulation Number 10 of 2021 on Investment Business Field (State Gazette of the Republic of Indonesia Number 61 of 2021).
- Regulation of the Minister of Energy and Mineral Resources of the Republic of Indonesia Number 7 Of 2020 on Procedures for the Granting of Areas, Licensing, and Reporting in Relation to Mineral and Coal-Mining Business Activities (State Gazette of the Republic of Indonesia Number 220 of 2020).
- Regulation of the Minister of Investment and Downstreaming/Head of the Investment Coordinating Board Number 5 of 2025 on Guidelines and Procedures for Implementing Risk-Based Business Licensing and Investment Facilities Through an Electronically Integrated Business Licensing System (Online Single Submission) (State Gazette of the Republic of Indonesia Number 738 of 2025).

Books

Hirman, Yuni Purwati, and Sigit Sapto Nugroho, *Hukum Perseroan Terbatas Prinsip Good Corporate Governance dan Doktrin Piercing the Corporate Veil* (Pustaka Iltizam 2017).

Nindyo Pramono, *Hukum Perseroan Terbatas*, (Sinar Grafika 2014).

Journal

Isabella Leoni Trika A, 'Perlindungan Hukum Pemegang Saham Minoritas dalam Perjanjian Pemegang Saham di Indonesia' (2023) 6 *UNES Law Review*.

Web Source

Assegaf Hamzah & Partners, 'Guide to Lending Security in Southeast Asia' (Rajah & Tann Asia, 2021)

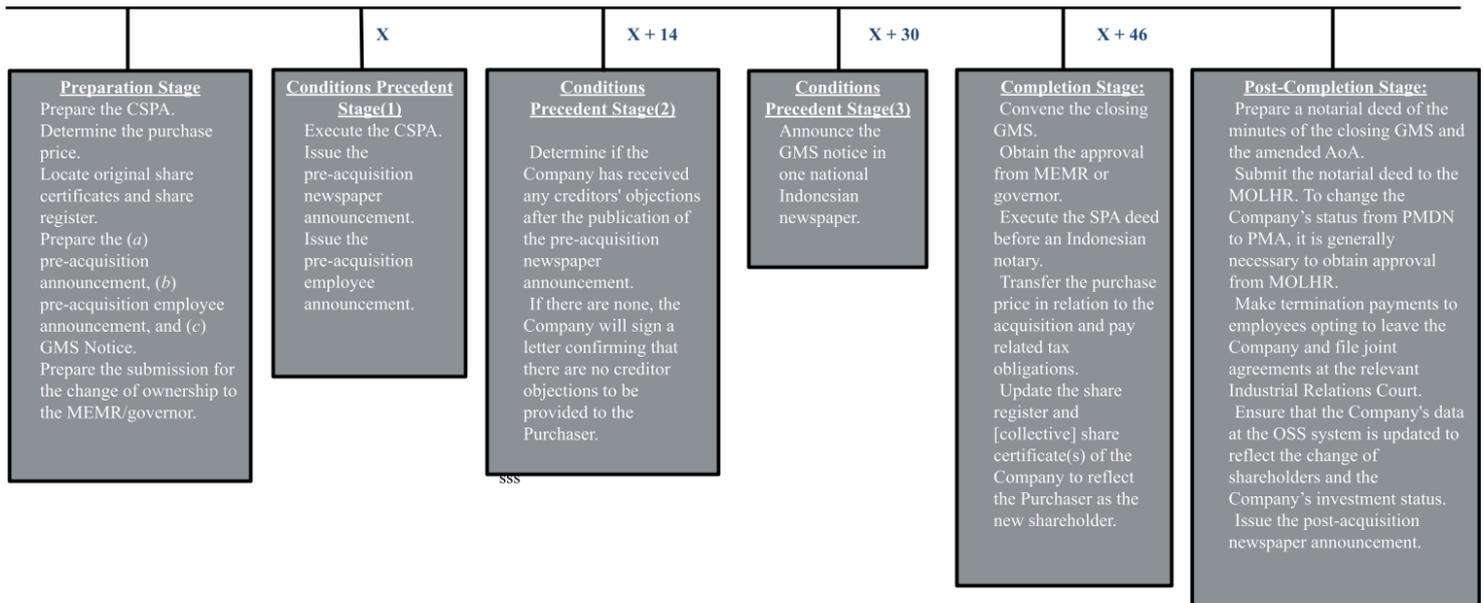
APPENDIX

*As per the information provided by the ALSA Indonesia Legal Memorandum Competition 2025 Committee, the legal memorandum must consist of a minimum of 1.500 words and a maximum of 3.000 words, **excluding footnotes, bibliography, and appendix.***

DIRECT ACQUISITION PROCEDURE

Min. 30 days

Min. 14 days, excluding the date of the
GMS notice closing





**NATIONAL CHAPTER
INDONESIA**

NATIONAL BOARD 2025-2026