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TRANSFER OF PRIVATE COMPANY SHARES IN THE AIFC: THE SIGNIFICANCE OF THE SHAREHOLDERS' REGISTER AND THE ROLE OF THE REGISTRAR

(information valid as of 1 June 2026)

Transactions involving shares of private companies incorporated in the jurisdiction of the Astana International Financial Centre (hereinafter – “AIFC”) often raise practical questions regarding the precise moment at which ownership rights to shares are transferred, as well as the interplay between the company’s internal corporate procedures and the registration requirements imposed by the AIFC Companies Registrar (hereinafter “AFSA” or the “Registrar”).

Instrument of Transfer

At first glance, the regulation of this matter appears relatively straightforward: AIFC legislation requires the execution of an instrument of transfer and the registration of the new owner in the company’s Shareholders’ Register. However, practical application of these provisions is complicated by the fact that, within the AIFC jurisdiction, a public register maintained by the Registrar exists alongside the company’s own Shareholders’ Register, and in recent years AFSA has implemented additional procedures to verify new shareholders.

As a result, a significant legal question arises in practice: at what exact moment does the acquirer become a shareholder of an AIFC company? This question has substantial practical importance for structuring M&A transactions, corporate restructurings, share transfers as collateral, the exercise of shareholder rights, and for determining the point at which corporate control arises, along with the associated regulatory risks.

This article examines the provisions of AIFC legislation governing the transfer of private company shares, analyzes the role of the company’s Shareholders’ Register and the AIFC Public Register, and explores the established administrative practice of AFSA with respect to the registration of shareholder changes.

According to paragraph 2 of Article 35 of the AIFC Companies Regulations¹, a private company is defined as a limited liability company (in the translation used on the AIFC website, “общество с ограниченной ответственностью”), and a share means a portion of the company’s charter capital, irrespective of its class.

The instrument of transfer, in its legal nature, represents both the method for transferring rights to shares and the document on the basis of which changes are recorded in the Shareholders’ Register. To a certain extent, this mechanism can be compared to matching debit and credit

¹ AIFC Companies Regulations – AIFC Companies Regulations No. 2 dated 20 December 2017 (as amended on 14 October 2024, effective from 1 January 2025).

instructions for the transfer of shares within a central securities depository system in the general jurisdiction of the Republic of Kazakhstan (hereinafter – “RK”)

At the same time, the instrument of transfer does not replace the primary civil-law agreement that constitutes the foundational basis for the transfer of shares. Such an agreement (for example, a sale and purchase agreement, a subscription agreement, or a transfer deed in the context of contributing shares of a private company to the charter capital of another legal entity, etc.) must exist separately and contain all the material terms of the transaction. Typically, this agreement itself is not submitted to the AIFC Registrar.

The corresponding transfer of rights must also be carried out in accordance with AIFC legislation, the company’s charter, any shareholders’ agreement (SHA), and the company’s internal corporate documents, which may require adherence to certain internal corporate procedures, including obtaining waivers from other shareholders of pre-emptive rights.

An interesting feature to note is that, unlike the Law of the RK on Limited and Additional Liability Partnerships, AIFC legislation generally does not provide shareholders with a pre-emptive right to acquire shares when they are sold to a third party, unless expressly stipulated in the SHA. However, such a right does arise in the case of an additional issuance of company shares. This shows a similarity with the Law of the RK on Joint-Stock Companies, although, unlike shares of a joint-stock company, shares of a private company do not require registration of issuance, preparation of a prospectus, or accounting in a central securities depository.

According to Section 54(1) of the AIFC Companies Regulations, a company is not entitled to register a transfer of shares unless it is presented with a properly executed written instrument of transfer on behalf of the acquirer, or unless the transfer is carried out in accordance with rules that permit the transfer of rights without a written instrument.

Paragraph 9.1 of the Standard Articles of Association for AIFC private companies further provides that the form of such a document may be any form approved by the company’s directors; however, the instrument of transfer must be signed by the transferor or a person authorized by them. For example, a standard form of instrument of transfer is available on the AIFC website in the post-registration actions section, together with a standard form of the transferor’s resolution.

Thus, signing the instrument of transfer is a mandatory step in the share transfer process. At the same time, the document itself merely establishes the basis for recording changes in the Shareholders’ Register and does not complete the transfer of rights without subsequent corporate actions.

Shareholders’ Register

According to Sections 54(2) and 54(5) of the AIFC Companies Regulations, upon the request of the person transferring shares, the company is obliged to promptly enter the acquirer’s name in the Shareholders’ Register. In other words, the direct maintenance of the Shareholders’ Register and the registration of the transfer of rights are carried out by the company itself.

Pursuant to Section 52(1) of the AIFC Companies Regulations, each private company is required to create and maintain a Shareholders’ Register (a standard form of the Shareholders’ Register is also available on the AIFC website). The company may, however, decide to keep the relevant information with the AIFC Registrar.

The practical application of this requirement has evolved over time. Previously, registration of private companies was carried out via submission of a paper form, which provided the option to choose the place where the Shareholders’ Register would be kept. Currently, registration is conducted online through the AIFC portal², and the electronic form does not include a separate

² <https://digitalresident.kz/>

option to select the register's storage location. This is likely because, as a general rule, the company itself maintains the Shareholders' Register, and the decision to transfer its maintenance to the Registrar is considered a subsequent corporate decision

Nevertheless, the possibility to make such a choice after registration remains, as evidenced by the availability of a separate post-registration notification form – the AIFC Notice of Place Where Registers Are Kept³.

It should also be noted that, regardless of whether the Shareholders' Register is maintained by the company itself or the information is kept with the Registrar, details of the company's shareholders are, in any case, reflected in the AIFC Public Register⁴.

For comparison, a similar approach is applied in the general jurisdiction of the Republic of Kazakhstan with respect to joint-stock companies and limited liability partnerships that delegate the maintenance of their registers to an independent registrar (Central Securities Depository) for the recording of securities or participatory interests in charter capital.

According to Section 41(2) of the AIFC Companies Regulations, a person becomes a shareholder of a company upon the simultaneous fulfillment of three conditions: (a) expressing consent to become a shareholder of the company; (b) acquiring the company's shares; and (c) having that person's details entered into the company's Shareholders' Register.

A literal interpretation of this provision indicates that, from a legal perspective, a person acquires the status of a shareholder of a private company only upon fulfillment of the last of these conditions – the entry of their details into the Shareholders' Register.

This approach is further confirmed by other AIFC instruments. For instance, paragraph 9.6 of the Standard Articles of Association for AIFC private companies provides that, until the acquirer is entered into the Shareholders' Register, the transferor continues to be regarded as the holder (owner) of the relevant share.

Thus, it is the entry in the Shareholders' Register that constitutes the official confirmation of shareholder status and the decisive legal act effecting the transfer of ownership of the shares. From that moment, all corporate rights of a shareholder, including the right to vote, the right to receive dividends, and other participatory rights in the company, pass to the acquirer, while the transferor ceases to hold such status.

Public Register

According to Section 204 of the AIFC Companies Regulations, the Registrar is required to maintain and publish registers of current and past company registrations in accordance with the requirements established by AIFC rules.

In this regard, pursuant to paragraph 17(1) of the AIFC Companies Regulations, when any registered details of a company (Registered Details) included in the Public Register are changed – including the composition of shareholders or the allocation of shares – the company is obliged to notify the Registrar in writing within 14 calendar days from the date of such change.

This obligation to notify the Registrar remains in force even if the Shareholders' Register is maintained directly by the company itself, rather than by the AIFC Registrar.

³ <https://afsa.aifc.kz/en/post-registration>

⁴ <https://publicreg.myafsa.com/>

Failure to comply with these requirements, including the deadlines for notification, may result in the imposition of a fine. For instance, Appendix 3 to the AIFC Companies Rules⁵ provides for a penalty of up to USD 10,000.

As noted above, a private company may make an election to have the information in its Shareholders' Register kept with the AIFC Registrar (Section 52(4) of the Regulations). However, even in this case, the obligation to provide information in a timely manner remains with the company itself.

Accordingly, pursuant to Section 52(14) of the AIFC Companies Regulations, during the period in which such an election is in effect, the company is required to provide the Registrar with all information that, in the absence of the election, would have been entered directly into the company's Shareholders' Register. Such information must be submitted within a reasonably short period after the occurrence of changes, but in any event no later than 14 calendar days.

Quote:

«(2) The Company must promptly enter the following in the Register of Shareholders:

(a) the names and addresses of its Shareholders, together with a statement of the Shares held by each Shareholder, distinguishing each Share by its number (if the Share has a number) and, if the Company has 2 or more classes of issued Shares, by its class;

(b) the date each Shareholder was registered as a Shareholder;

(c) the date any Person ceased to be a Shareholder;

(d) the date the number of Shares held by any Shareholder increased or decreased.

(14) During the period when an election under subsection (4) is in force, a Private Company must deliver to the Registrar any information under subsection (2) which the Private Company would, in the absence of any such election, have been obliged under these Regulations to enter in its Register of Shareholders and it must do so as soon as reasonably practicable after any relevant change but in any event within a period of 14 days.

(16) All notices and information to be delivered to the Registrar under this section must be made in Writing.

(17) Contravention of subsections (4) to (16) is punishable by a fine.».

Thus, even where the Shareholders' Register is maintained directly by the AIFC Registrar, the obligation to notify the Registrar of any changes in the composition of shareholders remains with the company itself.

A similar approach applies to the annual confirmation of registered details. Pursuant to Section 26-1 of the AIFC Companies Regulations, a company may elect not to submit an Annual Return, replacing it with the submission of an Annual Confirmation of Accuracy of Information in the Register. Even in this case, however, the company remains responsible for providing up-to-date information on shareholders and other registered details in a timely manner.

Practical Approach of the Registrar

Although, under the above-mentioned AIFC instruments, a person is considered a shareholder of a company from the moment they are entered into the Shareholders' Register, the position of the

⁵ AIFC Companies Rules – AIFC Companies Rules No. GR0004 dated 29 December 2017 (as amended on 22 September 2024, effective from 1 January 2025).

Registrar differs in practice. Specifically, according to oral guidance provided by AFSA, a change of shareholder is regarded as effective for registration purposes only from the moment the notice of transfer is recorded by the Registrar (provided that the documents are properly executed and submitted). In our view, this practice is justified by the fact that the Registrar performs an additional validation of the new shareholder through a Strategic Fit assessment⁶.

This additional validation is conducted before the information about the new shareholder is entered into the Public Register and includes, in particular, checks for the absence of sanction-related issues, identification of any intentions to use the company as a shell company, and other factors that could negatively impact the reputational risks of the AIFC jurisdiction. The Registrar has the right to refuse consideration and not process an application for registration of a share transfer if the new shareholder does not meet the “fit and proper” criteria, including as part of the AIFC’s sanction compliance and integrity assessment procedures.

This practice was introduced in mid-2022, coinciding with global changes in international markets that prompted entrepreneurs to actively seek alternative supply routes, including for the purpose of circumventing sanction restrictions.

Although such additional verification is not explicitly provided for in AIFC instruments, AFSA is entitled, under its internal procedures, to apply supplementary regulatory measures at its discretion. This approach was implemented, in part, by analogy with the practice of the Qatar Financial Centre, where similar procedures were introduced during periods of regional conflict.

The distinction between the moment of the legal transfer of rights (through entry in the Shareholders’ Register) and the registration effect for the purposes of public accounting and oversight by the Registrar helps explain the established practice.

For more details on the procedure for shareholder changes, the reader may refer to our article “10 Questions for Lawyers on Post-Registration Actions in the AIFC”⁷, while the objectives and approach of the Registrar in conducting the Strategic Fit procedure are discussed in detail in our article “10 Questions for Lawyers on Company Registration in the AIFC”⁸.

Shareholders’ Register vs. AIFC Public Register

With respect to which document serves as proof of ownership of shares in an AIFC company – whether an extract from the company’s Shareholders’ Register or an extract from the Public Register certified by the Registrar – it should be noted that this issue is not explicitly and unambiguously regulated in AIFC instruments.

In practice, AIFC instruments effectively provide for three documents that are relevant for confirming shareholder status:

- (i) the Shareholders’ Register, maintained by the company itself;
- (ii) the share certificate (share certificate) – Section 58 of the AIFC Companies Regulations; and
- (iii) the certificate (essentially an extract) certified by the Companies Registrar – paragraph 7.1.2 of the AIFC Companies Rules

It is the Shareholders’ Register that serves as the primary source for confirming shareholder status and ownership of shares. As noted above, AIFC instruments explicitly link the acquisition of shareholder status to the entry of information in the company’s Shareholders’ Register.

The share certificate is of a derivative nature. It is issued by the company only after the registration of the share transfer in the Shareholders’ Register (Sections 58(1) and 58(3) of the AIFC

⁶ <https://afsa.aifc.kz/registration/consider-before-opening-business/additional-assessment/>

⁷ https://online.zakon.kz/Document/?doc_id=36707439

⁸ https://online.zakon.kz/Document/?doc_id=38970018

Companies Regulations). Moreover, Section 58(2) of the Regulations allows for the possibility of evidencing share ownership without issuing a written share certificate (“If title to the Shares or the transfer of the Shares is evidenced without a written instrument...”). In such a case, the company completes the registration of the share transfer without issuing a share certificate.

Accordingly, a particular company may not issue any share certificates at all, whereas the Shareholders’ Register must, in any event, exist. For this reason, the Shareholders’ Register takes precedence over the share certificate.

With respect to the Registrar’s certificate (extract), paragraph 7.1.2 of the AIFC Companies Rules provides that a certificate signed by the Registrar, or on their behalf, containing information from the registers maintained by the Registrar in accordance with Section 204(1) of the AIFC Companies Regulations, constitutes evidence of the corresponding information.

Section 204(1) of the AIFC Companies Regulations requires the Registrar to maintain and publish registers of current and past company registrations, and paragraph 7.1.1 of the AIFC Companies Rules explicitly provides for the inclusion of shareholder information in the Public Register (“names of Shareholders or members of the company”).

Accordingly, an official extract from the Public Register may be requested from the Registrar. This service is fee-based, and the preparation time for the extract is up to 10 calendar days.

Various types of extracts are available, and their descriptions and corresponding requirements are set out in the Guidance on Post-registration Applications⁹. Extracts can be obtained either electronically or in paper form.

Requests for extracts may be submitted online via AIFC Digital Resident or from the company’s registered email address in accordance with Section 24-1 of the AIFC Companies Regulations. The post-registration fee for online processing ranges from USD 20 to USD 40 per extract, depending on the method of submission.

However, an extract from the Public Register does not include information on the date of entry of a shareholder. By comparison, for directors, such an extract typically reflects the dates of appointment and cessation of office.

It should also be noted that information on all registration actions, including the dates of entry in the National Business Identification Number Register, is available on the e-Government portal¹⁰. Nonetheless, it is important to recognize that the date of data update on the e-Government portal does not coincide with the date of entry in the company’s Shareholders’ Register and may differ in practice.

Banks and government authorities, when reviewing corporate decisions and needing to confirm the composition of current shareholders as of the date of the relevant corporate action, generally also rely on information from the AIFC Public Register.

⁹ <https://afsa.aifc.kz/registration/guidance/>

¹⁰ https://egov.kz/cms/ru/categories/facts_on_legal_persons