

In this essay we will analyse the accuracy of the statement “Under the Companies Act 1993, a shareholder who holds 51% of the ordinary shares in the company can control the company as they wish.”.

Firstly, shareholders do not control a company as under Companies Act 1993 s 128, directors control the company. However shareholders have the power to appoint and remove directors using resolutions under CA 1993, s 153(2).

Secondly, if a company has not developed their own constitution they are bound by the Companies Act 1993 default constitution (s28). With over 50% of ordinary shares, a shareholder may have the power to appoint and remove directors unless a supermajority constitution has been agreed upon. Therefore a shareholder who holds 51% of share may have the power to make changes of directorship in the company under a default constitution.

Thirdly, in accordance to Automatic Self-Cleansing Filter Syndicate Co Ltd v Cuninghame [1906] 2 Ch 34 (CA), the shareholder with 51% of shares would still be bound by the constitution in terms of changes which require special and unanimous votes. These are decisions involving changing the constitution and major transactions.

In conclusion the statement “Under the Companies Act 1993, a shareholder who holds 51% of the ordinary shares in the company can control the company as they wish.” is not accurate as directors control the company not shareholders, the shareholder with the majority of shares would only be able to make changes to the director appointed if the company doesn't have a super majority constitution and the shareholder would still require a larger proportion of shares to make decisions regarding significant transactions and changing the constitution.