MSWG
MINORITY SHAREHOLDERS WATCH GROUP

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Recent cases unfolded in corporate Malaysia highlights Section 195 of the Companies Act 2016 as one of corporate governance's enduring conundrum - where should the line be drawn between shareholders' participation and the Board's decision-making authority?

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SECTION 195 OF THE COMPANIES ACT 2016: A RIGHT WITHOUT A REMEDY?

For many company directors, company secretaries and even shareholders, Section 195 of the Companies Act 2016 is perhaps best known as the provision that allows members to ask questions at annual general meetings. It is frequently cited by chairpersons when opening the floor for questions and equally relied upon by shareholders to seek clarification on the company's affairs. Yet reducing Section 195 to merely a "question-and-answer" provision overlooks what may arguably be its more significant purpose. Hidden within the section is a mechanism that allows shareholders not only to question management, but also to make recommendations on how the company should be managed. More interestingly, the Companies Act itself contemplates circumstances in which those recommendations may become binding on the board.

This article is not written from the perspective of a legal practitioner, nor is it intended to offer a legal opinion on the interpretation of Section 195. Rather, it is written through the lens of a minority shareholder advocate who has attended hundreds of general meetings over the years and observed how the provision operates in practice. The objective is not to debate statutory construction, but to explore whether the current application of Section 195 truly reflects the spirit of shareholder participation that Parliament intended when the Companies Act 2016 was enacted.

Recent developments at the general meetings of Talam Transform Berhad and Tan Chong Motor Holdings Berhad have reignited an important discussion on the practical operation of Section 195. While the issues before the two companies were entirely different, both meetings tested the boundaries of shareholder participation in ways that few general meetings have done before. In doing so, they exposed several unanswered governance questions, particularly on whether Section 195, as currently practised, has become a statutory right that offers shareholders a voice, but seldom meaningful influence.

No one disputes that directors are entrusted with managing the company's affairs. Section 211 of the Companies Act makes that abundantly clear, and directors remain subject to fiduciary duties to act honestly, in good faith and in the best interest of the company. Equally, shareholders should not expect to manage the day-to-day affairs of the business through resolutions at general meetings. Yet Section 195 suggests that shareholders should play a more meaningful role than merely asking questions and receiving prepared answers. If so, an important question arises: when shareholders make recommendations under Section 195, who ultimately determines whether those recommendations deserve to carry legal effect?

Perhaps the time has come for regulators, practitioners and market participants to revisit not what Section 195 says, but how it actually works.

A Recommendation... But Only If the Board Agrees?

The most interesting aspect of Section 195 is not subsection (1), which requires the chairperson to provide members with a reasonable opportunity to question, discuss, comment or make recommendations on the management of the company. That principle is now widely accepted and forms part of the routine conduct of most general meetings. The more thought-provoking provision lies in subsections (2) and (3), which contemplate that recommendations made by shareholders may become binding under certain circumstances.

Broadly speaking, the section envisages two possible pathways. The first is where the directors consider the recommendation to be in the best interest of the company. The second is where shareholders pass the recommendation by way of a special resolution. On paper, this appears to strike a sensible balance. Directors retain their statutory responsibility to manage the company, while shareholders retain an avenue to influence management where there is overwhelming support. The balance between board primacy and shareholder democracy appears, at least conceptually, to have been preserved.

The practical difficulty, however, lies in the first pathway. Who determines whether a recommendation is in the best interest of the company? The answer appears to be the board itself.

That may seem perfectly logical where shareholder recommendations concern ordinary operational matters. However, the position becomes considerably more complicated where the recommendation itself concerns board accountability, governance failures or an independent investigation into matters involving the directors. Can shareholders realistically expect the board to conclude that such recommendations are in the company's best interest? More importantly, should the effectiveness of a shareholder recommendation depend almost entirely upon the willingness of the board to endorse it?

The alternative route, a special resolution, is available but considerably more demanding. Achieving a 75% majority is rarely straightforward, particularly in companies with concentrated shareholdings. Consequently, most shareholder recommendations are likely to be proposed as ordinary resolutions and, unless endorsed by the board, remain non-binding from the outset.

This raises an intriguing governance question. Has Section 195 unintentionally evolved into a provision where shareholder recommendations are, in reality, almost always destined to remain recommendations? If so, is the statutory right more symbolic than substantive?

Talam Test: When the Board Becomes the Gatekeeper

The recent extraordinary general meeting of Talam Transform Berhad illustrates why these questions are far from theoretical. Among the resolutions proposed by the requisitionists was a recommendation that the company appoint forensic auditors to undertake an independent review. The recommendation was significant because it related directly to corporate governance and oversight rather than the ordinary conduct of business. It was, in essence, a request for the board to initiate an independent process that the requisitionists believed was necessary in the interests of shareholders.

The board, however, did not share that view. It considered that the proposal was not in the best interest of the company. As a result, the resolutions proceeded as ordinary resolutions and, irrespective of the eventual voting outcome, could only amount to non-binding recommendations under Section 195.

This sequence of events exposes an interesting governance dilemma. If shareholder recommendations questioning board conduct or seeking independent investigations are assessed by the very board whose actions may be under scrutiny, can the first limb of Section 195 ever realistically operate? Put differently, does the provision create a theoretical mechanism for binding shareholder recommendations that, in practice, may be almost impossible to invoke?

None of this suggests that directors should simply follow every recommendation made by shareholders. Directors must continue to exercise independent judgment and discharge their fiduciary obligations. However, where recommendations concern governance and accountability, one may legitimately ask whether the current framework gives the board an effective veto over the operation of Section 195. If the answer is yes, does that diminish the practical significance of the provision?

These are not merely legal questions. They are governance questions.

The Tan Chong Dilemma: Can the Board Simply Stay Silent?

If Talam tested one aspect of Section 195, the recent requisitioned meeting of Tan Chong Motor Holdings Berhad tested another.

Unlike Talam, the more interesting issue was not whether the board considered the proposed governance-related resolutions to be in the company's best interest. Rather, the board appeared to adopt no position at all. The requisitionists themselves tabled the proposed governance and disclosure resolutions as ordinary resolutions, thereby making them non-binding from the outset.

This raises what may be an even more difficult question.

Can a board simply decline to determine whether a recommendation is in the company's best interests? If directors neither support nor oppose the recommendation, does Section 195 simply default to a position where the recommendation remains non-binding? If that is indeed the practical outcome, does the legislation inadvertently allow boards to avoid engaging with the first limb of Section 195 altogether?

There may well be legitimate reasons for boards to remain neutral, particularly where the resolutions originate from requisitionists rather than the company itself. Equally, directors may consider it inappropriate to advocate for or against shareholder proposals in certain circumstances. Nevertheless, the governance implications deserve closer examination. If boards are able to remain silent, should they at least be required to explain whether they considered the recommendation to be in the company's best interest and, if not, why?

Otherwise, silence itself may become a governance strategy. That surely cannot have been the intended outcome of a provision designed to encourage meaningful shareholder participation.

The Voting Paradox

The recent meetings also raise another question that appears to have received little attention. If everyone accepts that a recommendation is non-binding, should controlling shareholders vote on it at all?

From a strictly legal perspective, there may be nothing preventing them from doing so. Yet from a governance perspective, the issue deserves further thought. If the recommendation carries no binding legal effect, the vote arguably serves a different purpose. It becomes a mechanism for shareholders to express their collective sentiment on an issue affecting the company's governance.

Viewed through that lens, there may be merit in controlling shareholders voluntarily abstaining. Doing so would allow the company, the market and the board to better understand the views of independent shareholders without altering the legal consequences of the resolution. If the recommendation is non-binding in any event, why should there be concern about allowing minority shareholders to express that sentiment without being diluted by the votes of controlling shareholders?

The analysis may become even more compelling where shareholders seek to pursue the statutory pathway that would render a recommendation binding. In such circumstances, particularly where the subject matter concerns governance, accountability or potential conflicts, there is at least a credible governance argument that controlling shareholders should voluntarily abstain. Such abstention would enhance confidence that the outcome genuinely reflects the views of those shareholders whom the governance framework is principally designed to protect.

The Companies Act and the Listing Requirements do not presently address this issue. That, however, should not prevent the market from considering whether good governance ought to demand more than the minimum legal requirement.

From Shareholder Voice to Shareholder Influence

The recent meetings at Talam Transform and Tan Chong Motor Holdings were never simply about the resolutions placed before shareholders. Instead, they exposed several unanswered questions regarding the practical operation of Section 195 itself. They demonstrated that while the statutory framework seeks to balance shareholder participation with board authority, its application in practice may not always produce the outcomes that shareholders envisage.

Perhaps the time has come for a broader discussion. Should directors be expected to expressly determine whether shareholder recommendations are in the best interest of the company instead of remaining silent? Should Bursa Malaysia or the Securities Commission issue guidance on the practical operation of Section 195, particularly where recommendations concern governance and board accountability? Should boards provide post-meeting explanations where they reject or decline to adopt shareholder recommendations? And should controlling shareholders voluntarily abstain on non-binding governance recommendations to allow minority shareholder sentiment to be more accurately measured?

These questions are unlikely to find easy answers, nor is this article intended to suggest that the current framework is legally flawed. However, from the perspective of minority shareholder advocacy, they are questions worth asking. The Companies Act introduced Section 195 to strengthen shareholder participation, not merely to provide shareholders with another opportunity to speak.

After all, there is an important distinction between having a voice and having influence. Unless the market is prepared to confront the practical challenges exposed by recent meetings, Section 195 risks becoming remembered not as the provision that empowered shareholders, but as the provision that allowed them to make recommendations that were never intended to matter.

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MSWG
AGM/EGM WEEKLY WATCH

The following are the AGMs/EGMs of companies on the Minority Shareholders Watch Group's (MSWG) watch list for this week.

The summary of points of interest is highlighted here, while the details of the questions to the companies can be obtained via MSWG's website at www.mswg.org.my.

QUICK-TAKE

Date & Time	Company	Quick-take	Voting Position
07.07.26 (Tue) 10.00 am	PNE PCB Berhad (EGM)	The Company proposes to undertake a capital reduction which aims to eliminate RM40 million of its accumulated losses. Concurrently, the Company intends to diversify its principal business to include automotive retailing through an authorised XPeng electric vehicle dealership. To finance this venture, the Company proposes to reallocate RM4.88 million and RM10.50 million in the unutilised placement proceeds. These proceeds, initially earmarked for PCB production line upgrade and aborted glove business, will now support the working capital for PCB segment and the EV dealership.	MSWG will vote "AGAINST" resolutions 1 & 3 on the Proposed Diversification and the Proposed Variation 2 due to the absence of a secure, long-term commercial framework. PNE's disclosure that it is merely "actively formalising this collaboration" provides little assurance given that the underlying dealership agreement expires in September 2026. Considering PNE's track record marked by an unprofitable, shrinking PCB segment and an aborted glove venture, the Company has not provided the clear commercial validation needed to prove this pivot is viable. Automotive retailing is a highly competitive sector where PNE possesses no visible operational edge.

Date & Time	Company	Quick-take	Voting Position
08.07.26 (Wed) 10.30 am	Quality Concrete Holdings Berhad (AGM)	For its FY2026, Quality Concrete recorded total revenue of RM190.5 million, representing an increase of RM34.7 million or 22.3% compared to RM155.8 million in FY2025. The improved performance was driven by stronger contributions from both the Manufacturing and Construction segments, supported by stable performance from Road Maintenance activities and growth in trading-related income. However, its LBT widened to RM9.2 million (FY2025: LBT RM4.9 million) due to lower other income (in the absence of one-off insurance claim) and continued margin compression. A provision of RM6 million for LAD also contributed to the declined profitability.	MSWG will vote "FOR" all resolutions tabled in the meeting.
08.07.26 (Wed) 11.00 am	JKG Land Berhad (AGM)	For FY2026, the Group recorded revenue of RM241.9 million and PBT of RM71.3 million, compared to RM265.8 million and RM60.8 million, respectively, in FY2025. Although revenue declined by 9%, PBT increased by 17%, mainly due to the completion of The ERA Phase 2 and four development phases in Kulim, Kedah. As at FY2026, the Group's total assets increased by 5.7% to RM924.5 million from RM874.7 million in FY2025. Total equity attributable to owners of the Company rose by 8.9% to RM666.1 million, compared to RM611.8 million in the previous financial year.	MSWG will vote "AGAINST" Ordinary Resolutions 2(a), 2(b), 4 & 5 on re-election and retention of long serving INEDs to be tabled in the meeting.
09.07.26 (Thur) 11.00 am	KYM Holdings Berhad (AGM)	For FY2026, KYM recorded a total revenue of RM80.81 million, representing a decline of 4.8% compared to RM 84.87 million in FY2025. While the Group reported a PBT of RM1.245 million, this representing a decline of 58.6%	MSWG will vote "FOR" all resolutions tabled in the meeting.

Date & Time	Company	Quick-take	Voting Position
		compared to RM 3.01 million in the previous financial year. The decrease in profitability was mainly driven by the reduced sales volume and the lower average selling prices which reduced the gross profit margin.	

POINTS OF INTEREST

Company	Points/Issues to Be Raised
PNE PCB Berhad (EGM)	The entire investment thesis of the Automotive Retailing Business is anchored to a letter of appointment from Bermaz XPeng that is non-exclusive and covers an initial tenure of only one year (ending 30 September 2026). Although the Group mentions that it is actively formalising this collaboration, there is no assurance that the dealership arrangement will be renewed or maintained on favourable terms upon expiry in the future. a) Given that shareholders are being asked to approve the deployment of RM11.59 million in fixed capital overhead, what operational guarantees or performance benchmarks has Bermaz XPeng demanded to ensure the annual renewal of this agreement? b) What key terms or contractual provisions remain outstanding or under negotiation that have prevented this dealership arrangement from being fully formalised, despite operations having commenced in October 2025? c) What structural fallback protections exist for shareholders if the principal changes its regional distribution model upon the expiration of this initial contract?
Quality Concrete Holdings Berhad (AGM)	Despite reporting a 28.1% growth or RM14 million increase in revenue to RM64.1 million (FY2025: RM50.1 million), Construction division profitability remained under pressure due to project-specific cost variations (page 18 of Annual Report 2026). a) What specific costs eroded the profitability of the Construction division, which is the key revenue driver for the Group? To what extent is the Group able to pass through higher material, labour and subcontractor costs to project owners under existing contract terms? b) Public projects are known for relatively low profit margins. Given the continued compression of project margins, how does the Group maintain the balance between topline growth and bottomline profitability? Under what circumstances would the Group accept projects with relatively lower margins, and what strategic considerations justify undertaking such projects despite the profitability challenges? c) Please provide a management update on:

Company	Points/Issues to Be Raised
	• the current outstanding order book value across Construction and Road Maintenance divisions • the tender book size • the value of new contracts secured for Construction and Road Maintenance divisions during FY2026 • The sustainability of the current order book and revenue visibility for the next two to three years d) The Construction division also recognised a RM6 million provision for liquidated ascertained damages (LAD) in FY2026. Which project that the provision relates to? What caused the delay in completion? Please comment on the possibility of additional LAD exposure arising from other ongoing projects. e) QCHB operates an integrated business model with in-house manufacturing of ready-mixed concrete, asphalt, HDPE pipes and M-PVC pipes. Given this vertical integration, should the Group not enjoy a structural advantage in cost control and margin protection compared with peers that rely more heavily on external suppliers? Why does the Construction division continue to face significant margin pressure despite these in-house capabilities?
JKG Land Berhad (AGM)	The Group recorded a net profit of RM54.2 million, cash reserves of RM331.5 million (Source: Pages 92 & 93 of AR2026), and strong operating cash inflows, yet no dividend was recommended for FY2026 (Source: Page 88 of AR2026). What is the Board’s stated capital return policy, and what is the rationale for not distributing dividends despite the strong liquidity position?
KYM Holdings Berhad (AGM)	The Group has consistently cited pricing pressure and competitive market conditions as the primary reasons for reducing average selling prices in recent years. Given that revenue of Multiwall Industrial Paper Sacks division declined to RM63.066 million in FY2026 (FY2025: RM 68.517 million), and profit before tax (“PBT”) declined to RM4.152 million (FY2025: RM 7.022 million) (Page 10-11 of AR 2026) despite these pricing measures, could the Board share: a) Whether the Group's market share has improved, remained stable, or declined over the past few financial years. b) How does management evaluate the effectiveness of pricing strategy in balancing market share preservation and profitability?

DISCLOSURE OF INTERESTS

With regard to the companies mentioned, MSWG holds a minimum number of shares in all the companies covered in this newsletter.