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Independent Directors: Pragmatic and Effective or Toothless Tigers

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The article focuses on the effectiveness of independent directors in the modern commercial context and whether their presence is practical and pragmatic, or simply a case of having 'toothless tigers' on company boards. The article, very briefly, discusses the historical and jurisprudential perspectives in relation to independent directors and looks into their needs and functions. The article considers: (1) the importance of having independent directors on company boards; (2) the case against independent directors and their limitations, particularly in respect of appointment, remuneration, sufficiency of knowledge and liability; and (3) means of improving effectiveness and actually 'arming the tigers'.

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I. Introduction

Corporate governance has gained momentum in the last decade[1] and this interest has spread across continents.[2] Corporate governance has ushered in various reforms and such reforms apply to a variety of businesses, ranging from large public corporations and state owned enterprises to family owned firms and non-profit organizations.[3] In India, corporate governance came into limelight in the early 1990s when economic liberalization and deregulation measures were introduced. Since 1993, the Indian corporate sector has witnessed a sea of change and it is from that period that the phrase corporate governance came into vogue in India.[4] From then, a number of regulatory and legal reforms have been enforced in the Indian corporate sector and these have been aimed at improving areas related to insider dealing, fair treatment of minority shareholders and stakeholders, board structure and practices, and accountability and transparency.[5]

[1] C.A. Mall in, *Corporate Governance Developments in the UK,* in C.A. Mallin (ed.), *Handbook of International Corporate Governance* (Edward Elgar Publications, Cheltenham, 2006), p. 3

[2] D. Reed, *Corporate Governance Reforms in Developing Countries,* in D. Reed and S. Mukherjee (eds.), *Corporate Governance, Economic Reforms and Development: The Indian Experience,* (Oxford University Press, New Delhi, 2006), p. 1

[3] *Supra* note 1.

[4] For a detailed discussion on economic reforms in India in the 1990s and their effect on corporate governance, see B. Dahiya and D. Gupta, *The Current State of Corporate Governance in India,* in R. Jha Raghbendra (ed.), *Indian Economic Reforms,* (Palgrave Macmillan, New York 2003) 223-37

[5] B. Dahiya, *Corporate Governance Developments in India,* in C.A. Mallin (ed.), *Handbook of International Corporate Governance* (Edward Elgar Publications, Cheltenham, 2006) 233.

One clear trend of corporate governance reform that has swept across the globe is that independent directors have increasingly been seen as a prevalent and primary instrument for holding management more accountable and promoting the development of companies. In fact, many companies have already made great strides in restructuring their boards to follow the reform.[6] A large number of independent directors have now been invited on corporate boards,[7] and these directors have increasingly shown their willingness to act independently of the management. In this sense, the corporate governance system heavily relies on independent directors to achieve its agenda.

Clearly the role of the independent directors is part of a much wider academic debate concerning corporate governance in company law. There have been many developments recently in corporate governance which impact upon the role of independent directors, most notably the Higgs Report, the Tyson Report, [10] the recommendations put forward by the European Commission on February 15, 2005 , and the Company Law Reform Bill in the UK and its attendant consultant and research processes.[12]

[6] Y. Zhao, *Competing Mechanisms in Corporate Governance: Independent Directors, Institutional Investors and Market Force,* 21(10) I.C.C.L.R 338 (2010).

[7] See J.N. Gordon, *The Rise of Independent Directors in the United States, 1950-2005: Of Shareholder Value and Stock Market Prices,* 59 Stan. L. Rev. 1465 (2007).

[8] *Supra* note 6.

[9] D. Higgs, *Review of the role and effectiveness of non-executive directors,* available at www.dti.gov.uk/cld/non_exec _review/index.htm <Last visited on March 12,2011>

[10] London Business School, *"The Tyson Report on the Recruitment and Development of Non-Executive Directors"* (London, June 2003). This report was commissioned by the Department of Trade and Industry (UK) following the publication of the Higgs Report (copies are available at the London Business School).

[1] Commission Recommendation of 15 February 2005 on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board *cited from* P. Grant, *FRRP Teams Up with FSA to Review Accounts,* available at www.financialdirector.co.uk/news/1139889 <Last visited on March 12, 2011>

[12] Department of Trade and Industry, *"Company Law Reform White Paper"* (London, March 2005), available at www.dti.gov.uk/cld/review.htm,<Last visited on March 10, 2011>The final version of the Company Law Reform Bill was introduced to the House of Lords on November 1, 2005 and can be viewed at www.publications.parliament.uk/pa/ld200506/ldbills/034/2006034.htm <Last visited on March 9, 2011>

The Higgs Report reported on the effectiveness and role of independent directors. This report supported the UK Combined Code and gave additional recommendations as well.[14] Some of those recommendations were related to the frequency of board meetings and other main committees, and the attendance records of directors in these meetings.[15] It also recommended that a CEO should not also be the Chairman of a company, independent directors must meet separately at least once a year, and that companies and their CEOs should implement executive training programs to develop and train individuals for their future director roles.[1]

A revised Combined Code[17] was brought out in 2003. This revised code built on earlier reports and brought together the recommendations of various previous reports including the Higgs Report. This code has two parts, one relating to companies and the other relating to institutional shareholders. This code gave various recommendations related to audit committees, remuneration committees, independent directors and self evaluation of performance by companies, and their committees and directors.[18]

Clearly, there have been a number of corporate governance committee reports in UK and these have paved the way for corporate governance in UK. Some of these have actually also paved the way for corporate governance development in other countries around the world, with India being no exception. Corporate governance reforms in countries like the UK and the USA have obviously had a great impact on the corporate sector in India. Apart from these external factors, corporate governance reforms relating to independent directors in India have been brought about by internal factors as well. The initiative for better corporate governance in India first came from some of the bigger listed Indian companies and an industry association.[19]This is in contrast to the UK and the USA, where the main drivers of

[13] *Combined Code, Principles of Corporate Governance,* (Gee & Co. Ltd., London, 1998).
[14] *Supra* note 1 atp.5.
[15]1. Jones and M. Pollitt, *Understanding How Issues in Corporate Governance Develop: Cadbury Report to Higgs Review,* 12(2) Corporate Governance: An International Review (Blackwell Publishing, Oxford) 165 (April 2004). [16]*Supra* note 1 atp.5.
[17] Financial Reporting Council, "77/e *Combined Code on Corporate Governance",* (London 2003), available at www.frc.org.uk<Last visited on March 10, 2011>
[18] *Supra* note 1 at p. 6-7.
[19] O. Goswami, *India: The Tide Rises Gradually,* in C.P. Oman (ed.), *Corporate Governance in Development,* (Centre for International Private Enterprise and OECD Development Centre, 2003) 105.

corporate governance reforms were shareholders' groups, activist funds and self- regulatory bodies within the capital markets; or South- East and East Asia, where the financial breakdown in 1997-98 saw the emergence of corporate governance reforms as a result of the conditions made compulsory by the IMF and the World Bank.[20]

This article will focus on a critical evaluation of the role of independent directors in a company and the practical difficulties experienced by them while discharging their duties. The article will first, briefly, look into the jurisprudential and historical debates around independent directors followed by the role and functions performed by independent directors. The article will then examine whether independent directors are pragmatic and effective tools of corporate governance or whether they are simply toothless tigers who are bound by their various limitations.

II. Historical and Jurisprudential Context

The debate about 'for whose benefit the company is run' is one that has come up regularly in the history of company law. The early views of both Berle[21] and Dodd[22] were in accordance to the fundamentals of the "legal" model:

> *"The directors and other agents are fiduciaries carrying on the business in the sole interest of the • stockholders ... The sole function of the corporation is, however, conceived to be the making of profit for its stock-holder-members, so that they are the ultimate beneficiaries of the business and of the activities of the persons by whom it is carried on ...A corporation is an association of stockholders formed for their private gain and to be managed by its board of directors solely with that end in view. "*

Berle was of the view, with which Dodd pretty much agreed, that it was necessary to establish legal controls which would effectively prevent

[21] A. A. Berle Jr., *Corporate Powers as Powers in Trust,* 44 **H.L.R. 1049 (1931).**
[22] E.M. Dodd Jr., *For Whom are Corporate Managers Trustees?,* 45 H.L.R. 1**145** (1932).
[23] *Id.* **at** p. 1146-1147.

corporate managers fraudulently pocketing the profits of companies, because these legally belong to the shareholders.[24] The directors are "free from any substantial supervision by stockholders by reason of the difficulty which the modern stockholder has in discovering what is going on and taking effective measures even if he has discovered it".

Since the law is now, some 80 years later than Berle and Dodd expected, and clearly moving in the direction of requiring the directors to consider various wider social issues as part of their duties and report on these wider social issues, it is now necessary to consider the role of the director, and in particular the independent director, in this modern commercial context.

III. The Need and Functions of Independent Directors

Technically there is no difference in law between an executive director and an independent director. Beyond that, the historical nature of the role of the independent director and its relevance can be inferred as much from assumed limitations as it can from the positive statements about the role. Prof. Paul Davies in Gower's Principles of Modern Company Law, considered to be the foremost authority on company and corporate law in common law jurisdictions, states that "(non-executive) directors are expected to do little or nothing other than to attend a reasonable number of board meetings and, perhaps, some of the committees that the board may establish. As such they will be modestly rewarded by directors' fees resolved upon by the company in general meeting".[27] However it is later acknowledged on the same page that "one of the central aims of the Cadbury Committee was to strengthen the influence of non-executive directors on the boards of listed companies". This reflects deeply on the fact that the lack of analysis on the role of the independent director is quite remarkable and yet completely consistent with the general philosophical underpinnings of the text.

Generally speaking, executive directors are concerned with the actual management of the company and are normally appointed on a full-time

M. Sweeney-Baird, The *Role of the Non-Executive Director in Modern Corporate Governance,* 27(3) Comp. Law 67 (2003) at **p. 67-68.** [25] *Supra* note 22 **at** p. 1147.
[26]% ?ranote24atp.68.
[27] P.L. Davies, *Gower's Principles of Modern Company Law* **(Sweet and Maxwell, London, 6th edn.,** 1997) p. 193.
[28] *Supra* note 24 at p.70.

basis. The possible misuse or abuse of the centralized powers concentrated in the hands of a few on the board is always a risk for capital providers in any corporate democracy. In this regard, the appointment of independent directors has become pivotal in the modern corporate sector as they are assumed to play a key role on the monitoring front.[31] The presence of independent directors facilitates supervision by monitoring whether the management team in the company exhibits suitable entrepreneurial skills and complies with regulatory requirements. Independent directors also check whether the management has taken appropriate steps to achieve a proper operational level and that management has not adopted self-serving and unethical *modus operandi* to deceive shareholders.[32] In this context, examples have often been cited about American and British companies such as Enron, World. Com, Cendant and Liveant which collapsed due to accounting irregularities. It has been pointed out that as a result of manipulated accounting data and restatement of the accounts by showing profits as actual losses, the value of shares in the markets was endangered. [3] The Satyam fiasco in India is a recent example of such malpractices. These examples have further driven the point about the importance of appointing independent directors on the boards of such companies. An analogous reason for appointing independent directors is to widen the scope of the board. Corporate strategies may be formulated and made robust with the help of the experience and specific skills that such directors possess.[34]

Independent directors have the basic function of furthering the business of the company and safeguarding its assets. Independent directors usually participate in the company on a part-time basis. They are expected to enhance the confidence of shareholders by protecting the interests of shareholders, especially those in the minority. [35] Consequently, their functional role includes the resolution of conflicts between the executive

J. Farrar and B. Hannigan, *Farrar's Company Law* (Butterworths, London, 1998), p. 332.
[30] J.M. Chikura, *Role of Non-Executive Directors,* available at www.fingaz.co.zw <Last visited on March 12, 2011>
[31] S. Mahamuni, *The Potential Role of Non-Executive Directors in Indian Companies,* 18(6) I.C.C.L.R. 207 (2007).
[32] B. Cheffins, *Company Law: Theory, Structure and Operation* (Clarendon Press, Oxford, 1997),p.603-604.
M. Hemraj, *Good Corporate Governance: The Recipe for Corporate Survival,* 26 Company Lawyer 122(2005). [34] *Supra* note 31 at p. 209.
A. Worner, *Submission to the Review of the Role and Effectiveness of Non-Executive Directors,* available at www.lawsociety.com.au,<Last visited on March 11,2011>

directors and stakeholders, particularly concerning contentious issues, such as remuneration as well as accounting policy.[36] The Higgs Report probably best describes the key elements in the functioning of independent/non-executive directors:

> *Strategy: non-executive directors should constructively challenge and contribute to the . development of strategy.*
> *- Performance: non-executive directors should scrutinize the performance of management in meeting agreed goals and objectives and monitor the reporting of performance.*
> *- Risk: non-executive directors should satisfy themselves that financial information is accurate and that financial controls and systems of risk management are robust and defensible.*
> *- People: non-executive directors are responsible for determining appropriate levels of remuneration of executive directors and have a prime role in appointing, and where necessary removing, senior management and in succession planning.* "[37]

IV. Independent Directors as Pragmatic and Effective Tools of Corporate Governance

As a result of their independence, independent directors often bring a wider, fresh and objective perspective into the boardroom. Being outsiders, they are able to view things from an entirely new angle, and provide up-to-date and informed advice. They can also help resolve internal disputes by bringing an impartial and rational outlook, thus enabling the board to rise above boardroom politics in their decision-making and thus facilitating change. As they are often executives in other companies, they are experienced and widely knowledgeable in the business. They are thus able to see potential risks and opportunities as well as provide a valuable strategic overview.[38]

[36] *Supra* note 31 at p. 209.
[37] *Supra* note 11.
[38] S. Sheikh, *Non Executive Directors: Self Regulation or Codification,* 23 Company Lawyer 296 (2002) at p. 299.

Independent directors can also improve the internal management and general performance of companies. They have the potential to provide a check on the CEO's powers especially where he is also the chairman. They help in keeping managers on their toes and maintain discipline by ensuring that proper procedures are followed. Independent directors can make board meetings more productive by ensuring that executive directors provide accurate and adequate information. They ensure that executive directors are adequately prepared for meetings since they are aware that the independent directors will scrutinize their views and opinions.[3]

Independent directors are often appointed by stakeholders in the form of nominee directors. Although this concept is accepted in custom and practice, the term "nominee director" cannot be regarded as a straight forward legal concept to which one clear meaning has been assigned. The usage of the term indeed reveals some blurring of concepts. Basically, three primary usages can be ascertained in such a situation where an independent director is a nominee. The first sense in which the term "independent director" is employed is in the sense of a passive director who does the bidding of his or her co-director or co-directors.[40] This typically arises in relation to a relative or friend who agrees to be a director on incorporation of a sole trader's business. It was this type of director which was in contemplation in *Re Galeforce Pleating Co Ltd.*[41] where the judge remarked that "[a] director cannot shrug off his responsibilities by claiming that he is no more than a nominee director, and was not expected to perform any actual duties". Secondly, the term is used in relation to a person who provides his or her professional services as a director of companies on a nominee basis. The business of providing nominee director services involves persons, often company formation agents, providing their services to act as paper directors of a company for a fee. Thirdly, and most commonly, a nominee director is understood as being a person appointed to the board of a company by a natural or legal person to represent its interests.

[39] S. Kiarie, *Non-Executive Directors in UK Listed Companies: Are they Effective,* **18(1)** I.C.C.L.R. 17(2007).
[40] Du Plessis, *Nominee Directors versus Puppet, Dummy and Stooge Directors: Reflections on these Directors and their Nominators or Appointers,* J. S. Afr. L. 310 (2002).
[41] [1999] 2 B.C.L.C. 704 Ch.D at 716.
[42] D. Ahem, *Nominee Directors' Duty to Promote the Success of the Company: Commercial Pragmatism and Legal Orthodoxy,* 127(Jan) L.Q.R. 118 (2011) **at** p. 121-122.

Such independent directors who are nominees do not *ipso facto* owe legal duties to their appointer. It has been judicially accepted that the mere fact that a director has been nominated by a shareholder would not, of itself, impose any duty on the director to the shareholder. This was the view of the Court of Appeal in *Re Neath Rugby Ltd; Hawkes* v. *Cuddy*[43] where it was held that a duty to a nominator could arise by reason of the director being an employee or officer of the nominator or by reason of a formal or informal agreement with the nominator. This provides a strong case in favour of the effectiveness of independent directors and emphasizes that even when an independent director is a nominee, he or she has the ability to stay independent.

It is generally felt that independent directors can be invaluable at safeguarding shareholder interests as a whole. For example, at Fisons, independent directors played a major role in securing a CEO with better financial judgment.[44] In Wyevale, they ensured the removal of the non-performing chairman and two other independent directors. [45] Although independent directors may be prevalent in big companies, they are also useful in SMEs and family-owned businesses. They are able to bring new and independent expertise, provide useful contacts and provide strategic planning which may assist in the growth of such businesses.[46] The benefits of independent directors have even been experienced in a controlled economy like China where they have been praised for providing unique recommendations in various fields, as well as keeping the controlling shareholders and boards in check against bad governance practices.[47]

Recent case law further drives home the point that independent directors can be used as effective tools of corporate governance. Nonexecutive directors exercise a monitoring and supervisory role over the management of a company. They cannot be totally inactive and wilfully ignorant of the affairs of the company. The case of *Lexi Holdings Pic (In*

[43] [2009] EWCA Civ 291 at para. 20.
[44] P. Wickham and P. Townsend, *The Non-Executive Director: A Management Perspective,* 15 Company Lawyer211 (1994)at212.
[45] L. Smith, *Garden Centre Group's Chairman Weeded out by Hedge Fund Ruse,* The Guardian, December 23, 2005.
[46] *Supra* note 39 at p.20.
[47] L.M. Cha, *Corporate Governance Reform in China: Progress and Prospects,* available at wwvv.oecd .org, <Last visited on March 9, 2011>

Administration) v. *Luqman* illustrates the bold approach taken by the Court of Appeal towards establishing a causative link between the breach of duty by independent directors and the loss suffered by the company. This case makes it clear that directors will not be able to rely on their lack of involvement as an excuse to avoid the imposition of liability.[4]

The position in respect of inactive directors was previously considered by the Court of Appeal in *Westmid Packing Services Ltd (No. 3), Re*[50] where it was said that, "some delegation and division of responsibility was permissible and often necessary. However, this had to be distinguished from a total abrogation of responsibility, which was not permitted." It was emphasized that a board must not permit one individual to dominate it. It was no excuse to argue that directors had been dominated and manipulated by another director, as they would be in breach for allowing this to happen, rather than exercising their own initiative and discretion.[51]

V. The Case against Independent Directors

There are various arguments supporting the theory that independent directors are toothless tigers with no real power and the inability to be effective corporate governance tools. The foremost argument being that a board as a "rubber stamp" controlled by the management certainly cannot play a meaningful role of monitoring. In response to this problem, as discussed earlier, there is a necessity to reform the board so as to insulate it from improper pressure from the management. Therefore this creates a place for independent directors in the corporate governance system. In order to neutralise the dominance of the management, a majority of the board should be composed of independent directors, and these directors should take over leadership of the whole board and important sub-committees (for example, the audit and remuneration committee). However, independent directors do not magically appear and they must be nominated by someone in the first place. As discussed above, the management traditionally has a great influence on

[48] [2009] EWCA **Civ** 117.
[49] **J.L.** Yap, *Hear No Evil, See No Evil, Speak No Evil: The Total Inactivity of Non-Executive Directors,* 20(11) **I.C.C.L.R. 412 (2009).**
[50] **[1998]** B.C.C. **836**
[51] *Supra* note 49.

nomination and selection of directors. Clearly in this scenario, the reform and inclusion of independent directors becomes useless.

As they are appointed by the management or another appointer, there is a danger of them becoming a "self-perpetuating oligarchy" because they may be drawn from the same social, educational or business background as the executive directors themselves, or may even be former executive directors or management. They are therefore unlikely to take a tough stance against various issues, for example, as regards excessive remuneration as this will have an impact on their own remuneration. Evidently, their independence is compromised from their appointment itself. Clearly, an effective corporate governance regime and the success of independent directors is hugely impacted by the recruitment and appointment process. Possible solutions to this dilemma lie in widening the net and hiring outside known business circles to include academics, professionals and civil servants who may bring unique experiences and expertise into the boardroom.[54]

The effectiveness of independent directors lies in their ability to secure quality, adequate and timely information. They are, however, heavily dependent on the executive directors and management for information required to enable them to make their own judgment. On the other hand, the executive directors (or management, as the case may be) are in a position to edit, delay or incompletely disclose information to independent directors. This may be advisable in cases where some independent directors are drawn from competing companies and disclosure would not be ideal for the company, or when an urgent decision needs to be made. This, however, does not override the crucial need for independent directors to access timely, accurate and adequate information in order to effectively discharge their duties. The problem of access to accurate information has been, the main reason behind many corporate scandals, for example, the role of independent directors in companies like Enron, Maxwell Communications and Queen's Moat Houses was undermined by the inaccurate and inadequate nature of the information they received.[55]

Y. Zhao, *Nomination and Selection of Independent Directors: from Anglo-Saxon Style to Chinese Practice,* 32(3) Comp. Law 89 (2011).

[53] I. Stratton, *Non Executive Directors: Are They Superfluous,* **17 Company Lawyer 162** (1996) at p. 164 *cited from supra* note 39 at p.20.

[54] *Ibid.*

[55] *Supra* note 39 at 21.

Most independent directors are usually executives in other companies, a position that generates a significant workload. This deters them from devoting sufficient time to company affairs and as a result, hampers their ability to get a better insight into the company.[56] Moreover, according to the Higgs Report, less than a quarter of independent directors receive a formal briefing or induction upon assuming their role and two-thirds do not receive any development training.[57] Insufficient time commitments and the absence of any formal briefing prevents independent directors from fully discharging their duties as they are unaware of their role and the expectations from them.

Independent directors are generally not paid as much as the executive directors, and are often excluded from share options and pension schemes. Their pay is also not commensurate with their performance or that of the company. This may discourage them from effectively discharging their monitoring role since their efforts and workload are not reflected on their pay cheques.[58] Their remuneration should therefore reflect the workload, time commitment and complexity of the role, and be sufficient to attract and retain high-quality independent directors.

Another factor diminishing the effectiveness of independent directors is that the corporate governance regime provides no way of enforcing independent director duties and the various corporate governance codes across the world have little to say on the accountability of independent directors to shareholders. There is also no mode of redress for independent directors who are displeased with the performance of the executive directors. Often, the only solution before them is to threaten to resign from the board which is clearly not an ideal situation for an independent director trying to get some form of redressal.[59] Executives can exploit this loophole to do away with proactive and vigilant independent directors by strategically vexing or frustrating their actions to the point that they opt to resign, and this has indeed been witnessed in some Chinese companies recently.

Ernst and Young, *"Boardperformance: Non-Executive Directors and their contribution to business performance"*, available at www.ey.com, <Last visited on March 12, **201**1>
[57] *Supra* note 9 at paras. 11.2 and 11.7.
[58] *Supra* note 39 at 22.
R. Esen, *Managing and Monitoring: The Dual Role of Non-executive Directors on UK and US boards.* 11(6) I.C.C.L.R. 202 (2002) at 203. [60] *Supra* note 47.

VI. Conclusion

There seems to be a further need to strengthen the monitoring role of independent directors by legislating on their distinct and specific role. Traditionally, self-regulation as opposed to statutory regulation has been the favoured approach in most parts of the world. From the recent scandals, including the Satyam scandal in India, it is evident that best practice does not necessarily raise corporate governance standards, whereas legislation can enforce it. This will provide a way of enforcing the duties of independent directors and ensuring accountability to shareholders. Although legislation in itself may not necessarily improve corporate governance but it can compel independent directors to take their role seriously.

The presence of independent directors cannot guarantee the absence of corporate wrong-doing, but it can play a significant role where they are effective. This is supported by their growing popularity across all continents. They started gaining popularity in the UK and USA and slowly spread across to continental Evirone. Japan, CVnna. and. \n.dAa,. A\'ftlOVXg\l llldiepenUent directors have, of course, failed their shareholders in various circumstances as revealed by the recent credit crisis where most of the major financial institutions involved had independent directors, or even in the collapse of Enron which had a majority of independent directors on its board, their absence from boards will probably lead to bigger crises.

As unsure as we may be about the role of independent directors in companies, it seems they are here to stay. They have been identified as one of the key features behind the success of Anglo-American corporate governance, and the same is being felt across Asian boards. Companies and national regulators should now focus their attention on overcoming the various problems holding back independent directors from fully realizing their potential. This article has looked into the solutions for some of the problems affecting the effectiveness of independent directors, for example, those relating to their appointment, lack of information, insufficient time commitments and so on. These solutions indeed reflect on the fact that independent directors are not always mere toothless tigers but can be pragmatic and effective tools of bringing about corporate governance reforms.