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IMF CONDITIONALITY AND RULE OF LAW: EXCEPTIONAL POWERS AND BANKING IN MALAYSIA AND VENEZUELA

A thesis submitted in fulfilment of the
requirements for the award of the degree

DOCTOR OF PHILOSOPHY

UNIVERSITY OF WOLLONGONG

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LLB (*magna cum laude*, Central University of Venezuela), LLM (Boston
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FACULTY OF LAW

2009

CERIFICATION

I, Gabriel Garcia, declare that this thesis, submitted in fulfilment of the requirements for the award of Doctor of Philosophy, in the Faculty of Law, University of Wollongong, is wholly my own work unless otherwise referenced or acknowledged. The document has not been submitted for qualifications at any other academic institution.

Gabriel Garcia

January 2009

ABSTRACT

The 1990s was a decade marked by the implementation of market reforms worldwide. Countries in Latin America and Asia experimented with neoliberal programs sponsored by international financial institutions (IFIs) in order to adopt the arrangements required for the functioning of a market economy. The International Monetary Fund (IMF) joined in these efforts and incorporated structural requirements in its programs as conditions for the provision of financial assistance, including requirements associated with the strengthening of governance and the rule of law that limited the scope of *ad hoc* decision making schemes. However, by the end of the 1990s the results of IMF-sponsored reforms were controversial.

This thesis explores, from a legal perspective, IMF conditionality as a mechanism to strengthen the rule of law and the relations between these two concepts and exceptional powers in the banking sector. The main argument developed in this thesis is that in spite of the official discourse regarding the promotion of governance and the rule of law, IMF conditionality did not contribute to strengthening this notion in the 1990s. In contrast, conditionality was involved with episodes of instability and the invocation of states of emergency in some developing countries.

The analysis is undertaken through a comparative case study approach in which the legal responses of the governments of Malaysia and Venezuela to address the financial crises that affected those countries in the 1990s are examined. Malaysia declined the help of the IMF during the crash and instead it implemented its own program to manage the financial turmoil. The Malaysian solution provides useful insights and differences from the *ad hoc* legal management crisis style employed by the Venezuelan government that had the technical and financial assistance of the IMF.

Overall, the findings of this thesis suggest that in the case of Venezuela, IMF conditionality did not contribute to the strengthening of the rule of law and the urgency of the measures contributed to the use of exceptional powers by the Venezuelan government in addressing the banking crisis. In contrast, Malaysia, a nation that adopted its own domestic solution, provides a more adequate legal management approach to a financial crisis that helped to strengthen the rule of law in the banking system.

ACRONYMS

AD	Acción Democrática
ADB	Asian Development Bank
AMCs	Assets Management Companies
ASEAN	Association of Southeast Asian Nations
BAFIA	Banking and Financial Institutions Act 1989
BANDES	Economic and Social Development Bank of Venezuela
BCV	Central Bank of Venezuela
BMF	Bumiputera Malaysia Finance
BN	Barisan Nasional
BNM	Bank Negara Malaysia
CDRC	Corporate Debts Restructuring Committee
COPEI	Social Christian Party of Venezuela
CNE	Venezuelan National Electoral Board
CTV	Worker Union of Venezuela
CVF	Corporación Venezolana de Fomento
DANAHARTA	Pengurusan DANAHARTA Nasional Berhad
DTCs	Deposit Taking Cooperatives
ESCAR	Essential Security Cases Regulations 1975
FEA	Financial Emergency Act
FEB	Financial Emergency Board
FEDECAMARAS	Federacion de Camaras y Asociaciones de Comercio y Producción de Venezuela
FOGADE	Deposit Guarantee and Banking Protection Fund
FIV	Investment Fund of Venezuela
FMS	Federated Malay States
FSAP	Financial Sector Assessment Program
GDP	Gross Domestic Product
GNP	Gross National Product
HDI	Human Development Index
IADB	Inter-American Development Bank
IBA	Islamic Banking Act 1993
IFIs	International Financial Institutions
IMF	International Monetary Fund
ISA	Internal Security Act
ITs	Indicative Targets
LOFSA	Labuan Offshore Financial Services Authority
MCA	Malay Chinese Association
MCP	Malayan Communist Party
MIC	Malayan Indian Congress
MIFC	Malaysia International Islamic Financial Center
MoF	Ministry of Finance
MPAJA	Malayan Peoples Anti-Japanese Army
MVR	Movimiento Quinta República
NEAC	National Economic Action Council

NEP	New Economic Policy
NERP	National Economic Recovery Plan
NPLs	Non Performing Loans
NUDs	Need and Urgency Decrees
OECD	Organisation for Economic Co-operation and Development
PAs	Prior Actions
PAS	Islamic Party of Malaysia
PETRONAS	Petroleum Nasional Berhad
PCs	Performance Criteria
PROTON	Perusahaan Otomobil Nasional
PRs	Program Reviews
PRGF	Poverty Reduction Growth Facility
PSUV	United Socialist Party of Venezuela
RAP	Right Accumulation Program
SAC	National Syariah Advisory Council for Islamic Banking and Takeful
SBs	Structural Benchmarks
SDRs	Special Drawing Right
SUDEBAN	Superintendency of Banks and other Financial Institutions
UMNO	United Malays National Organization
UMS	Unfederated Malay States
UNDP	United Nation Development Programme
UK	United Kingdom
US	United States of America
VAT	Value Added Tax
WB	World Bank
WWI	World War I
WWII	World War II

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