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## IMF conditionality and rule of law: exceptional powers and banking in Malaysia and Venezuela

Gabriel Garcia  
*University of Wollongong*, [ggarcia@uow.edu.au](mailto:ggarcia@uow.edu.au)

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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**

**GABRIEL GARCIA**  
LLB (*magna cum laude*, Central University of Venezuela), LLM (Boston  
University)

**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

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

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

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