ROBERT E. LITAN
MICHAEL POMERLEANO
V. SUNDARARAJAN

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Strengthening Financial Sector Governance in Emerging Markets

Policymakers and analysts are still sifting through the wreckage of the Asian financial crisis of 1997 and the subsequent crises in Argentina, Russia, and Turkey to discern key lessons so similar crises will not recur. Some lessons are by now well understood and have been acted upon. Pegged exchange rates can encourage excessive borrowing and expose countries to financial collapse when foreign exchange reserves run dry. By and large, rates that were formerly fixed are now more or less flexible. Inadequate disclosures by both private companies and central banks also can create dangers of financial collapse. More transparency is now found in most of the emerging markets where the financial system did indeed collapse. And the laxity in the supervision and regulation of financial institutions in these markets that aggravated their financial crises has, to a significant degree, been corrected.

One problem, however, has received too little attention thus far: the extent to which financial crises have resulted from a failure in "governance"—broadly defined to include the efficient and effective management of public institutions and private firms. When countries and firms borrow excessively and mismanage their financial affairs, then almost by definition, they are not being governed well. Governance problems in the financial sectors of crisis-affected countries proved to be of special concern.

Among the problems: uninformed investors who were too ready to invest in debt and equity without gathering adequate information; inadequate provision of information by firms and governments that issued these securities; poor regulation of banks and capital markets; ill-defined incentives to avoid excessive risks in private and state-owned financial institutions and companies; the lack of clearly defined and enforced property rights; and insolvency regimes that, after the crises occurred, did not protect creditors.

This volume has been assembled to improve understanding of these particular problems of the financial sector. The papers that follow were commissioned as part of the fourth annual conference on emerging markets finance sponsored by the World Bank Group, the International Monetary Fund, and the Brookings Institution, which was held in New York in April 2002. As in previous years, the 2002 conference brought together a distinguished group of senior public officials, private sector participants, and academic experts to debate and examine the new research commissioned by the sponsors and presented at the conference. In this initial chapter, we summarize some of the highlights of the papers presented at the conference, as well as the discussion by the participants and authors about the subjects raised in the papers. Although this summary does not follow the sequence of the papers contained in the volume, the narrative nonetheless provides a framework within which the papers can be read.

What Is Governance?

In its broadest sense, *governance* refers to the range of institutions and practices by which authority is exercised. As authors of several of the papers in this volume point out, the term is typically used in a governmental context and includes the mechanisms for selecting, monitoring, and replacing officials performing governmental duties, as well as the institutions that create and deliver public goods to citizens.

For the private sector, and specifically for corporations, governance also includes institutions and practices designed to ensure that those running companies serve the interests of those who own them. Solving what has come to be known as the principal-agent problem is not an issue for privately held companies, where the managers are the owners or represent dominant shareholders, and it may be less of a problem, at least in principle, where ownership is highly concentrated in one or a few owners who then have significant incentives to monitor the behavior of managers (but who also then have greater incentives and opportunity to loot the corporation). Where ownership is more widely dispersed, or where minority shareholders' and other stakeholders' interests need to be protected, however, various other institutions—including disclosure requirements, legal protections of the rights of minority shareholders, fiduciary obligations imposed on officers and directors, market conduct rules, an active corporate takeover market, and incentive contracts for managers—have been developed in advanced economies (especially the United States) to ensure that the interests of corporate agents (managers) are closely aligned with their principals (shareholders), and other stakeholders.

The Importance of Financial Sector Governance

This volume focuses specifically on governance in the *financial sector* in emerging markets, in both public and private contexts. Special emphasis is given to this sector because of the unique character of financial intermediaries and the added complexity of standard governance problems among financial institutions. For example, questions of transparency, incentive conflicts, and agency conflicts in the corporate sector are compounded by greater opacity, government ownership, and regulation of financial institutions, banks in particular. In addition, the costs of poor governance in the financial sector are much more widespread than are those of individual corporations. Because financial intermediaries are the repositories of household wealth, their losses or failures can lead to large systemic and social costs.

Governance in the financial sector has both a public and a private dimension. On the public side, governments typically regulate financial institutions and markets and in many countries also own and operate financial institutions directly. In the private context, financial sector governance refers not only to the control financial institutions can and do exercise over borrowers, but also to the institutions and practices, including the governance of regulators, designed to ensure the soundness of financial institutions themselves. The capital markets also provide a means of governance of both financial and nonfinancial firms.

Financial sector governance is important for several clear and obvious reasons. One critical reason is to avoid financial crises—the failures of large numbers of financial institutions or the sudden and sharp collapse of prices of financial instruments traded on capital markets. Financial institutions must function effectively, because they operate the payments system and store much of the wealth in any society. Likewise, capital markets are instrumental in enabling companies to raise funds and investors to hold or access their wealth. In a very real sense, therefore, financial sectors are the functional equivalent of circulatory systems in human beings. Just as humans can be killed or severely impaired if they suffer a heart attack, the real sectors of economies can be crippled if the financial system becomes dysfunctional.

Every one of the major economic crises in emerging market countries in recent years—in East Asia, Argentina, Brazil, Russia, and Turkey—was accompanied or triggered by a crisis in its financial sector, and the citizens of these countries suffered deep pain in the process. In the case of Indonesia, which was hit hardest during the Asian financial crisis, the fiscal costs alone of having the government step in to make good on the obligations of the privately held banks exceeded 100 percent of the country's gross domestic product (GDP). Financial crises also typically entail large social and economic costs, which are visited not only on the wealthy who have something to lose, but also on entire populations of countries where employment opportunities dwindle and wages collapse when GDP drops sharply and currency values plummet.

The costs of financial crises are not the only reasons for being interested in the governance of the financial sector, however. Poor governance is typically associated with corruption, which not only corrodes the trust individuals have in their private and public institutions, but also acts as a significant deterrent to foreign direct investment (FDI). In chapter 3, Shang-Jin Wei of the IMF and Brookings estimates that corruption currently imposes the equivalent of a tax on FDI in excess of 20 percent in many emerging market countries. This "corruption premium" depresses the total amount of FDI—in some countries, by more than 50 percent; it also shifts the composition of incoming foreign capital toward bank lending and shorter-term portfolio flows, both of which make countries more vulnerable to financial crises if confidence in the economy (or its government) is suddenly shattered.

More broadly, Daniel Kaufmann from the World Bank explores in chapter 4 the linkage between governance in the public and private sectors. Based on extensive empirical studies on various governance indicators, Kaufmann notes that "control of corruption" as an aspect of good governance is strongly and positively correlated with the soundness of financial systems. His paper presents evidence showing that elite financial firms in the private sector often play a strong hand in shaping rules and institutions in the public financial sector and that regulatory capture by firms is more widespread in the financial sector than in other regulated sectors. He also emphasizes that regulatory capture by firms calls for a multipronged strategy to foster good governance. Instead of the conventional policy advice geared at public sector officials, Kaufmann recommends a systemwide approach to reform that focuses on building transparency, improving incentives, and preventing corruption on both the public and private sector sides.

Poorly governed financial institutions are liabilities to the financial system: first, because, as Kaufmann demonstrates, they exert a distorting influence on public sector rules and institutions, and second, because they lend to the wrong borrowers and in excessive amounts. Channeling the scarce savings of a country's society to wasteful borrowers deprives sound companies of credit and thus acts as a drag on economic growth. Excessive lending, meanwhile, can lay the foundation for a future financial crisis when an economic shock renders many borrowers unable to repay.

Governance of Banks

Banks are the principal financial intermediary in emerging markets (but less so in developed countries, especially the United States). Banks are funded mainly by depositors; thus bank failures can adversely affect household wealth while possibly leading to systemic losses. The development of new technologies, major industry consolidation, globalization, and deregulation have placed the banking industry at a strategic crossroads. Therefore, banks face a more competitive, volatile global environment than other types of corporations.

Gerald Caprio and Ross Levine explain in chapter 2 why banks pose a special governance problem that is different from ordinary corporations. First, banks' activities are more opaque and thus more difficult for shareholders and creditors to monitor. Second, because governments heavily regulate banks, ownership may be dispersed by mandate (as it is in 79 of the 107 countries for which the authors had data) and thus takeovers may be impeded, directly or through prohibitions on bank ownership by certain kinds of companies. Third, the protection of bank deposits by government deposit insurance programs can undercut incentives for depositors to monitor management, thus shifting responsibility for governance of banks to other parties or institutions. Accordingly, the authors encourage more public reporting of banks' financial conditions, greater entry by foreign banks into emerging markets (which enhances competition and brings greater technical expertise to local banking markets), more market discipline to counteract the disincentive effects of deposit insurance (through, for example, subordinated debt requirements), and perhaps enhanced fiduciary obligations imposed on bank managers and directors. The authors also argue that the need for such additional countervailing measures is especially great in emerging market countries, where information is scarce and less reliable than in industrial countries, where economies are more likely to be dominated by a few family-owned conglomerates, and where state ownership of financial institutions is more pronounced.

A number of the conference participants were not as confident as Caprio and Levine about the benefits of greater foreign ownership of banking systems, especially in small open economies, where if domestic banks were wiped out, foreign banks would have too ample an opportunity to cherry-pick the best customers and leave much of the country underserved. Several participants questioned whether concentrated ownership—a frequently mentioned solution to the principal-agent problem for corporations generally—is appropriate for banks, which can be more easily looted (directly or indirectly, by channeling funds to companies owned by their shareholders).

Meanwhile, despite a wave of privatization around the world in the past two decades, 40 percent of the world's population still resides in countries where most bank assets are controlled by state-owned institutions. State-owned banks pose special governance problems. Government ownership thwarts competitive forces, limits the effectiveness of government supervision in the financial sector, and tends to increase the opacity of banks' operations. Governments can use their state-owned institutions to support excessive government spending and to favor less-than-creditworthy borrowers. All of these tendencies can dampen overall economic growth. In addition, governments often operate their institutions, or the regulatory processes that govern them, in ways that discourage the development of vibrant private sector competitors.

For all of these reasons, there was support voiced at the conference for efforts by governments that continue to own banks to privatize them. But reservations were expressed at the same time. In particular, Y. V. Reddy, deputy governor of the Reserve Bank of India, argues in a case study that governance structures need to be improved before widespread privatizations take place in order to prevent small groups from benefiting from interconnected lending.

The experiences of the Hong Kong Monetary Authority (HKMA) and the Monetary Authority of Singapore (MAS) provide some useful lessons in financial sector governance. For example, increasing the contestability of markets, especially by opening the financial sector to foreign investment, decreases the reliance on family or conglomerate relationships. Legal and bankruptcy frameworks are critical to putting the right incentives in place for a competitive financial sector. To promote transparency and independent audits of financial institutions, HKMA issued a guideline in May 2000 requiring the board of each bank to establish an audit committee made up of nonexecutive directors, the majority of whom should be independent; furthermore, the members must have written terms of reference specifying their authorities and duties. MAS takes another approach to strengthening governance of banks, requiring banks to separate financial and nonfinancial businesses and to change their audit firms every five years.

Governance of Investment Companies

Collective investment schemes—which enable investors to own proportionate shares of a pool of financial assets—have become increasingly important financial institutions in developed countries. The governance structures of these institutions vary widely. Corporate-style mutual funds, found mostly in the United States and a few emerging markets, dominate in terms of value of assets. Contractual and trust-type structures dominate in terms of the number of funds and are found mostly in countries where joint stock company laws do not permit firms to issue and redeem their own shares continuously or where liquid markets to manage open-ended schemes may not be well developed.

Sally Buxton and Mark St. Giles argue in chapter 9, however, that the governance structure is irrelevant for the conduct and performance of collective investment funds. The key to their sound performance lies in effective market discipline underpinned by strong disclosure. They stress the importance of reputational risk in disciplining fund managers and propose a three-pronged approach resting on competition, disclosure, and the ability to exit funds.

The lack of transparency and disclosure by collective investment funds in emerging market countries, in particular, inhibits their performance.

Indeed, the authors report that it is difficult in many emerging markets even to locate a list of the investment funds that are available. Accordingly, they recommend that emerging markets set and enforce disclosure standards for investment vehicles (including a requirement that net asset values be published regularly), while educating the public—through the media—about their risks and rewards.

Asset management companies, or AMCs, a very specialized type of investment vehicle, were created by East Asian governments to hold and ultimately sell troubled assets (often loans) that were formerly on the books of weak or insolvent financial institutions. In countries where banking problems have been severe, AMCs have become major financial institutions in their own right. For example, the Indonesian Bank Restructuring Agency controls 70 percent of the financial sector assets in Indonesia. Clearly, therefore, as the case study by David Cooke illustrates, the governance for these institutions has critical implications for the pace of problem resolution and the costs involved.

The East Asian AMCs are modeled to a large extent on similar institutions that were established in the aftermath of financial crisis in many industrial and emerging market countries in the 1970s and 1980s. Perhaps the best known—and most successful—AMC was the Resolution Trust Corporation (RTC), created in the United States in 1990 to dispose of assets held by hundreds of insolvent savings and loan institutions. The RTC disposed of its assets quickly, placing them in the hands of private sector managers who found alternative uses for them.

The conference participants discussed the experiences of the AMCs created following the Asian financial crisis. They generally agreed that many of these institutions faced conflicting objectives, that their responsibilities were poorly defined, and that oversight committees were not sufficiently separated from management. Looking ahead, possible solutions are to articulate explicit missions for the AMCs; to provide for independent and informed oversight committees, which would articulate the policy objectives and review AMC performance; and to create independent operating boards with authority to manage AMC activities.

Pension Funds

As the population of the world ages, pension funds—both public and private—assume greater importance, both for the individuals covered and for the development of the financial systems to which the funds belong. At this point in time, according to data provided by Gregorio Impavido in chapter 11, almost half of the world's labor force is covered by mandatory, publicly managed, defined-benefit pension plans that are funded on a pay-as-you-go basis. Another 32 percent is covered by partially funded public pension systems. Just 10–15 percent of the world's labor force is covered by public or private defined-contribution pension funds.

The governance of pension funds is critically important, since the quality and performance of fund management can determine the income flows to which retirees are entitled, as well as the level of government funding of any shortfall between what the plans may promise (if they are defined-benefit) and what they are capable of delivering. Impavido provides evidence of poor performance by many publicly managed pension systems and demonstrates that this poor performance is highly correlated with measures of (poor) governance, including government-imposed restrictions on investments and the absence of pension board authority to govern investment decisions. Impavido recommends that public pension programs be given a clear mandate—to maximize the returns for retirees—and not be assigned collateral social objectives; that the boards be insulated, to the maximum extent possible, from political influence; that the members of the board meet rigorous qualifications for serving and that they understand and avoid any conflicts of interest when administering these plans; and that the performance of the plans be disclosed regularly so that boards can be held accountable to beneficiaries.

The Role of Capital Markets in Exerting Governance

Achieving good corporate governance generally has been more challenging for emerging market countries than for advanced economies (notwithstanding the failure of Enron in the United States) for several reasons: corporate ownership in emerging market economies tends to be highly concentrated, often in a few families, with only limited ownership by minority shareholders; takeover markets are thin or nonexistent; and judicial enforcement through formal government sanctions or class action suits also is not widely used or available. Various ideas for improving corporate governance in these circumstances were suggested at the conference.

One improvement might be a requirement that certain kinds of corporate transactions, especially those involving controlling shareholders, be approved by a majority of the minority shareholders. Another participant suggested having specialized courts with expertise in corporate law. Some participants thought high listing standards on exchanges, such as those now used in Germany and Brazil, would strengthen corporate governance, but others questioned whether there was enough demand by companies to satisfy those standards. Another possibility would be to limit investments of pension funds in local companies only to those firms that meet certain minimum, but high, corporate governance standards. The participants broadly endorsed the implementation of internationally endorsed best practice guidelines for corporate governance, especially enforcement of rules on disclosure.

An important lesson that emerged from the papers and from comparison of various countries' experiences was that the changes to capital markets are not a "silver bullet" to facilitate better governance. Moreover, capital markets cannot be viewed in isolation, but instead must be seen as institutions that are inextricably linked to a constellation of legal practices, other institutions, and corporate governance structures. As a result, policymakers and regulators need to tailor their approaches to governance to the institutions and practices that have grown up in specific countries.

For example, the fear of hostile takeover, which is a strong disciplinary force in U.S. markets, relies on a rather well-developed, high-yield bond market that has been a source of funding for acquiring firms. However, this blunt instrument of corporate governance that wrenches out corporate inefficiencies in many advanced economies is simply not relevant in emerging markets or some developed economies, where takeovers are not prevalent. As a result, participants and authors at the conference agreed that it would be a mistake to assume that what may be an effective governance device in developed economies can easily be transplanted to any emerging market economy.

One area of continuing controversy in academic circles about corporate governance is whether Anglo-American common law, where rules are developed over time on a case-by-case basis, does a better or worse job in fostering the development of financial markets than European "civil law," where the rules are set forth in statutes and tend to be less changeable over time. In examining this controversy in chapter 10, Cally Jordan and Mike Lubrano of the World Bank Group agree that legal traditions and systems fundamentally shape the feasibility of various corporate governance mechanisms. But as they highlight in their paper, the debate over the superiority of Anglo-American or European civil law obscures the very important governance role played by *private* rules, whether by contract, often underpinned by voluntary codes of conduct and thus adopted ex ante, or by ex post enforcement through contractual dispute resolution, including arbitration, or through market discipline. Drawing on recently published work, Jordan and Lubrano make the case that private law has been especially important in the development of markets for derivatives instruments. The effectiveness of private rules that rely on voluntary codes of good conduct to promote good governance very much depends, however, upon how they interact with and complement the public rules that underpin governance.

Public Sector Governance of the Financial Sector

Finally, given the economic importance of the financial sector and the dangers when it functions poorly, it is not surprising that governments in both developed and emerging market countries alike take a keen interest in regulating and supervising financial institutions and markets. Jeff Carmichael, chairman of the Australian Prudential Regulation Authority, points out in chapter 5 that the public sector has a close and complex relationship with the financial sector in most economies, often playing several roles simultaneously: the regulator of financial institutions; an owner of financial institutions; a market participant; a fiduciary agent; and sometimes an agent that directly intervenes in the operations of the market. Carmichael outlines a number of principles for effective public sector regulation and oversight. These principles were further analyzed in both normal times and crisis periods in chapter 6 by Udaibir Das and Marc Quintyn of the IMF.

First, perhaps the most important financial public sector governance principle is to ensure the independence of financial regulators, matched by appropriate accountability arrangements. Regulators must be protected against both capricious dismissal and damage suits for performing their regulatory duties.

Second, government agencies (whether financial or not) should have transparent objectives and operational processes, both supported by adequate reporting to the public.

Third, arrangements should be in place to ensure the integrity of the regulatory agency. For example, it is useful to maintain and enforce codes of conduct to govern the staff of regulatory bodies, including a mechanism for judicial review of agency decisions. Carmichael also reinforced the importance of preventing corruption from infecting public oversight of financial institutions and markets.

Das and Quintyn emphasize that incentives for good corporate governance can be distorted in situations of financial distress and crisis and that the scope of regulatory governance has to be reinforced through new institutional structures with enhanced transparency and greater accountability.

The IMF and World Bank are working jointly to assess adherence to financial sector standards as part of a broader assessment of stability and development needs in the Financial Sector Assessment Program (FSAP). Since the inception of the FSAP in 1999, nearly eighty countries have participated or agreed to participate in the program. FSAPs typically have assessed country practices against various internationally accepted standards in supervision, transparency, and market infrastructure (in particular, the IMF Code of Good Practices on Transparency in Monetary and Financial Policies), as well as international standards for the supervision of banks, securities firms, insurance companies and payments systems. As stressed in the Carmichael and Das-Quintyn chapters, these standards give primary emphasis to the importance of independence of regulatory agencies from political influence as a threshold indicator of good public sector governance.

Based on their review of the findings of the FSAPs, Das and Quintyn report that securities regulators score highest of all financial sector regulators on the scale of governance, with banking regulators falling right behind. Banking regulators score as high as they do because in many countries banking supervision is carried out by the nation's central bank, which is more than likely to be strong institutionally, adequately funded, and independent of much of the rest of the government. Insurance regulators face the greatest challenges in adhering to international standards.

Another key indicator of good public sector governance is the degree of transparency of the regulatory objectives and operations, including the regulators' relationships with other agencies. By this measure, the FSAP process reveals that developing countries as a whole, including transition economies, lag behind advanced countries. On the positive side, however, even in developing countries, banking and payments systems supervisors—again, often central banks—score reasonably high.

Looking ahead, the FSAP process is designed to identify and highlight key policy reforms that hold the best prospects for improving financial sector governance practices. Enhancing the independence and accountability of financial regulators, supported by the appropriate degree of transparency of regulatory actions, can greatly add to financial stability and help the public to determine whether financial regulations are serving the public interest.

Summary and Conclusions

Public and private financial sector governance cannot be addressed in isolation without considering the institutional setting. Differences across countries in the degree of rule of law, competition, and the effectiveness of the takeover market shape the effectiveness of governance measures. With respect to governance in the financial sector in particular, policymakers must recognize and take account of the unique institutional and legal climates in various countries. For example, it is useless to threaten litigation as an instrument for enforcing governance in a country that lacks the legal institutions or cultural tradition for lawsuits. Likewise, policymakers cannot expect that market discipline or reputational risk will rein in financial managers when the necessary market mechanisms—transparency, ability to enter and exit markets, and competition—are lacking.

As a result, there is no single, universally applicable remedy to governance challenges in the financial sector. Instead, the collection of papers and discussion at the conference suggest a two-pronged effort, with each element reinforcing the other: one that works to strengthen regulatory oversight on the one hand, while enhancing informational transparency, contestability of markets, foreign access, shareholder participation—in effect, greasing the wheels of the market—on the other.