

Corporate Governance in South-Asian Financial Landscape *A Critical Review on Bangladesh Financial Sector*

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***Abstract:** Globalization of financial markets and fears of financial instability have brought the issue of the corporate governance into forefront of the policy discussions. This paper reviews the practice of corporate governance in financial institutions in south Asian countries with particular reference to the financial sector of Bangladesh. At present, financial sector in south Asian countries are considered to be the highly regulated sector compared to other sectors. This paper has shed light on the state of corporate governance in south Asia, especially India, Pakistan and Bangladesh, and critically examines corporate governance practice in the financial sector of Bangladesh involving their ownership structure, board issues, executive aspects, disclosure, and audit practices along with their associated weaknesses.*

1.0 Introduction

For some fifteen years now, the research program of Ross Levine' together with a research group at the World Bank has lent econometric credibility to an old belief that a functioning financial sector is a vital prerequisite for sound economic growth. At the macro level, research attention was directed to which kind of environments would be most conducive to a successful financial sector, and research demonstrated that the legal environment to enforce financial contracts assumed center stage².

At around the same time, the corporate finance literature started to generate awareness that proper contract enforcement is a necessary but by no means sufficient condition for a successful financial market. But later corporate scandals in some developed markets proved that, a functioning legal environment could not be a sufficient condition to shape an efficient financial sector. The financial institutions

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many countries, particularly South Asian countries, to lead a drive for better corporate governance practice.

As public pressure in South Asian markets brings about more liberalized economies and consequently a demand for better corporate governance, codes of good corporate governance have been increasingly introduced in recent years, either collectively country-wide or on an individual firm basis. Such codes, however, are of limited value without effective implementation procedures - and indeed, the implementation of such codes in many of the South Asian markets particularly in Bangladesh that have adopted them, remain woefully inadequate.

2.0 Research methodology

The report has been made on the basis of available information of the financial systems of the concerned countries. An extensive study has been made on available reports published by the central banks of the south Asian countries and articles on this issue published in internationally renowned journals. In addition, various World Bank reports on south Asian financial markets have also been studied in this regard. Apart from these, interviews with some high officials of Bangladesh Bank have been made for information and discussion on this issue.

3.0 Corporate governance in South Asian Financial Markets

While corporate governance standards within south Asia's financial systems are as varied as the region itself, majority of countries, where standards have historically been weak, achieved significant improvement in line with global financial markets. The region's hugely expensive financial crisis of 1997/1998, which was in part brought on and compounded by weak corporate governance; was an incentive for improvement, and not just in those countries most directly affected. Another spur was a shift away from family and state ownership of the banks towards more diversified and more foreign ownership, which in turn largely arose out of the banks' financial-crisis induced recapitalization requirements. Also, south Asia's banks

have been increasingly integrating with the international financial markets, raising both debt and equity, and this has brought pressure to bear for better, more internationally comparable standards of corporate governance. Apart from these, there has been a general desire on the part of some governments for more modern, stable banking systems combined with the realization that this requires better corporate governance. Such improvements, however, have generally come off a low base, and considerable further development is required. Table I shows the high loan-deposit ratios in south Asian countries that indicate the necessity of strengthening the level of governance. Here development of corporate governance practice in two major south Asian countries, India and Pakistan, has been stated in addition to the scenario of Bangladesh.

Table I: Loan-Deposit ratio in south Asia's banking system

	2001	2002	2003	2004	2005	2006	2007
Bangladesh					82.8	82.3	82.2
India	49.4	53.2	54.1	54.4	62.3	69.6	73.0
Maldives	62.4	58.3	54.1	63.6	87.7	107.3	124.4
Nepal	60.1	61.1	60.2	59.8	64.9	60.7	68.7
Pakistan		65.3	65.2	73.6	76.8	80.3	71.9
Sri Lanka	72.9	67.0	66.4	66.7	71.1	78.6	78.9

Source: World Bank

3.1 India

Corporate governance among Indian bank dominated financial system is discussed across three broad categories - the state-owned banks, the "new" private sector banks, and the "old" private sector banks. There are 27 state-owned banks in India, accounting for 75% of banking-system assets. Government ownership varies from 51%-100%. These banks have begun to list their equity on the domestic bourses and have needed to comply with disclosure and good corporate governance guidelines stipulated by the stock exchanges, which focus on the rights of minority shareholders. It is worth mentioning that boards, including executive chairmen and "independent" directors, are still determined by the government; and power is concentrated with the executive chairman, who is generally appointed on account of seniority. The

signs are that intervention by the state in state-owned banks' credit operations is declining. Foreign ownership of some shares in some banks and frequent interaction with large institutional investors has maintained pressure on these banks to adopt more progressive corporate governance standards. Summing up, although there has been an improvement in the governance practices of these banks, the ownership overhang still remains, and they still comply more with the letter of governance practices than the spirit!

In India, corporate governance standards are the highest among new private sector banks. These banks adhere to the governance practices and disclosures expected by international investors. The boards of these banks are reasonably broad based, with independent directors of wide-ranging experience. Anecdotally the various board committees (compliance, audit, risk, compensation) are vocal, particularly in the internationally listed banks. All this has had a knock-on effect on the other domestic banks. In sharp contrast, the old private sector banks have the weakest level of governance. These banks are controlled by a few families or by communities, with non-bank interests. While these banks might have outside directors and various board committees, these tend to be passive with real decision-making concentrated with the large shareholders - increasing the chance of related party lending.

3.2 Pakistan

Pakistan leads the region in corporate governance scores made by the World Bank (World Bank 2008). Pakistan implemented some bold measures to reform the financial sector first in the 1990s and then in 2000. To further strengthen the stability of the financial sector, the SBP issued Corporate Governance guidelines for the banking sector. A major step towards this was a joint project by the Securities and Exchange Commission of Pakistan and the UNDP (SECP-UNDP) in collaboration with the Economic Affairs Division (EAD) of the Ministry of Finance". The project was launched in August 2002, with the objective to design, develop and implement a Code of Corporate Governance. Although the project had some discussion on corporate governance for banks, its main focus was, in general the corporate

sector. The project issued measures to create stakeholder awareness, capacity building and networking with other emerging economies. To address the problems of the banking sector, the State Bank of Pakistan (SBP) issued a 'Handbook of Corporate Governance' in 2003 (SBP, 2003c). The objective of this handbook was to provide guidelines for Board of Directors, managers and shareholders. Most of the recommendations and guidelines stated in the handbook are directly drawn from the recommendations made by the **Basel** Committee on corporate governance and the OECD. These guidelines cover four important areas, namely, Board of Directors, Management, Financial Disclosure, and Auditors.

In a survey it was revealed that the Bangladesh banking sector was highly leveraged compared to other Asian countries. In fact, the sponsors of the bank does business with the money of the depositors and therefore, the largest stakeholder of a bank is the depositors who does not have any representation in the decision making process.

4.0, Bangladesh Financial Sector- A Bird's Eye View

The financial sector of the country has gone under several changes and had to face many ups and downs to come up to this stage due to change in policy, philosophy and attitude of the Government. After independence, the government accepted the philosophy of mixed economy and nationalized all commercial banks, two DFIs and one agricultural bank. Until 1980s the government owned controlled and directed the financial **market** of the economy. From early 1980s the government began to reform the financial sector and **number** of legislative steps was taken to give it an appropriate shape. Some of the important steps were: allowing private sector to set up banks since 1983, adopted of the Financial Sector Reform in 1986, promulgation of Banking Companies Act, Financial Institution Act etc are very important. Adoption of Five years Financial Sector Reform Project (FSRP) in 1990 as 'an IMF requirement was a mile stone in the Bangladesh **Financial** sector history. The Financial Institutions Act was passed in 1996 to guide, supervise and monitor the NBFIs. The Banking **Companies** Act was modified to stop insider landing in 1997.

In order to bring the leverage in control **Basel** style **Capital Adequacy** was adopted in **1998** through BRPD circular. International Accounting Standard 30 (known as IAS 30) was adopted through BRPD circular to ensure disclosure requirement.

In case of **banking** sector the sponsors of many PCBs after gaining confidence of the depositors and the Government over a period of time took the advantage of using public deposits through their banks and started using the same for their own interest. The above along with the poor performance of the **NCBs** due to unionism and political influences in the operation forced the Central Bank to control the rein of the sector. The Bangladesh bank, under the FSR during the last 10 years has been trying to bring the sector on track in line with the international banking practices and norms. During the last ten years the Central Bank has issued a number of directives to bring the sector under its control. It is interesting to note that most of the directives are directed to improve the governance practice and adoption of best practices.

The scenario of the insurance sector also is not different. Immediately after liberation in **1971**, the Government of Bangladesh nationalized **all insurance companies except ALICO and formed two insurance** companies for life and non-life. **Sadharan** Bima Corporation (non-life) and **Jibon** Bima Corporation (life) were operating in monopoly style till early of the nineties when the Government opened the door of the industry to private sector in **1985**. At present **44** non-life insurance companies and **17** life insurance companies have been operating in the market including ALICO, a foreign life insurance company in Bangladesh. There are three **Takaful/Islami** Insurance companies operating non-life business. **Govt.** owned organizations of the country are obliged to have their insurance policies with SBC where SBC has to share a significant portion of this premium earning with other private insurance companies in this sector. **The** above government policy inwardly ensures a significant part of premium earnings of most of the private insurance companies in this sector, **However**, presence of large number of insurance companies in a small market lead to tough market competition and unethical practices which has

already created a significant number of sick insurance companies in this industry.

5.0 Governance Practice in the Financial Sector

The over all corporate governance in the financial sector is still poor. It is still far away from best practice and international norms. Since the sector is closely linked with the world economic order, the Government had to look at the sector a bit differently and on priority basis.

Many rating and investor service companies (S&P, Moody's, Fitch, ISS etc.) viewed that, corporate governance analysis should be made on ownership structure, board structure and composition, rights of the stakeholders, disclosure and transparency. The corporate governance in the Bangladesh Financial sector may be discussed under the following clusters:

5.1 Ownership Structure

Ownership structure has been identified as the single most common driver of the strength of corporate governance by Fitch Rating firm. Ownership concentration has direct influence on corporate governance in general and on the constitution of board, formation of committees, performing duties and responsibilities according to the rules and regulations by the directors in particular.

Ownership pattern in financial sector of Bangladesh is highly concentrated and closely held by a small number of sponsor shareholders. The lion portion of the shares is owned by a few capitalists leaving a small portion of the ownership to the general investors. Apart from this, a large number of institutions are not even publicly listed companies. In banking sector, an average of only 20 percent shares is publicly available (Reaz and Arun, 2005). The scenario in other sectors, non-bank financial institutions and insurance companies, is shoddier than banking sector. However, Bangladesh Bank's guidelines for corporate governance restrict any individual or family or institution to hold more than 10 percent share in case of

banks and 20 percent in case of non-bank financial institutions. In this study it is found that the condition of banks and non-bank financial institutions is improving as a result of Bangladesh Bank regulation, but due to lack of regulation, condition of insurance sector remains poor in this aspect.

5.2 The Board of Directors

Although corporate governance involves many systems and structures, the heart of it lies in the boardroom. Moreover, unlike developed countries, the board in south Asian countries plays the vital role in operating a financial institution. Thus the composition of board is significantly important in complying with the codes of corporate governance.

The Board of Directors is elected by the shareholders of the company and is the ultimate decision making body. The primary function of the Board is oversight and defining the standards of accountability that enables the executive management to act in the best interest of the shareholders.

In banking sector, the boards of NCBs are constituted by the Government, **being** the owner of these **banks**, through nomination from various sectors usually loyal to the ruling party's philosophy. As a result, the Boards follow the philosophy of the government in respect of providing guideline and management. In this circumstance, the managements of the banks are rather to protect the interest of the government and financing its various activities and political commitments. NCBs provide huge loans to the government and political persons which are not based on standard lending procedure. In addition there is always a tendency from the Ministry to ignore the Board in many important management issues. The only improvement is that now political leaders are not made chairman in the NCBs' board of directors which was practiced in previous time. Under the above backdrop the NCBs are suffering from poor corporate governance and it can hardly be hoped that this scenario will improve shortly as Bangladesh Bank's guideline does not force the NCBs to improve this condition.

Most of the PCBs were sponsored by some industrial and business groups. The constitution of Board is also heavily influenced by these sponsoring Groups as the general shareholders are highly dispersed and disorganized. Thus the boards of the PCBs also carry the philosophy of the sponsoring business groups which is reflected in the funding of their own business or other business houses selected by the Group. The Central Bank, at a later stage had to impose restriction on the loans and advances of the sponsors to curb such business philosophy. The foreign commercial banks' boards are however completely comprised of the executives who are accountable to senior regional and global managers. And these board members happen to work with full autonomy and usually work very professionally.

Other components of the financial sector such as NBFIs and Insurance companies are not better than private sector banks. In respect of insurance industry, the only difference is that it does not have any strong regulatory body like Bangladesh Bank. As a result there is no improvement in the sector over last 20 years.

5.3 Number of Board Members

In case of private sector banks, the number of directors was varying from 10 to 30 persons prior to Bangladesh Bank's restrictions on the number of Directors. The maximum number of Directors in Board of banks is now fixed at thirteen and in board of non-bank financial institutions at eleven excluding the Managing Director. In spite of intense objection by the sponsors and sue against this directive, a good number of sponsors had to be out **from** the Board. Despite this success in reducing number of directors, the private sector banks are still controlled by the sponsor groups. In case of NCBs, Government has been following the charter of the NCBs in nominating the number of directors in the Board. FCBs are also found complying with this regulation.

5.4 Family Members in Board

Prior to the Bangladesh Bank's guideline, the boards in banks and non-banks financial institutions were consisted of many members from a

single family. The main sponsors, based on the number of shares, used to take son, daughter or in-laws in the board which is against any corporate governance philosophy or ethical standard. To curb the control of one family within a bank, Bangladesh Bank issued guidelines restricting maximum number of family members in the Board of financial institutions. The question of family members in the Board does not apply in case of NCBs, as no private business groups are their owner. In the insurance sector, the appointment of family members or relatives is still in practice in large Boards.

5.5 Tenure of Directorship

The Corporate Governance Philosophy suggests that some directors should retire in order to create opportunity for the new candidate to make the board vibrant with new ideas and philosophy. In Bangladesh it was well established thinking that any board member, since the directors are the sponsor shareholders holding majority of the shares, can remain member for indefinite time through reelection. In line with the principle of corporate governance, Bangladesh Bank curtailed the tenure of any director in financial sector for not more than two terms continuously with three years in a term. However, in practice it is found that, the retired sponsor directors elect their wives or sons or daughters in the Board keeping themselves at the back bench and wait for the next term for election.

5.6 Appointment of Directors

The board of directors is a control mechanism of 'professional referees' (Fama and Jensen, 1983a), designated to discipline the top management of the firm and, if need be, to replace it with more effective individuals (Hermalin and Weisbach, 2003). Corporate governance principles put forward that the directors of financial institutions should have at least basic financial literacy and significant literacy in relevant areas. In line with such global best practices, Bangladesh Bank issued guideline regarding appointment of directors in financial institutions. The appointee requires satisfying the "fit and proper test" and having at least of business or professional experience to be appointed as director in financial institutions.

However, in practice, qualification is not the criterion to be appointed as a member in a Board. In the NCBs the nomination in the Board is not based on the philosophy of professionalism rather based on loyalty to the government. The Board is formed by the government through nominated directors **from** various sectors to serve the purposes of special quarters involving politicians and business houses as "rubber stamps". It is widely recognized that the directors in NCBs pass their time in board meeting by discussing things other than banking business. In case boards of PCBs and non-bank financial institutions (NBFIs), most of the directors are not appropriately qualified according to the central bank's guideline although present condition is far better than previous years. Lack of sufficient qualification of the directors generates poor condition of corporate governance in this sector. However, the boards of foreign commercial banks are consist of highly qualified executives and do not suffer **from** any breach of corporate governance principles.

5.7 Independent Director in the Board

The inclusion of independent directors on the board is thought to lower the probability of collusion of management to expropriate security holders (Peasnell et al., 2001). However the concept of independent director in Bangladesh is new and the issue is one of the much talked subject in the corporate management in recent days although these has been in existence globally for a long time as best practice. In some of the countries the listing rules require that the Board must submit report periodically as to the change in the qualification and criterion of independent directors. In most of the cases the important committees are headed by the independent directors. In Bangladesh the concept of independent director's presence in the Board is considered to be policing against the existing directors which is to be removed. The SEC Bangladesh has recently circulated a corporate governance guideline for the listing companies with implement or explain basis asking the companies to have 1/5th of the member of the Board as independent directors to be elected by the Board. The listed financial institutions will fall under the above circular that will bring a positive result. Moreover, commercial banks

are asked to include two directors among the depositors in order to represent depositors in the board. Very few financial institutions have independent director except the public sector institutions.

5.8 Ownership vs Management

The governance debate identifies the central problem of the separation of ownership and control in the corporate firm and centers on the alignment of the various stakeholders' interest. In line with this, corporate governance principles confined the duties and responsibilities of the owners represented by the elected directors. Board of directors has the responsibility to prepare policies and broad guidelines which will be implemented by the management in a way they think best for the goal of the institutions. In addition, board has the responsibility to oversight on the affairs of the financial institutions and evaluates management performance in achieving organization's goal. However in Bangladesh financial sector, it is found that board decides on almost everything, from recruitment, promotion, transfer to loan approval procedure, thus taking the responsibility of running the business instead of relying on the management, while it is clearly restricted for the board to interfere in normal business operation. It is also found, in this study, that financial institutions sanction loan to the companies, indirectly owned by the directors, on the basis of directors' recommendation only and without maintaining due procedure, most of which become non-performing loan. At this backdrop, Bangladesh Bank in its guideline for corporate governance clearly states the duties and responsibilities of the board and restricts financial institutions providing loan to the directors. This apparently enhanced the state of loan to the directors in financial institutions. However, careful study can reveal the underground fact behind this scenario that directors of one bank provide undue treatment in loan approval process to the directors, friends and relatives of other banks in exchange of reciprocal dealing. Thus, corporate governance in this aspect, in true sense, has not been established in Bangladesh financial sector.

5.9 Appointment of CEO, Remuneration and Delegation of Power

In private sector and foreign financial institutions, CEOs are recruited on basis of their experience, professionalism and prospective contribution to the institution and their contracts are linked to their performance that are almost consistent with the best practice guidelines of Bangladesh Bank. However, this has been found in case of public sector financial institution like NCBs and DFIs.

Remuneration of the management also found better in private and foreign financial institutions while the public sector institutions remain far behind in terms of remuneration or reward for performance in maximizing wealth.

On the other hand, delegation of power to managerial hierarchy remains poor in both public and private sectors financial institutions. Most of the PCBs have "executive Committee" usually headed by the Chairman or Vice Chairman of the Board, decides on all the functions of the bank and provides approval that are under the scope of the management or matter of deciding in the board meeting. As a result, board meeting becomes merely a formality to approve the decisions of the executive committee and delegation of power to the management remains on the papers only. In case of public sector institutions, board retains all the power to take any kind of decision like loan appraisal, recruitment at any level, promotion or transfer of employees, loan rescheduling etc. which fall under the authority of the management, according to the corporate governance guidelines, by the recommendation of the ruling politicians or ministries of the government. In spite of Bangladesh Bank's guidelines on delegation of power to the managerial hierarchy and imposition of several restrictions on board's interference in managerial activities, condition of both private and public sector institutions improved a little.

5.10 Audit and Internal Control

Effective internal and external audit in association of audit committee of board of directors maintain accountability and transparency of financial institutions operation to all their stakeholders. In Bangladesh

most of the financial institutions have internal audit department who report either to board of directors or to senior management. Financial institutions are also required to do audit by external auditor. Apart from these, Bangladesh Bank has issued guidelines for internal control and instructed all the financial institutions to form audit committee by the board to ensure effective internal control system.

However, in spite of all these measures the over all internal control system of the financial institutions in Bangladesh is poor. A study (Reaz and Arun, 2005) found that, more than half of the banks' internal audit found evidence of fraud in their audit and more interestingly 5 percent of the banks disclose the internal audit report to the shareholders in the AGM.

5.11 Accounting Standard and Disclosure of Information

A strong disclosure regime that promotes real transparency is a pivotal feature of market based monitoring of companies and is central to shareholders' ability to exercise their ownership rights on an informed basis. Disclosure of related information affecting the stakeholders is one of the pre-requisite of sound corporate governance. During the last couple of years the disclosure in the annual reports and also in financial statements has improved significantly in the country, particularly in the banking sector. There was a time when the operational information of a financial institution was considered to be classified information. But the change in the above mentality started with the adoption of International Accounting Standard 30 (IAS 30) by Bangladesh Bank in the form of BRPD circular. In addition, the SEC also provides guideline to the listed companies to provide half yearly accounts and other information in the annual report. Bangladesh bank issued a number of circulars to ensure appropriate disclosure. For example the Central Bank made it mandatory to form Audit committee and to disclose many highly confidential operational information such as capital adequacy of the bank, funding and liquidity position, Sector wise loans and advances, loan loss provisions with greater transparency, disclosure on the ownership and shareholding pattern, details of investment in portfolio with the market price. All these vital

information are now disclosed in the annual accounts and annual reports. However, there is no substantial improvement in the disclosure policy of insurance companies. Management expenses, a big head of expenses is still remained as the black box. There is very poor disclosure in respect of claim settlement and premium receivables, net discount offered to the clients to procure business, related party claim settlement, reinsurance details etc.

Basel-II guideline provides for more disclosures in respect of many issues related to the operation. On accounting disclosures, the Basel Committee and IFRS committee formed a joint Committee to review the IAS 30 under the current context.

6.0 Conclusion

In Bangladesh, corporate governance has drawn attention of the policymakers and the regulators following high percentage of classified loans of the private banks in the early 1990s and the 1996 capital market crash. Bangladesh Bank (BB) has brought major changes in the laws to strengthen the banking sector and ensure appropriate governance structure. The above discussion shows the ineffectiveness and limitations of these reforms. Since corporate governance in financial sector impacts so directly on macroeconomic development, it should be accorded the highest possible priority by the State. Most importantly, poor corporate governance is costly. Failure of any financial institution due to ineffective governance can undermine confidence in the entire financial system. It is estimated that **after** the Asian crisis the fiscal costs of meeting the financial obligations of commercial banks in Indonesia exceeded 100% of the country's gross domestic product (GDP). Therefore, Government has a **responsibility**, as a regulator, to ensure that financial entities are operated in the interest of the depositors, the shareholders and the wider economy. Financial institutions must conduct their activities in such a manner so as not to compromise the financial well being of all its stakeholders. Failure to do this, may pose substantial financial costs and economic dislocation. The Bangladesh economy is now more linked with the international economy than ever before. Therefore,

without having a trustworthy and reliable financial Sector characterized by professional management, strong ethical code, avoidance of conflict of interest, dynamic regulatory environment that ensures strong accountability and transparency the economy cannot move and Bangladesh must ensure that these issues of corporate governance meet international standards. Based on the limitations of the existing regulations regarding corporate governance, the following recommendations may be considered as further efforts to strengthen and upgrade the level of governance in the financial sector that meets international standards.

Corporate Governance Rating: Since general stakeholders may not be aware of hundreds of principles to evaluate a financial institution's governance structure, Corporate Governance Rating can be introduced. The rating has to be initiated and administered by the SEC or Bangladesh Bank or any third party like rating companies under the supervision or regulators. This rating also have to be mandatory, recognized and published regularly. Not only this will be easy to understand, but also a corporation's functioning and operation through access to finance, issuance of securities, credit rating should largely be a function of this rating.

Establishing separate monitoring unit: A separate "Corporate Governance Monitoring Cell" can be set with Bangladesh Bank or SEC that would closely observe the listed company activities. This dedicated cell would make it mandatory to report regularly on their activities to them, and also would accept complaints from the stakeholders on a corporation. The settlement power of the complaints may also lie with, this cell.

Corporate Governance Report and CSR: Corporate Governance Report and Corporate Social Responsibility Report must be made mandatory for publishing by the financial institutions that would be considered while valuing the institutions by the stakeholders for a particular period. In many countries like USA, Canada or Australia, regulators have clearly articulated the length and contents of these reports. Regulators in Bangladesh may also enforce it for

understanding the progress in development governance structure in the financial institutions.

Basel II in NBFIs: Like the banking sector, **Basel** accord should be implemented in the non-bank financial institutions also. Bangladesh Bank has decided to implement these principles in NBFIs but has yet to prepare any **roadmap** in this regard.

Strengthening the regulatory capacity of Bangladesh Bank: Bangladesh Bank has introduced and instructed the financial institutions many rules in line with good governance which are not implemented perfectly due to their lack of capacity. Therefore, in order to ensure proper implementation of corporate governance in financial institutions, the capacity of Bangladesh Bank should be enhanced.

End Notes:

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