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APPRAISAL REPORT

CAO Compliance Appraisal

CAO Ref. Code: C-I-R9-Y13-F188

August 30, 2013

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**IFC Investment in Harmon Hall, Mexico**  
**[IFC Project #24803]**

**Case of**

Complaint from employees of Harmon Hall whose identities are confidential

**Summary**

This appraisal relates to labor and working conditions issues around IFC's investment in Harmon Hall, an English language school chain in Mexico.

In December 2011, CAO received a complaint from a former employee of Harmon Hall. CAO initiated a dispute resolution process, throughout which the complaint count rose to 17. The CAO dispute resolution process led to agreements on 15 complaints, as well as a number of systemic changes to the company's human resources management systems.

The remaining two complaints were forwarded to CAO compliance summarized as follows:

A dispute between a former teacher and management about whether the adequate amount was paid out as the employment relationship ended. This was an ongoing court case, which the parties attempted to resolve through CAO-mediated dialogue. During the mediation process, both parties could not reach an amicable agreement and they resolved to continue having the case addressed in the Mexican courts.

Case of a former employee: One former employee contacted CAO with a range of concerns about the company's past, particularly the legality of the actions of its former owners. Upon being presented with the process options open to complainants, the complainant did not choose to participate in the dispute resolution process. As a result, the case will be transferred to the CAO's Compliance function for appraisal.<sup>1</sup>

Having considered the issues raised in the complaints and conducted a review of documentation related to the investment, CAO has not identified substantial concerns regarding environmental and/or social outcomes, and/or issues of systemic importance to IFC/MIGA of the type that would warrant a compliance investigation.

CAO thus decides to close this case.

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<sup>1</sup> CAO Conclusion Report, Harmon Hall – Mexico (July 2013).

## **About CAO**

*The CAO's mission is to serve as a fair, trusted, and effective independent recourse mechanism and to improve the environmental and social accountability of IFC and MIGA.*

CAO (Office of the Compliance Advisor Ombudsman) is an independent post that reports directly to the president of the World Bank Group. CAO reviews complaints from communities affected by development projects undertaken by the two private sector lending arms of the World Bank Group: the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA).

For more information about the CAO, please visit [www.cao-ombudsman.org](http://www.cao-ombudsman.org)

## 1. Overview of the CAO Compliance Appraisal process

When CAO receives a complaint about an IFC or MIGA project, the complaint is referred to CAO's dispute resolution arm, CAO dispute resolution, which works to respond quickly and effectively to complaints through facilitated settlements, if appropriate. If CAO dispute resolution concludes that the parties are not willing or able to reach a facilitated solution, the case is transferred to CAO compliance for appraisal and potential compliance investigation.

The focus of CAO compliance is on IFC and MIGA, not their client. This applies to all IFC's business activities including the real sector, financial markets, and advisory. CAO assesses how IFC/MIGA assured itself/themselves of the performance of its business activity or advice, as well as whether the outcomes of the business activity or advice are consistent with the intent of the relevant policy provisions. In many cases, however, in assessing the performance of the project and IFC's/MIGA's implementation of measures to meet the relevant requirements, it will be necessary for CAO to review the actions of the client and verify outcomes in the field.

In order to decide whether a compliance investigation is warranted, CAO compliance first conducts a compliance appraisal. The purpose of the compliance appraisal process is to ensure that compliance investigations are initiated only for those projects that raise substantial concerns regarding environmental and/or social outcomes, and/or issues of systemic importance to IFC/MIGA.

To guide the compliance appraisal process, the CAO applies several basic criteria. These criteria test the value of undertaking a compliance investigation, as CAO seeks to determine whether:

- There is evidence of potentially significant adverse environmental and/or social outcome(s) now, or in the future.
- There are indications that a policy or other appraisal criteria may not have been adhered to or properly applied by IFC/MIGA.
- There is evidence that indicates that IFC's/MIGA's provisions, whether or not complied with, have failed to provide an adequate level of protection.

In conducting the appraisal, CAO will engage with the IFC/MIGA team working with the specific project and other stakeholders to understand which criteria IFC/MIGA used to assure itself/themselves of the performance of the project, how IFC/MIGA assured itself/themselves of compliance with these criteria, how IFC/MIGA assured itself/themselves that these provisions provided an adequate level of protection, and, generally, whether a compliance investigation is the appropriate response. After a compliance appraisal has been completed, the CAO can close the case or initiate a compliance investigation of IFC or MIGA.

Once CAO concludes a compliance appraisal, it will advise IFC/MIGA, the President, and the Board in writing. If a compliance appraisal results from a case transferred from CAO's dispute resolution role, the complainant will also be advised in writing. A summary of all appraisal results will be made public. If CAO decides to initiate a compliance investigation as a result of the compliance appraisal, CAO will draw up terms of reference for the compliance investigation in accordance with CAO's Operational Guidelines.

## 2. Background

Harmon Hall is a chain of English Language schools in Mexico with a network of 101 schools in 63 cities, and approximately 40,000 students and 1229 employees. Harmon Hall was founded in 1966 and its headquarters are located in Mexico City.

Nexus Capital Private Equity Fund III L.P (Nexus), a private equity fund that targets investments in middle-market Mexican companies, acquired 60 percent of Harmon Hall in 2008.

The total Project costs was estimated at US\$ 20 million, of which IFC provided a US\$7.9 million direct equity investment to Harmon Hall. IFC investment consisted of two components: (i) the purchase of the founding shareholders' shares; and (ii) a capital increase to finance the company's expansion plans for an 18 month period. The project, classified as a Category B, was approved in July 23<sup>rd</sup>, 2010 and was fully disbursed in August 18<sup>th</sup>, 2010.

## 3. Scope of Appraisal

In December 2011, CAO received a complaint from a former employee of Harmon Hall. CAO initiated a dispute resolution process, throughout which the complaint count rose to 17. The CAO dispute resolution process led to agreements on 15 complaints, as well as a number of systemic changes to the company's human resources management systems.

The scope of an appraisal is defined by issues raised in a complaint and identified during the CAO assessment phase.<sup>2</sup>

The remaining two complaints were forwarded to CAO compliance summarized as follows:

A dispute between a former teacher and management about whether the adequate amount was paid out as the employment relationship ended. This was an ongoing court case, which the parties attempted to resolve through CAO-mediated dialogue. During the mediation process, both parties could not reach an amicable agreement and they resolved to continue having the case addressed in the Mexican courts.

Case of a former employee: One former employee contacted CAO with a range of concerns about the company's past, particularly the legality of the actions of its former owners. Upon being presented with the process options open to complainants, the complainant did not choose to participate in the dispute resolution process. As a result, the case will be transferred to the CAO's Compliance function for appraisal.<sup>3</sup>

CAO attempted to contact the remaining complainants for clarification of their concerns. The first complainant declined to share further details due to an ongoing court case against the Company. The second complainant did not respond to CAO communications.

While the issues raised by the complaints referred to CAO compliance are no doubt important at an individual level, the limited information available does not support the conclusion that project raises "substantial concerns regarding environmental and/or social outcomes."<sup>4</sup> The remaining question for this appraisal is thus whether the complaints raise "issues of systemic importance to IFC/MIGA."<sup>5</sup>

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<sup>2</sup> CAO Operational Guidelines (2013) para. 4.2.1.

<sup>3</sup> CAO Conclusion Report, Harmon Hall – Mexico (July 2013).

<sup>4</sup> Operational Guidelines, para. 4.2.1.

<sup>5</sup> Ibid.

The unresolved complaints raise potential issues in relation to IFC's approach to the identification and supervision of risks relating to PS2 (Labor and Working Conditions). These are discussed below.

#### **4. IFC's Appraisal and Supervision of Labor Issues at Harmon Hall**

The discussion that follows is organized chronologically following the IFC project cycle, dealing first with issues related to IFC's due diligence in the preparation of the project, and second with issues around supervision. Each section identifies applicable Environmental and Social (E&S) requirements and describes IFC's approach to meeting these.

##### Issues related to project preparation

In relation to the pre-commitment phase of the project cycle, the key question for CAO is whether IFC exercised due diligence in its review of and response to the client's assessment of the project's E&S impacts, particularly in relation to labor issues. In this case, questions arise relating to IFC's assessment of Harmon Hall's track record with regard to PS2 issues, and its commitment and capacity to meet the requirements of PS2. The underlying principle established by the IFC Policy on Social and Environmental Sustainability (the Sustainability Policy, 2006) in this respect is that "IFC does not finance new business activity that cannot be expected to meet the performance standards over a reasonable period of time" (para 17). In order to reach a conclusion on this question IFC is required to conduct a review that is "appropriate to the nature and scale of the project, and commensurate with the level of social and environmental risks and impacts (para. 13)."

PS2 (2006) includes the following provisions relevant to IFC's investment in Harmon Hall. In terms of human resources policy, PS2 establishes that "the client will provide employees with information regarding their rights under national labor and employment law, including their rights related to wages and benefits. This policy will be clear and understandable to employees and will be explained or made accessible to each employee upon taking employment" (para.6). According to the IFC Guidance Note on PS2, a human resources policy should include specifics about termination procedures and rights and entitlement to and payment of wages (p. 54).

In terms of working conditions, when the client is not party of a collective agreement with workers' organizations "the client will provide reasonable working conditions and terms of employment that, at a minimum, comply with national law" (PS2, para.8). Finally, "[t]he client will provide a grievance mechanism for workers to raise reasonable workplace concerns" (para. 13).

A preliminary IFC review of E&S issues around the Harmon Hall investment dated May 2010,<sup>6</sup> identifies labor practices and terms of employment as potential risks that need to be assessed. An Environmental Specialist carried out an appraisal mission on the second half of May 2010, visiting various facilities and meeting with various corporate level directors at Harmon Hall (ESRS, p.2).

IFC's Summary of the Proposed Investment, dated July 2010, highlights that "[g]eneral human resource policies are in place, with no evidence of restriction of freedom of association;" and that "[t]he company will need to formalize some procedures and develop a [...] grievance mechanism for employees and neighbors."

On labor issues, IFC's Environmental and Social Review Summary (ESRS), also dated July 15th, 2010 points out that "The company does not currently have a Human Resources policy." The ESRS further specifies that the Harmon Hall has an Internal Work Regulation (including employees' rights and obligations and the company's discipline procedures) but that actual human re-

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<sup>6</sup> IFC, PSD – Concept (May 4, 2010).

sources (HR) procedures have not been communicated to the employees and are, according to the HR Director, “in draft version.” The ESRS notes that the Internal Work Regulations are reported to be presented to the workers at the signing of the contract and should be available for review in every facility. However, the ESRS also reports that the Internal Work Regulations were not available at several of the schools visited by IFC during the appraisal mission. In addition, the ESRS states that benefits around insurance, vacation and salary “[are] found to be compliant with Mexican labor regulations” and that the “[t]he termination procedure establishes the employee’s right to payment according to Mexican regulations.” The basis on which these findings of compliance are made is, however, unclear.

In terms of labor relations or disputes, the ESRS points out that “[a]ccording to the interviewed teachers, they are paid all the hours they work.” The ESRS notes the lack of a formal grievance mechanism, with facility directors considering themselves in charge of addressing employees’ disputes. It also notes that “[t]he employees interviewed ... were not aware of a formal process in place, and that should they have a concern, they would present their complaint to the facility director or to the academic supervisor.” No further labor dispute or employees’ concern is reported in this document.

The Environmental and Social Action Plan (ESAP) includes a number of actions related to PS2 that were due “six months after signing the loan agreement.”<sup>7</sup> Required actions include the finalization of the Human Resources Policies and the establishment of an Internal Grievance Mechanism, as well as actions to make employees aware of these developments. No conditions of disbursement are listed in relation to PS2.

#### Issues related to project supervision – general supervision

Following commitment, IFC’s obligation is to monitor the client’s E&S performance in accordance with its Sustainability Policy and ESRPs. Relevantly, this includes the requirement to review project performance on the basis of the client’s commitments in the investment agreement and Action Plan and, in cases where a client fails to comply with these commitments, to work with the client to bring it back into compliance (Sustainability Policy, 2006, para. 26).

Harmon Hall communicated the completion of all actions regarding PS2 under the ESAP on December 2011, 10 months after they were due. Harmon Hall also produced an internal procedure regarding compensation at the end of the work relationship, dated February 2011, which asserts to calculate such compensation according to the Mexican Labor Law. In the same communication, Harmon Hall includes a copy of the internal announcement informing employees of the new human resources policies and the internal grievance mechanism.

In response to the ongoing CAO dispute resolution process, Harmon Hall launched an independent grievance mechanism called Programa de Asistencia al Empleado (PAE). Moreover, Harmon Hall incorporated a number of systemic changes around the company’s human resources management systems aimed at addressing some of the concerns voiced during the dispute resolution process.<sup>8</sup>

Harmon Hall’s first Annual Monitoring Report (AMR) was due January 2012. Harmon Hall presented an AMR reporting from June 2011- June 2012, on July 2012. The July AMR states that 46 HR policies and procedures have been developed and are available on its internal website. IFC’s AMR Review, dated November 2, 2012 reports on the establishment of a local grievance mechanism by Harmon Hall to address the complaints received by the CAO regarding labor issues.

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<sup>7</sup> The investment agreement between IFC and Harmon Hall was signed on August 16<sup>th</sup>, 2010.

<sup>8</sup> CAO Conclusion Report.

An IFC site supervision report from January 2013 notes Harmon Hall's progress in terms of establishing an internal grievance mechanism. It also notes the establishment of the PAE, which had registered 26 complaints from employees at the time. The supervision report identifies outstanding issues related to the implementation of the ESAP but none of these is relate to PS2. The supervision report provides no indication that the IFC site visit included consultations with Harmon Hall employees or analysis of the underlying causes of the complaints being made through the PAE.

In February 2013, CAO notes that Harmon Hall decided to replace the PAE by a strengthened internal complaints response.<sup>9</sup>

## **5. CAO Decision**

The complaints forwarded to CAO compliance provide no indication that this project raises substantial concerns regarding environmental and/or social outcomes. While this appraisal raises some questions as to the robustness of IFC's approach to the review and supervision of PS2 issues, CAO finds no indication of issues of systemic importance to IFC/MIGA of the type that would warrant a compliance investigation.

CAO thus decides to close this case.

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<sup>9</sup> CAO Conclusion Report.