



CAO ASSESSMENT REPORT

Eighth Complaint regarding IFC's Harmon Hall Project (#29753)

Mexico

April 2014

Office of the Compliance Advisor Ombudsman
International Finance Corporation/
Multilateral Investment Guarantee Agency
www.cao-ombudsman.org

About the Compliance Advisor Ombudsman

The Office of the Compliance Advisor Ombudsman (CAO) is the independent accountability mechanism for the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA), the private sector arms of the World Bank Group. CAO reports directly to the President of the World Bank Group, and its mandate is to assist in addressing complaints from people affected by IFC/MIGA supported projects in a manner that is fair, objective and constructive and to enhance the social and environmental outcomes of those projects.

For more information, see www.cao-ombudsman.org.

TABLE OF CONTENTS

LIST OF ACRONYMS..... 4

1. Overview 5

2. Background..... 5

 2.1. The Project..... 5

 2.2. The Complaint 5

3. Assessment 5

4. Next Steps 6

LIST OF ACRONYMS

CAO	Compliance Advisor Ombudsman
IFC	International Finance Corporation
IMSS	Mexican Social Security Institute
MIGA	Multilateral Investment Guarantee Agency

1. OVERVIEW

CAO received a complaint by Graeme Ritchie, a former employee of Harmon Hall English Language School in Puerto Vallarta in March 2014. The Complainant raises concerns about Harmon Hall's approach to teacher contracting – employing teachers with self-employed, or *asimilados* contracts, rather than employee, or *nomina*, contracts and the consequences of being employed with *asimilados* status. CAO determined that the complaint met its three eligibility criteria, and undertook an assessment of the complaint. During the assessment, the parties did not come to an agreement to engage in CAO-convened mediation. This complaint will therefore be handled by CAO Compliance for appraisal of IFC's performance. This Assessment Report provides an overview of the assessment process, including a description of the project, the complaint, the assessment methodology, and next steps.

2. BACKGROUND

2.1. The Project

Harmon Hall (the Company) is a chain of English Language schools in Mexico with a network of 100 schools, and 1,494 employees. The Company is 60% owned by Nexxus Capital Private Equity Fund III L.P (Nexxus), a private equity fund that targets investments in middle-market Mexican companies. Nexxus' share of the Company was acquired in April 2008.

The IFC project provides an equity investment in Harmon Hall that consists of two components: (i) the purchase of the founding shareholders' shares and (ii) a capital increase in Harmon Hall to finance the expansion plans of the Company over an 18 month period. IFC provided a direct \$7.9 million equity investment after which it acquired a portion of the founding shareholders' stake in the Company. The project was approved in July 2010 and is classified as a Category B project.

2.2. The Complaint

A complaint was lodged with CAO in March 2014 by former employee Graeme Ritchie of the Puerto Vallarta School. Mr. Ritchie explained that the Mexican Social Security Institute (IMSS) recently ruled that his work status during his period of employment with Harmon Hall was that of a full time employee (*nomina*) as opposed to being self-employed (*asimilados*). As a result, the Complainant contends that Harmon Hall owes him benefits withheld for the two years' service with the school.

This is the eighth complaint regarding IFC's Harmon Hall project.

3. ASSESSMENT SUMMARY

The purpose of a CAO assessment is to clarify issues and concerns raised by the Complainant(s) and to help Complainant(s) and companies determine whether they wish to engage in a voluntary CAO-convened dispute resolution process or prefer for their concern to be handled by CAO compliance to appraise IFC's performance vis-à-vis the project.

During the assessment, CAO does not gather information to make a judgment on the merits of the complaint. (See Annex A for a complete description of the CAO complaint handling process.)

The CAO assessment of the complaint consisted of:

- Desk review of project documents
- Written correspondence and phone interview with the Complainant, the Company and Nexxus representatives.

The Complainant’s perspective:

Based on the original complaint and further discussions undertaken during CAO’s assessment, below is a summary of concerns raised by the Complainant:

The Complainant informed CAO that on 13 October 2013, the IMSS ruled that his work status whilst employed with Harmon Hall should have been that of a *nomina* (full time employee) and not *asimilados* (self-employed). Nomina employees receive benefits such as health insurance or government support for mortgages. As a result, the Complainant believes that Harmon Hall owes him benefits and compensation denied for the two year period he worked with the school.

The Company’s perspective:

The Company chose not to engage in a voluntary CAO-facilitated collaborative process to resolve the complaint issues under the auspices of CAO’s Dispute Resolution function, and reiterated their commitment to addressing any complaint that is received through their internal grievance systems.

4. NEXT STEPS

As the parties could not reach an agreement to engage in a CAO facilitated voluntary dispute resolution process, the complaint will be transferred to CAO’s compliance function for appraisal of IFC’s role in accordance with CAO Operational Guidelines.

Annex A: CAO Complaint Handling Process

The Office of the Compliance Advisor Ombudsman (CAO) is the independent recourse mechanism for the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA) of the World Bank Group. CAO reports directly to the President of the World Bank Group, and its mandate is to assist in addressing complaints from people affected by IFC/MIGA supported projects in a manner that is fair, objective, and constructive and to enhance the social and environmental outcomes of those projects.

The initial assessment is conducted by CAO's Dispute Resolution function. The purpose of CAO's assessment is to: (1) clarify the issues and concerns raised by the Complainant(s); (2) gather information on how other stakeholders see the situation; and (3) help stakeholders understand the recourse options available to them and determine whether they would like to pursue a collaborative solution through CAO's Dispute Resolution function, or whether the case should be reviewed by CAO's Compliance function.

This document is a preliminary record of the views heard by the CAO team, and explanations of next steps depending on whether the parties choose to pursue a Dispute Resolution process or prefer a CAO Compliance process. *This report does not make any judgment on the merits of the complaint.*

As per CAO's Operational Guidelines,¹ the following steps are typically followed in response to a complaint that is received:

Step 1: **Acknowledgement** of receipt of the complaint

Step 2: **Eligibility:** Determination of the complaint's eligibility for assessment under the mandate of the CAO (no more than 15 working days)

Step 3: **CAO assessment:** CAO conducts an assessment of the issues and provides support to stakeholders in understanding and determining whether they would like to pursue a consensual solution through a collaborative process convened by CAO's Dispute Resolution function, or whether the case should be handled by CAO's Compliance function to review IFC's/MIGA's environmental and social due diligence. The assessment time can take up to a maximum of 120 working days.

Step 4: **Facilitating settlement:** If the parties choose to pursue a collaborative process, CAO's dispute resolution function is initiated. The dispute resolution process is typically based or initiated by a Memorandum of Understanding and/or a mutually agreed upon ground rules between the parties. It may involve facilitation/mediation, joint fact-finding, or other agreed resolution approaches leading to a settlement agreement or other mutually agreed and appropriate goal. The major objective of these types of problem-solving approaches will be to address the issues raised in the complaint, and any other significant issues relevant to the complaint that were identified during the assessment or the dispute resolution process, in a way that is acceptable to the parties affected².

¹ For more details on the role and work of CAO, please refer to the full Operational Guidelines: http://www.cao-ombudsman.org/documents/CAOOperationalGuidelines2013_ENGLISH.pdf

² Where stakeholders are unable to resolve the issues through a collaborative process within an agreed time frame, CAO Dispute Resolution will first seek to assist the stakeholders in breaking through impasse(s). If this is not possible, the Dispute Resolution team will inform the stakeholders, including IFC/MIGA staff, the President and Board

or

Compliance Appraisal/Investigation: If the parties opt for a Compliance process, CAO's Compliance function will initiate an appraisal of IFC's/MIGA's environmental and social due diligence of the project in question to determine whether a compliance investigation of IFC's/MIGA's performance related to the project is merited. The appraisal time can take up to a maximum of 45 working days. If an investigation is found to be merited, CAO Compliance will conduct an in-depth investigation into IFC's/MIGA's performance. An investigation report with any identified non-compliances will be made public, along with IFC's/MIGA's response.

Step 5: **Monitoring** and follow-up

Step 6: **Conclusion/Case closure**

of the World Bank Group, and the public, that CAO Dispute Resolution has closed the complaint and transferred it to CAO Compliance for appraisal.

Annex B:

Table 2: Summary of Remedial Actions, CAO Harmon Hall 01

ISSUE	REMEDIAL ACTION
Respectful treatment	<ul style="list-style-type: none"> • A web training program on communication for directors, academic coordinators, teacher trainers and master teachers.
Teachers' role and work program	<ul style="list-style-type: none"> • Redefined teachers' job descriptions in order to maintain a greater degree of transparency and to ensure that employees understand what is, and is not, required of them.
Clarification of which teachers' tasks are compensated by the hour	<ul style="list-style-type: none"> • Teachers will be compensated for extra help sessions whenever an established validation system is adhered to. • An additional half hour (per course taught) will be paid to cover administrative tasks. • No compensation for time taken for teacher training/tests, however such tests should directly translate into professional development opportunities, such as the ability to teach more advanced classes, and higher earnings potential. • Discounts given to teachers for taking TOEFL (Test of English as a Foreign Language) tests, an employment requirement.
Contracts	<ul style="list-style-type: none"> • All employees were provided with a copy of their employment contract.
Moving from self-employed ('asimilados') to employee ('nomina') status	<ul style="list-style-type: none"> • Management's strategy is to employ as many teachers as possible on "nomima" rather than "asimilados" contracts. A policy to this effect has been implemented and communicated to teachers.
Wage levels	<ul style="list-style-type: none"> • Management clarified its aim to ensure teachers receive four to ten times Mexico's daily minimum wage. Wages will be strictly aligned with a transparent matrix that links individual teacher wage levels to the levels of classes taught, performance, and class levels to relevant qualifications (a combination of training and tests taken and relevant experience). Subsequently, the wage level will be inflation-linked when the market benchmark allows.
Availability of information and effectiveness of communication	<ul style="list-style-type: none"> • Management acknowledged the need for greater sensitivity when implementing and announcing changes. • Clarification of the calculation and payment of teachers' social security contributions via a direct communication to staff.
Grievance Mechanism	<ul style="list-style-type: none"> • To provide an independent mechanism for receiving and addressing any future employee concerns, management initially hired a third-party ombudsman service provider. In February 2013, this was replaced by a strengthened internal complaints response. • In addition, a class assignment methodology has been released for application in all schools: how classes were assigned had been a significant source of anxiety among teachers.