4. Disciplinary Measures

This chapter sets out the basic principles, rules and decision criteria to ensure due process and transparency in the disciplinary processes and the imposition of a reasonable, adequate, consistent and impartial response to non-compliant behavior.

## 4.1. General rules

Siemens personnel who violate the laws and regulations and/or applicable Siemens policies including the Siemens [Business Conduct Guidelines](https://intranet.legal-compliance.siemens.com/docs/2019_SAG_BCG_English_FINAL.pdf), while acting within the scope of their employment (“non-compliant behavior”) shall be subject to appropriate disciplinary consequences[[1]](#footnote-1). Non-compliant behavior can result from action or the willful failure of action.

Non-compliant behavior can also exist when a manager tolerates non-compliant behavior by a supervised employee or when a manager fails to promptly report and stop non-compliant behavior. Generally, a manager’s failure to exercise proper supervision and organizational duties can amount to non-compliant behavior[[2]](#footnote-2).

Disciplinary consequences shall be evaluated and decided in disciplinary processes at central or local level[[3]](#footnote-3).

Co-determination rights[[4]](#footnote-4) of the employee representatives (if and where applicable) shall be respected throughout the applicable processes.

Personal employee data shall be processed and transferred in accordance with applicable data privacy laws.

Changes to the rules set out in this chapter are only permissible to the extent they are required by local law. LC CO IR RD[[5]](#footnote-5) must be notified in advance of any such changes.

## 4.2. Disciplinary processes

The appropriate response to non-compliant behavior is evaluated and decided either:

* In a global disciplinary process at central level by the “Central Disciplinary Committee” (CDC), comprised of members of global top management, whose actions are based on rules set out in this chapter and in the CDC Charter in which significant parts of the CDC process are referred to LC CO IR RD (“Regular CDC Process”, see also section 4.2.1.1).
* In an accelerated CDC Process by the responsible management[[6]](#footnote-6) along with the governing Human Resources Organization (“HR Organization”), whose actions are based on rules set out in this chapter and in the CDC Charter (“Accelerated CDC Process”, see also section 4.2.1.2). Disciplinary decisions that are made via the Accelerated CDC Process must be approved by LC CO IR RD. The CDC will be informed accordingly.
* In general processes by the responsible management along with the governing HR Organization whose actions are based on the rules as set out in this chapter (see also section 4.2.2).

### 4.2.1. CDC processes

#### 4.2.1.1. Jurisdiction of the CDC

The CDC jurisdiction applies as follows:

* For employees of the Top Management (TM) group and ICFRCertifiers, the CDC shall have jurisdiction in all cases regardless of the nature and severity of the non-compliant behaviour.
* For employees of the Senior Management (SM) group, CDC jurisdiction depends on the nature and severity of the non-compliant behaviour. The CDC will likely exercise jurisdiction where there are substantial violations of the BCG, particularly when the violations are related to anti-corruption or antitrust regulations or when they involve financial integrity rules,[[7]](#footnote-7) are systemic or have significant financial or reputational impact. For Supporting Certifiers, CDC jurisdiction is likely when the non-compliant behaviour impacts the supporting certifier’s reliability.
* For employees of the Non-Senior Management (NSM) group, the CDC will exercise jurisdiction only in excep­tional cases that present the potential for severe risks for the company (especially financial or reputational impact)[[8]](#footnote-8).
* Where CDC jurisdiction only applies to certain employees of a case, the CDC may exercise jurisdiction over all employees involved in the underlying case regardless of their categorization to ensure consistency and equal treatment of all involved parties.
* To the extent permissible under local law, CDC members may direct certain cases to the CDC regardless of the involved employee’s workforce categorization, if, in their discretion, the case implicates an important company interest.

#### 4.2.1.2. Regular or Accelerated CDC Process

Non-compliant behavior within the jurisdiction of the CDC can be handled through the Regular CDC Process or the Accelerated CDC Process:

* For employees of the Top Management (TM) group and ICFR Certifiers, the Accelerated CDC Process is generally not available.
* For employees of the Senior Management (SM) group and Supporting Certifiers, the Accelerated CDC Process may apply, if the nature and severity of the non-compliant behaviour does not warrant CDC consideration in the Regular CDC Process.
* For employees of the Non-Senior Management (NSM) group, the Accelerated CDC Process is generally appropriate.

**Determination of CDC jurisdiction**

LC CO IR RD is responsible for determining whether CDC jurisdiction applies in a particular case and whether the Regular CDC Process or the Accelerated CDC Process will be followed. This determination is generally only made after the fact-finding activities[[9]](#footnote-9) have been completed and a final written report has been submitted to LC CO IR RD.

#### 4.2.1.3 Further rules and governance

**Execution of disciplinary measures[[10]](#footnote-10)**

Disciplinary measures may not be executed until the fact-finding process has been finalized and the CDC’s decision or recommendation has been issued, or after the required steps of the Accelerated CDC Process have been performed.

**Suspension or other measures during fact-finding**

In exceptional cases, while fact-finding activities are ongoing, the execution of disciplinary measures (such as immediate suspension) could be warranted due to mandatory local labor law deadlines, to protect the ongoing investigation or for other reasons in the best interest of the company. Such exceptions require adherence to the rules and procedures of this chapter and may not be taken without the prior approval of LC CO IR RD. At its discretion, LC CO IR RD may direct the decision to the CDC.

**Role of LC CO IR RD**

The composition of the CDC and additional rules related to the CDC Processes are provided for in the CDC Charter. LC CO IR RD is the governance owner for the Regular CDC Process and the Accelerated CDC Process. In this role, LC CO IR RD may perform monitoring activities to ensure that the requirements of this chapter are carried out. The latter also applies in cases that have been investigated by LC CO IR CF / LC CO RFC LF[[11]](#footnote-11) and were assigned for disciplinary evaluation and decision in the General Disciplinary Processes.

### 4.2.2. General disciplinary processes

In cases where CDC jurisdiction does not apply, General Disciplinary Processes shall be followed by the responsible management along with the governing HR Organization, in accordance with the rules set out below.

#### 4.2.2.1. Jurisdiction

As a rule, the disciplinary evaluation and decision upon the appropriate response to non-compliant behavior shall be undertaken by the affected employee’s manager/department head and the responsible local HR Organization.

Cases with a potential wider impact shall be dealt with by the responsible higher-level management and the respective Head of HR. This especially concerns cases that present the potential for conflicts of interest.

#### 4.2.2.2. Establishment of local disciplinary committees

Upon notice to LC CO IR RD, the responsible management may establish disciplinary committees or other committees as evaluation and/or decision bodies (“Local DC”)[[12]](#footnote-12) with the CDC as benchmark.

Local DC processes and procedures must be set out in a written charter that shall be guided by the CDC Charter and, at minimum, set out the following:

* Members of the Local DC by title
* Rules governing the role and involvement of the affected employee’s manager/higher-level management
* Jurisdiction of the Local DC
* Meeting rules
* Process to conclude on decisions/recommendations
* Mechanisms for resolving (potential) conflicts of interest

#### 4.2.2.3. Involvement of stakeholders

**Management and HR organization**

Where the Local DC or higher-level management determines a disciplinary measure, the affected employee’s manager and the appropriate local HR Organization must be sufficiently informed/consulted and shall implement the decision and consider how and to what extent the non-compliant behavior shall be reflected in the Performance Management Process (“PMP”) according to section 4.2.5.

**Involvement of the Compliance Officer**

If an investigation has been conducted by the Compliance Organization, the responsible Compliance Officer shall be promptly informed about the timeline for the decision and the execution of the disciplinary measures.

### 4.2.3. Basic principles and decision criteria

All individuals evaluating and taking decisions in the Disciplinary Processes (collectively “Decision Body”) must thereby comply with the following basic principles[[13]](#footnote-13) and decision criteria:

#### 4.2.3.1. Basic principles

* The disciplinary evaluation and decision shall be reasonable, adequate, consistent and rendered without bias, partiality or personal interest.
* All circumstances of the particular case, including the local legal framework, shall be considered.
* A hearing of the employee conducted by individuals taking the disciplinary decision within a General Disciplinary Process and in the presence of the employee’s manager or higher-level management shall be considered, particularly before any disciplinary measure in the form of a termination is imposed[[14]](#footnote-14). The criteria for the hearing in the CDC Processes are provided in the CDC Charter.
* The decision criteria as provided under section 4.2.3.2. of this chapter shall be considered to ensure consistency.
* The disciplinary evaluation and decision need to be based on appropriately conducted and documented fact-finding. This fact-finding needs to comply with chapter 3 “Code of conduct for compliance investigations and fact-finding” and all other company policies and local legal requirements. Any indication of improper fact-finding shall be immediately and adequately followed up.
* Employees who are in charge of and personally engaged in the fact-finding shall have no vote in the subsequent evaluation and decision on the disciplinary measure. An exception may be made in cases that are investigated by the relevant HR Organization if such cases do not require comprehensive fact-finding and no conflict of interest exists.
* Actual or potential conflicts of interest or the appearance of conflicts of interest in the disciplinary process are not permitted and need to be resolved immediately. Actual or potential conflicts of interest may result, inter alia, from a personal or professional relationship between a member of the Decision Body and the subject employee and/or previous or current personal involvement by a member of the Decision Body in the facts/circumstances relating or leading to the non-compliant behaviour.
* Employees who believe there is an actual or potential conflict of interest or the appearance of an actual or potential conflict of interest shall promptly inform appropriate personnel. If no local rules are established to address conflicts of interest, appropriate personnel would include their manager, the next management level or the governing HR Organization. As soon as such notification has been provided, the person/department addressed, in conjunction with the respective HR Organization, must promptly determine or seek advice with respect to whether a (potential) conflict situation exists and, if so, take appropriate action to ensure that the disciplinary process continues without any appearance of bias or partiality. Such action shall include the exclusion of the individual(s) from the disciplinary process and the nomination of an appropriate substitute.

Disregarding the outlined principles and criteria may itself constitute non-compliant behavior and, if so, shall be handled accordingly.

#### 4.2.3.2. Decision criteria

When deciding the appropriate response to non-compliant behavior, inter alia the following criteria shall be considered in the evaluation, if applicable:

* Nature and severity of the non-compliant behaviour
* Degree of participation
* Duration and frequency of misconduct
* Whether the employee was acting on instruction or through his/her own will
* Intent or negligence
* Self-enrichment or intention of self-enrichment
* Extent of damage to the company
* Period and course of employment
* Relevant past non-compliant behaviour (labour law perspective)
* Internal company factors and conditions that might have facilitated the non-compliant behavior
* Time of the non-compliant behaviour and behaviour thereafter
* Position level and role and responsibilities of the individual at the time of the misconduct
* ICFR certification function at the time of the misconduct and at present[[15]](#footnote-15)
* Candidate for and extent of amnesty[[16]](#footnote-16)
* Cooperation and attitude during the fact-finding/disciplinary process
* Self-indictment in whistle-blowing situations
* Recognition of improper conduct by the individual
* Standards set/measures taken in comparable cases

### 4.2.4. Disciplinary or other measures

The assessment of appropriate measure(s) in response to non-compliant behavior shall be made by the Decision Body. This discretionary decision shall be exercised in accordance with the basic principles as provided under section 4.2.3.1. above and respecting the rules as provided below in this section 4.2.4[[17]](#footnote-17).

Depending on the nature and severity of the non-compliant behavior, the following measures as laid down in section 4.2.4.1. - 4.2.4.6) are generally available to the extent they are permissible under local law.

It is the responsibility of the affected employee’s manager and the Head of the relevant HR Organization to ensure that an adequate record of executed disciplinary measures is maintained. Such record shall be maintained in the employee’s personnel file, to the extent[[18]](#footnote-18) permissible under local law.

#### 4.2.4.1. Compliance training

If the Compliance Organization was responsible for the investigation of the non-compliant behavior, the Decision Body needs to decide whether or not the employee will have to participate in tailored online or in-person Compliance training or Finance training. Tailored in-person Compliance training or Finance training requires the involvement of the responsible Compliance or Controlling and Finance function. The employee’s manager is responsible for ensuring that the Compliance or Finance training course is completed.

#### 4.2.4.2. Warnings

Informal Warning

An informal warning or other comparable measure under local law, which can be written or oral, is appropriate in cases of less serious non-compliant behavior that require some disciplinary response but less than a severe sanction.

An informal warning consists of: (1) a description of the employee’s non-compliant behavior, and (2) a clear direction with regard to the expected change in behavior for the future.

As a rule, the informal warning shall be delivered in person by the employee’s manager. Verbal warnings can be made in the presence of an HR representative, particularly where he/she took part in the disciplinary process.

Formal warning[[19]](#footnote-19)

A formal warning or other comparable measure under local law is appropriate in cases of non-compliant behavior that require a serious disciplinary response, but where it is reasonable to continue the employment relationship with the employee.

A formal warning should consist of at least: (1) a description of the employee’s non-compliant behavior and (2) a clear direction with regard to the expected change in behavior for the future, and (3) the announcement of further measures up to and including the termination of employment, if the employee does not change his/her behavior

As a rule, the formal warning shall be delivered in person by the employee’s manager in the presence of the HR representative who took part in the disciplinary evaluation process. The formal warning should be documented in writing.

#### 4.2.4.3 Consequences for remuneration

In cases of non-compliant behavior that require response measures in addition to a formal warning, potential appropriate disciplinary measures include the forfeiture or revocation of entitlements to variable pay (e.g. Senior Management Short Term Incentive) and/or voluntary remuneration elements (particularly the Siemens Stock Awards) [[20]](#footnote-20) for a defined period of time.

The forfeiture of Siemens stock awards can only affect awards that have not vested at the time the disciplinary decision is taken. It shall also be decided whether new stock awards should be granted in the period following the execution of the disciplinary measure.

The rules of this section shall also apply to other voluntary remuneration elements if they exist.

#### 4.2.4.4. Transfer to another function

It shall be determined whether non-compliant behavior warrants a transfer to another function as a side step or demotion. If such action is taken, adequate steps should be taken to ensure that such a transfer is not perceived as a promotion. In no case shall an employee be transferred to a function with a higher workforce categorization and/or a function with greater overall remuneration.

#### 4.2.4.5. Further measures

Other measures in addition to or as an alternative to the measures provided under Nos. 1 through 4 above may include, but are not limited to, the following measures, which shall be limited to a reasonable period of time:

* Suspension (with or without remuneration)
* Exclusion from promotion
* Exclusion from an ICFR certification function

Additional measures can be official monitoring by a suitable senior manager or tailored training.

#### 4.2.4.6. Termination

If termination of the employee for non-compliant behavior is warranted, such termination may be “ordinary termination” or “extraordinary termination.”

Ordinary termination

Ordinary termination is appropriate in cases of non-compliant behavior that warrants termination because it is no longer reasonable to continue the employment relationship, but it is not necessary to terminate the employment utilizing extraordinary termination. An ordinary termination may provide for a statutory notice period or for a statutory severance payment under local law.

Extraordinary termination

Extraordinary termination (e.g. termination for cause, termination for gross misconduct or termination without notice period) can be appropriate in the most severe or repeated cases of non-compliant behavior.

### 4.2.5. Consideration within the Performance Management Process (PMP)

Non-compliant behavior requires sound management judgment from the employee’s manager regarding whether or not, to what extent and for which time period the non-compliant behavior should be considered in the PMP. All cases of non-compliant behavior that warrant a formal warning or even more severe measures generally qualify for such consideration. Specific consideration should (if applicable) be placed on the employee’s HOW evaluation, variable pay (target achievement) and development actions. These considerations and management decision need to be discussed with the relevant HR Organization prior to the Round Table discussion.

Where the non-compliant behavior has an impact on the PMP, appropriate documentation of the behavior (not the disciplinary measure imposed) shall be added to the PMP feedback dialogue form[[21]](#footnote-21).

The employee’s consideration in future PMP round table discussions and the possibility for the employee to be subject to remuneration increases and/or to a different potential statement in future PMP round tables depend on the severity of the non-compliant behavior and conduct shown by the employee thereafter.

### 4.2.6. Reporting

The responsible Compliance department requests from the relevant HR Organization anonymized data to allow the Compliance Organization an anonymized systematic internal reporting of non-compliant behavior and corresponding disciplinary measures[[22]](#footnote-22) . Selected data will also be used for external reporting. LC CO is responsible for defining the respective reporting categories and the details of the reporting process.

## 4.3. Training and supporting material

[Siemens Compliance Brochure](https://www.siemens.com/content/dam/internet/siemens-com/global/company/sustainability/downloads/responsible-business-behavior-compliance-at-siemens.pdf)

## 4.4. History of changes

|  |  |  |
| --- | --- | --- |
| **Date** | **Author** | **Major changes of binding content** |
| January 1, 2019 | Bernd Plagemann | First release through the Compliance Handbook based on Siemens Circular SC No. 226 “Global Compliance”, Appendix 11. |
| April 1, 2019 | Bernd Plagemann | Discontinuation of Position Level assignment. |

## 4.5 Contacts

Compliance Officer

The Compliance Officer responsible for your unit can be found through the following [link](https://intranet.for.siemens.com/cms/059/de/about/org/Pages/compliance_organization.aspx).

Corporate Governance Owner

The contact person for disciplinary measures is:

[Bernd Plagemann (LC CO IR RD)](https://scd.siemens.com/luz/IdentitySearch?cn=plagemann+b&utI=I&utX=X&utT=T&rtH=H&rtS=S&rtZ=Z&rtO=O&rtAktiv=A)

1. Please refer also to Chapter A of the [Business Conduct Guidelines](https://intranet.legal-compliance.siemens.com/docs/2019_SAG_BCG_English_FINAL.pdf) (hereafter also “BCG”). [↑](#footnote-ref-1)
2. Please refer also to Chapter E of the BCG. [↑](#footnote-ref-2)
3. The applicable disciplinary process depends upon the nature and severity of the non-compliant behavior and the workforce categorization (Top Management, Senior Management and Non-Senior Management) of the affected employees. [↑](#footnote-ref-3)
4. Co-determination means the employees’ participation and involvement in the management’s decision-making process related to employees’ status and rights. In legal systems with co-determination, employees usually form special bodies exercising the employees’ rights. [↑](#footnote-ref-4)
5. Department Compliance Investigations and Regulatory, Discipline and Remediation. [↑](#footnote-ref-5)
6. The Accelerated CDC Process is conducted by the management team on the respective Siemens entity level, Business Unit or Country level. [↑](#footnote-ref-6)
7. Particularly intentional violations of accounting and financial reporting regulations, independent audits of the annual financial statements and internal accounting controls. [↑](#footnote-ref-7)
8. Particularly cases where there are anti-corruption or antitrust violations, or where the violations involve concerns related to accounting rules and financial integrity. [↑](#footnote-ref-8)
9. Formal investigations or other fact-finding activities. [↑](#footnote-ref-9)
10. As stated before, disciplinary measures shall be executed with due regard to co-determination rights of the employee representatives. [↑](#footnote-ref-10)
11. Department Compliance Investigations and Regulatory Central Function / Compliance Risk, Framework and Controls Legal Frame. [↑](#footnote-ref-11)
12. So called “Local Disciplinary Committees”. [↑](#footnote-ref-12)
13. The CDC has implemented comprehensive principles (beyond these basic principles) as applicable in the CDC Processes in its CDC Charter. [↑](#footnote-ref-13)
14. For Germany, it should be noted that a hearing shall also particularly be considered prior to a formal warning. [↑](#footnote-ref-14)
15. This criterion is of particular relevance in Compliance cases. [↑](#footnote-ref-15)
16. This criterion is only relevant in a limited amount of Compliance cases. [↑](#footnote-ref-16)
17. As stated before, the disciplinary decision and implementation shall be executed in accordance with co-determination rights of the employee representatives. [↑](#footnote-ref-17)
18. Such record shall be deleted as required by relevant local laws. [↑](#footnote-ref-18)
19. This includes a final written warning. [↑](#footnote-ref-19)
20. Such measures can only be imposed to the extent they are permissible under local law and/or the relevant regulations governing the conditions of employment. [↑](#footnote-ref-20)
21. If local law does not allow documentation of the behavior and measure imposed in the employee’s personal file/PMP feedback dialogue form, such documentation may not occur. [↑](#footnote-ref-21)
22. HR (Compliance) cases are not included in the reporting activities. [↑](#footnote-ref-22)