



**Oyu Tolgoi LLC**

Human Resources and Capability Development

HR-H1.1: Performance Management and Discipline Procedure

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# Introduction

## 1. Procedure Number

This document is known as ***HR-H1: Performance Management and Discipline Procedure.***

## 2. Purpose

The purpose of the Performance Management and Discipline Procedure is to ensure that a fair and effective process exists for managing unsatisfactory work performance, improper behaviour and misconduct in the workplace and for imposing disciplinary actions for violation of employment agreement and company policies and procedures.

This procedure outlines options available to leaders, and provides guidelines on appropriately applying disciplinary actions, up to and including termination of employment.

Specifically, this procedure provides a clear understanding of:

- the process involved in managing employee performance and behaviour and;
- the process of applying disciplinary actions; and
- the roles and responsibilities of all parties.

# Procedure

## 1. Overview

### 1.1 Performance and Discipline Overview

It is the intention of Oyu Tolgoi LLC to promote the well-being of its employees by maintaining high standards of work performance and professional conduct. This procedure will be applied where an employee's performance or conduct falls below the standards required by the Company.

The Company encourages a mutual problem solving approach to handling employee performance and conduct issues. It is expected that in the majority of cases, guidance, support and direction supplied through day to day leadership will usually serve to correct behaviour and improve performance, avoiding a need for formal disciplinary action.

Where formal disciplinary action is required the nature of that action will be determined having regard to the circumstances of the case including the severity of the issue and the disciplinary record of the individual.

Minor performance and behaviour issues will be managed informally by the employee's leader, with guidance from Human Resources as the first step.

Where a minor issue continues after informal management or where an issue relates to misconduct or more serious performance and behaviour issues, a formal disciplinary and/or investigative process will be followed. Leaders should seek advice and assistance from Human Resources when applying the disciplinary process. A range of template documents are also available on the Oyu Tolgoi Portal.

The outcome of any performance improvement and disciplinary action will be relative to the circumstances of each case including the nature of the issue for which the employee is being disciplined, the employee's disciplinary record and other relevant factors. Outcomes may include, but are not limited to:

- Counselling, and Performance Improvement Plan
- Verbal warning
- Written warning
- Final written warning
- Termination of employment

## **2. Employee Performance Management**

Performance management is an important process that assists in improving organisational performance by developing the performance of individuals and teams.

The main concerns of performance management are:

- a. Aligning individual objectives to organizational objectives and encouraging employees to uphold corporate core values – “The Way We Work”.
- b. Enabling the company and managers to set expectations in relation to role responsibilities, accountabilities and behaviours providing opportunities for employees to receive feedback on their performance and to develop their skills and competencies.

### **2.1 Objectives of performance management**

The overall objectives of performance management are to develop the capacity of employees to meet and exceed expectations and to achieve their full potential to the benefit of themselves and the Company. Performance management is a continuous and flexible process that involves leaders and those they manage.

### **2.2 Dealing with under- performers**

This procedure focuses on the improvement of performance that falls below the standards required by the company.

Managing under-performers should start with clear feedback from leaders and then look forward to what can be done by employees to overcome performance problems and how leaders can provide support and help.

### **2.3 Performance Improvement Tools**

Monitoring employee performance is a key task for every leader. Where a performance issue is identified leaders can apply a number of performance improvement tools. The emphasis of these tools is on encouraging improvement and supporting the individual to enable them to achieve the required standard of performance by providing appropriate development opportunities and time to improve. Early detection and intervention by a leader can prevent an issue escalating to a serious performance issue.

When applying any performance improvement tool leaders are required to:

- set and communicate clear objectives for their staff
- establish measurable standards of performance required to achieve those objectives
- give individuals timely and constructive feedback on their performance and ensure that the individual is clear that he/she is receiving feedback on their performance
- make it clear what support is available to help the individual improve.

Where possible performance improvement conversations should be followed up in writing to avoid any misunderstandings.

### **2.3.1 Coaching**

Coaching is carried out by the employee's leader and may occur where an employee is new to a role, is learning what is required of them, or is developing capability for effective performance in their role. Coaching involves monitoring the performance of tasks and the acquisition and application of skills and giving feedback on how to improve.

Leaders are encouraged to keep a record of any coaching that they conduct, however, there is no requirement for this to be placed on the employee's personal file.

### **2.3.2 Counselling**

Counselling is carried out by the employee's leader with the support of Human Resources and may occur when an employee's performance or behaviour is not at the required standard.

Counselling involves discussion of an issue with the employee.

Here are the five basic steps to follow:

- a) Identify the problem: *a summary of why the employee's performance or behaviours are deemed unsatisfactory or inappropriate.*
- b) Establish the reason(s) for the shortfall. *Identify any causes external to the job and outside the control of either leader or employee. Focus on factors that are within the control.*
- c) Decide on the action required. *Action may be taken by employee, leader or both.*
- d) Resource the action. *Provide the coaching, training, guidance, experience or facilities required to enable agreed actions to happen.*
- e) Monitor and follow up. *Both leader and employee monitor performance, ensure feedback is provided and analysed, and agree on any further necessary actions.*

In determining a reasonable time frame for correction of performance and behaviour, consideration should be given to what would be deemed appropriate in line with the employee's role, the employee's level of experience, the nature and impact of the issue and any other relevant factors.

Prior to holding a counselling meeting, the leader should advise the employee of the meetings purpose, time and venue. Counselling meetings should be held as close as possible to a performance issue or event occurring. Records of any counselling should be signed off by both the leader and the employee.

### **2.3.3 Performance Improvement Plan**

A performance improvement plan may be used to document a required change in performance or behaviour that is expected of an employee. It is intended to assist them in addressing an area of deficiency and outline a specific timeframe within which any changes must occur. Department manager shall issue a performance improvement plan only after consultation with Human Resources. A performance improvement plan may be given in conjunction with a formal disciplinary outcome; however imposition of a disciplinary outcome is not a prerequisite for a plan being implemented.

Plans should encourage employees to take responsibility for their own actions and ensure they meet the requirements of their role. Employees placed on a performance improvement plan are given up to 3 calendar months to improve their performance or behaviour to a satisfactory level to be determined by their leader. It is the responsibility of the leader to monitor and ensure ongoing adherence to the plan.

At the end of the improvement period, a formal review meeting is conducted with the employee to discuss compliance with the plan and assess improvement in performance or

behaviour. Based on the outcome of this discussion and assessment one of the following outcomes will be applied:

- a. Where the employee has shown sufficient improvement they will be removed from the performance improvement plan; or
- b. The employee may remain on the performance improvement plan for an additional period of time (not to exceed 90 calendar days); or
- Further formal disciplinary action may be applied. In this instance a copy of performance improvement plan will be placed on an employee's personal file.

### **3. Disciplinary Actions**

**The discipline process consists of two stages, the investigation stage and the discipline stage.**

Disciplinary matters must be dealt with promptly. A final decision in any disciplinary matter should be made within a reasonable period of time but no more than 30 days from the date that an issue first came to light. This requires that a disciplinary investigation be commenced promptly and that it is conducted efficiently through to the point of imposing any disciplinary outcome. The reasonableness of the length of time taken for an investigation will depend on the complexity of the case and any special circumstances.

Matters raised in both the investigation and discipline stages of the process should be treated confidentially, and disclosed to third parties only for legitimate purposes.

Any decision to impose a disciplinary outcome must be made and implemented in a manner that is procedurally fair.

#### **3.1 Disciplinary Issues**

Disciplinary action will be taken against employees who breach the terms of their employment agreement or Company policies and procedures.

Examples of disciplinary issues may include, but are not limited to:

Violation of safety regulations

- 3.1.1 Continued, frequent or unexplained absenteeism
- 3.1.2 Failure to present to work in a fit state
- 3.1.3 Failure to follow Company policies, procedures and standards
- 3.1.4 Making false and misleading statements, rumours and unsubstantiated innuendoes that affect staff morale, cause concern, affect the daily activities of other staff members
- 3.1.5 Making false and misleading statements, rumours, unsubstantiated innuendoes regarding OT LLC activities to parties outside the Company
- 3.1.6 Dishonesty in statements or actions
- 3.1.7 Proven intentional or negligent disclosure of confidential company information
- 3.1.8 Damage to company property; Negligent use of company equipment, material or property
- 3.1.9 Insubordination – refusal to perform legitimate instructions or tasks assigned by leader
- 3.1.10 Harassment including sexual harassment
- 3.1.11 Abusive or objectionable language

## **3.2 Disciplinary Process**

### **3.2.1 Investigation Stage**

Investigation Stage consists of two steps:

#### **3.2.1.1 Investigation**

The purpose of an investigation is to determine, to the best of the investigator's ability, the facts surrounding misconduct issues in the workplace. As a result, investigations must be conducted in a fair and objective by a team of representatives of the relevant business unit and HR. Representatives of other departments shall be involved in the investigation process where deemed necessary.

Upon being notified or becoming aware of an act of misconduct issue a leader must consult with Human Resources to identify the appropriate response and, when required, plan & conduct an investigation.

Investigations will be conducted in accordance with the Oyu Tolgoi Investigation Guidelines. This includes ensuring that all facts of the situation are gathered and verified and may involve:

- collection of physical evidence and documents
- interviewing witnesses and attaining statements
- interviewing the employee

The steps and time taken to complete an investigation may vary from case to case.

At the end of an investigation the investigator must produce an investigation report. The report must document, in detail:

- the matters or allegations that were being investigated,
- steps taken during the investigation,
- the evidence gathered and
- the recommendations made.

All investigations must be completed and the investigation report produced within three weeks of the later of:

- the date that the misconduct or performance issue occurred, or
- the date that management became aware of the issue.

An investigation report must be produced regardless of the outcome of investigation.

#### **3.2.1.2 Temporary withhold of employee from work**

In some circumstances it may be appropriate to temporary withhold an employee from work with pay whilst an investigation is conducted.

Temporary withholding an employee from work may be appropriate when investigating allegations of serious misconduct or if it is necessary to remove the employee from the workplace in order to ensure the accuracy of the investigation or to ensure their safety or the safety of other individuals.

A leader can only temporary withhold an employee from work after consulting with Human Resources. Where a leader considers temporary withholding an employee from work to be warranted this consultation should occur as soon as practicable.



Where a decision is made to temporarily withhold an employee from work they must be provided with notice stating:

- that they are being withheld on full pay and should not report for duty until further notice; and
- that they must make themselves available to participate in the investigation process in person.

Where practical this notice should be in writing before being withheld. Where this is not possible verbal notice may be supplied, but must be followed up in writing.

### **3.3.2 Disciplinary Stages**

In cases of proven misconduct or ongoing poor performance the company may apply any of the disciplinary outcomes detailed below. The selection of an appropriate disciplinary outcome will generally be made having regard to the nature and severity of an issue, however in some cases a specific outcome may be prescribed by a policy, procedure, standard or within an employment agreement. Relevant HR managers must be consulted prior to any decision being made in relation to imposition of a disciplinary outcome.

#### **3.3.2.1 First Written Warning**

A written warning should contain the following elements:

- details of the performance issue or behaviour/misconduct,
- the date(s) of any previous counselling sessions or warnings relating to this issue (if documents were produced at any previous meetings these should also be referred to)
- a clear statement of the performance, behaviour or conduct required;
- details of any specific corrective actions necessary; and
- Information about the potential consequences that may occur if the performance or behaviour/conduct is not rectified to the satisfaction of management;
- any follow-up meetings or actions agreed;
- the employee's signature, acknowledging the discussion and receipt of the warning; and
- the leader's signature.

#### **3.3.2.2 Final Written Warning**

A final written warning should contain all of the elements required for a written warning with the addition of a clear statement that any repeat of the behaviour or a failure to improve performance to an acceptable level will result in the termination of employment.

First and Final written warnings issued to an employee must be pre-authorized by a resolution from an authorized Company senior officer.

#### **3.3.2.3 Termination of Employment**

Termination of the employment must always occur on guidance provided by Human Resources and in accordance with the provisions of Mongolian legislation and the Separation of Employment policy. In cases of serious misconduct it may not be necessary for other disciplinary outcomes to have been applied before an employee is terminated.

All proposed terminations must be reviewed by the legal department and endorsed by the GM of the relevant business unit and the VP Human Resources. The final decision to terminate employment will be made by the President and CEO only taking into consideration the results of the investigation and the recommendations of relevant General Managers.

The following examples under which the company reserves the right to effect immediate termination may include, but are not limited to:

- A. Serious violation of safety regulations
- B. Failure to present to work in a fit state
- C. Utilisation and distribution of illegal substances
- D. Criminal acts, unlawful or malicious activities
- E. False and misleading statements, rumours, unsubstantiated innuendoes regarding OT LLC activities to parties outside the Company
- F. Fraud activities
- G. Cases of claiming false expenses
- H. Undeclared conflict of interests
- I. Intentional or negligent disclosure of confidential company information
- J. Damage to company property; Negligent use of company equipment, material or property
- K. Unauthorised use or misuse of company property and information for personal gain or profit
- L. Possession and use of weapons or items qualifying a weapon (including firearms, knives, explosives, toxic and hazardous substances) at work premises, or vehicles of the Employer, and in/on the project site, buildings, facilities and structures, areas and territories owned, possessed and/or used by the Employer or while on business trip
- M. Absence from work for more than 3 consecutive days with no legitimate excuse
- N. Excessive use of power by employee which exceeded authorization granted under the rules, regulations, resolutions or proxy by the Employer.

Evidence for all above mentioned examples must be documented. Where termination of employment is being considered, the employee must be advised of this and be provided with a reasonable opportunity to prepare and present a response. Once an employee's response has been considered by management the Company's final decision will be communicated to the employee by their leader and Human Resources.

In the event of termination of employment, the employee will be issued with a notification letter informing the employee of the Company's intention to terminate the employment agreement. The leader is responsible for ensuring that all paperwork required to process the termination is completed and that all company property is collected from the employee.

#### **3.3.2.4 Disciplinary meeting**

Where an investigation has established that misconduct has occurred or that ongoing performance issues warrant the application of a formal outcome, the employee's leader must consult with Human Resources to determine the type of disciplinary outcome that may be appropriate in the circumstances. Security and legal team representatives to be involved where deemed necessary. The leader will then organise for a disciplinary meeting to be held with the employee and a representative from Human Resources.

The purpose of this meeting is to:

- Explain to the employee the findings of the investigation;
- Indicate the company's intention to apply a disciplinary outcome; and
- Provide the employee with an opportunity to provide a response to the proposed outcome including advising about any mitigating factors.

Whenever possible an employee should be provided with prior notice of the discipline meeting that states the date, time and location of the meeting and provides specific details of the specific misconduct or performance issue that has occurred. Where termination is being considered as a possible disciplinary outcome it is essential that the notice mentions this.

A leader must consider any relevant information provided by an employee during a disciplinary meeting. The final decision to impose a disciplinary outcome must be approved by the President and CEO.

## **4. Employee Support**

### **4.1 Employee Right to a Support Person**

When dealing with a disciplinary matter, employees must be advised prior to any meeting or discussion of their right to have a support person present.

The support person is another employee whose role is to provide support, but not to participate in the discussion (i.e. not to advocate for the employee).

The leader must also nominate another impartial person to be present at any meetings or discussions to act as a record keeper. This person will usually be a representative from Human Resources.

## **5. Employee Assistance Program**

Any employee who participates in a disciplinary process in any capacity may access the Employee Assistance Program.

## **6. Documentation**

### **6.1 Records Management**

The employee's leader is accountable for ensuring that adequate and appropriate documentation of employee performance including performance improvement plans, misconduct, written warnings, and other matters associated with performance or misconduct are maintained and recorded with Human Resources on the individual's personnel file.

In all cases of disciplinary action or counselling, a formal record of discussion should be kept as evidence for both parties of what has occurred, and as a basis for future action. At the start of any meeting the employee should be informed that a record will be made, why it will be made and who will have access to it.

The record should be made as soon as possible after the meeting and, where possible, be signed by:

- The record keeper;
- the employee;
- the leader; and
- other people who are present as observers.

If the employee does not believe that the record is an accurate reflection of the discussion they should attach their own signed version of the meeting record.

Human Resources is responsible for storing the record of discussion securely along with other disciplinary materials and preventing any unauthorised access.

Any request for access to a copy of investigation records will be subject to Oyu Tolgoi LLC and Rio Tinto Information Security and privacy standards.

An employee will be requested to sign any documentation. Where an employee refuses to sign the documentation, a note will be made to this effect. The documentation will stand.

## **6.2 Disclosure of Information**

Matters raised in a counselling session and/or during an investigation or disciplinary meeting should be treated confidentially and disclosed to third parties only for legitimate purposes.

# Roles and Responsibilities

## 1. Employees

The Employee is accountable for:

1. abiding by Mongolian law and legislation
2. abiding by policies and procedures
3. identifying & raising issues if unable to meet role requirements
4. participating openly in discussions with their leader; and
5. improving performance by undertaking agreed performance improvement actions
6. acting as a support person where requested and appropriate

## 2. Leaders

Leaders are accountable for:

1. setting clear, measurable and realistic performance expectations and monitoring employee performance and conduct
2. identifying and diagnosing misconduct and/or performance issues in a timely manner
3. conducting the investigation process where appropriate
4. conducting all disciplinary meetings
5. taking minutes and ensuring materials are documented/filed
6. offering the use of a support person to employees
7. keeping the manager once removed informed
8. liaising with HR and keeping them informed
9. ensuring an employee is aware of their rights under this policy

## 3. Human Resources

Human Resources are accountable for:

- providing advice and guidance to leaders who are managing an issue raised under this policy;
- ensuring due process is followed;
- conducting the investigation process where appropriate;
- participating in formal disciplinary meetings, where appropriate;
- providing templates and guidance to leaders to support them in preparing documentation (e.g. written warnings, management plans etc.);
- providing advice and guidance and compliance to leaders on the investigation process and upon appropriate disciplinary outcomes in individual cases;
- ensuring leaders are aware of, and managing, employee performance or conduct issues;
- ensuring all documentation is securely stored in personal files; and
- ensuring an employee is aware of their rights under this policy.

## 4. President and CEO

President and CEO is accountable for:

- approving any termination of employment.

# Appendices

## 1. Definitions

In this procedure document the following outlines the key terms and their meanings:

- **The “Company”** – The business units/functional groups of Oyu Tolgoi LLC.
- **Coaching** – The practice of supporting an individual through the process of achieving a specific personal or professional result.
- **Counselling** – Where a particular aspect of the employee's performance has been identified as requiring attention, the leader and employee will meet face-to-face, in private, to constructively discuss goals for the employee to correct the problem.
- **Employee** – All regular full-time, part-time and casual employees unless otherwise specified.
- **Performance Improvement Plan** – A document that outlines the required change in performance and behaviours that is expected of an employee. Includes details on timeframes and support required.
- **Support Person** – An OT LLC employee who is chosen by the employee to support during the process.

## 2. Procedure Review – Stakeholder Engagement

During the development of this procedure, all key stakeholders in Oyu Tolgoi LLC have been consulted and provided input where needed.

This stakeholder engagement will be different for each Policy and procedure, but for this Procedure the following key stakeholders (including those in the wider Rio Tinto Group) were consulted prior to the approval of this Policy:

- Andrew Upfill – Site HR Manager;
- Nadia Sodnom – Senior HR Manager;
- Munkh-Orgil Lkhaasuren - Site HR Manager;
- Nicolas Saunders – Principal Advisor Employee Relations.

## 3. Through putting Mongolian Laws and Regulations Review

Through putting forward this procedure for review and approval, the procedure owners acknowledge that a review of the implications of the implementation of this document under Mongolian laws and regulations for Oyu Tolgoi has been completed.

This review has identified the following Mongolian laws and regulations that are relevant to this policy, and the implications of these laws and regulations has been included into the document.

- Labour law, 1999
- Law on labour safety and hygiene, 2008
- Law on organization's secret, 1995

- Law on company, 2011
- Supreme court resolution on interpretation of some provisions of Labour law No.33, 2006
- Rule on organizing labour safety and hygiene work in company & organization, Minister order No: 33 of Social welfare and labour, 2000

#### **4. Related Policies**

The following policies support the execution of the Performance and Discipline Procedure:

- The Way We Work;
- Data Privacy Policy;
- Grievance and Fair Treatment Policy;
- Equal Employment Opportunity Policy; and
- Performance Review Procedure.

## Document Information

<b>File Name</b>	HR-H1: Performance Management and Discipline Procedure
<b>Description</b>	This procedure ensures that a fair and effective process exists for managing unsatisfactory work performance, improper behaviour and misconduct in the workplace.
<b>Original Author(s)</b>	Nicolas Saunders, Nadia Sodnom
<b>Creation Date</b>	April 2013

## Revision History

Version	Revision Date	Author(s)	Revision Notes
1			
2			
3			

## Document Approval

Date	Approver Name	Approver Signature	Company Stamp	Seal
4/22/2013	<u>OT Policy Owners:</u> Nicolas Saunders <b><i>Principal Advisor</i></b> <b><i>Employee Relations</i></b>  <u>Nadia Sodnom</u> <b><i>Senior HR Manager</i></b>	 		
4/22/2013	<u>Policy Approver:</u> Cameron McRae <b><i>President and CEO</i></b>			