

Fiduciaries and fiduciary law in Singapore

Generally, a fiduciary is someone who has undertaken to act for or on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence. More specifically, in most cases

1. the fiduciary has power or discretion;
2. the fiduciary can exercise that power or discretion unilaterally so as to affect the beneficiary's legal or practical interests; and
3. the beneficiary is particularly vulnerable or dependent upon the fiduciary.

Am I a fiduciary

The following list non-exhaustively illustrates some categories of fiduciaries and the person to whom they owe the fiduciary duties to:

1. Trustees (to the beneficiary);
2. Directors (to the company);
3. Agents (to the principal);
4. Lawyers (to the client);
5. High ranking employees (to the employer);

Sources of law

Singapore operates a common law legal system. Case law is developed in the area of fiduciaries by the courts of Singapore, which means that the decisions of precedent cases in the superior courts are binding on the lower courts. Where appropriate, the Singapore courts also follow certain decisions of other commonwealth jurisdictions – in particular, the UK.

In addition to common law, special statutes (passed by the Parliament of Singapore) regulate certain positions or relationships. For instance, in Singapore, the Companies Act imposes statutory duties onto the directors of a company. Hence, company directors in Singapore are bound by both their fiduciary duties and their statutory duties.

Duties of a fiduciary

Fiduciaries are generally bound by the following duties:

1. The duty to avoid a conflict of interest and duty. For instance, a lawyer will be unable to act for two clients with conflicting interests. Additionally, the fiduciary's own interests cannot be in conflict with that of the beneficiary's.

2. The duty to avoid unauthorised profits. For instance, a director of a company may be in breach of his duty if he usurps a business opportunity belonging to the company for himself.

Generally, the beneficiary to whom the fiduciary duty is owed to can waive the duty. Hence, it is possible for the fiduciary to obtain consent to waive said duty.

Remedies for a breach of fiduciary duty

The following are some possible remedies that may be obtained through the Singapore courts to remedy a breach of fiduciary duty:

1. Rescission of a contract which involves a breach of fiduciary duty;
2. Equitable compensation payable by the fiduciary to the beneficiary;
3. An account of the ill-gotten profits payable by the fiduciary to the beneficiary;
4. Proprietary remedies – transferring title of the ill-gotten property from the fiduciary to the beneficiary
5. Injunctions or specific performance – to stop the fiduciary from committing a breach.

Source: <https://singaporelegaladvice.com/law-articles/fiduciaries-and-fiduciary-law-in-singapore/>