



NATIONAL CONTACT POINT  
CANADA  
POINT DE CONTACT NATIONAL

## Canada's National Contact Point - Draft Initial Assessment

### "Sakto Group" and Bruno Manser Fund

#### Summary

1. On January 11, 2016, the Canadian National Contact Point (the "NCP"), on the OECD Guidelines for Multinational Enterprises (the "Guidelines"), received a Request for Review (RfR), from the Bruno Manser Fund ("the Notifier"), entitled "*Complaint against the Sakto Group, Ottawa*".

2. The RfR states that the "Sakto Group" comprises at least eleven (11) Canadian companies and eighteen (18) subsidiaries/related parties in seven (7) different jurisdictions outside of Canada (the United States, United Kingdom, Australia, Malaysia, British Virgin Islands, Hong Kong, and Jersey). See ANNEX 1 for the full list of companies identified in the RfR. The RfR alleges that the "Sakto Group" breached the disclosure requirements of the Guidelines.

3. The NCP assesses requests for review according to the *Procedures Guide for Canada's NCP for the OECD Guidelines* ("Procedures Guide"), (see ANNEX 2: OECD Guidelines and the NCP Mandate). The first step consists in reviewing all the information submitted by the parties and conducting an initial assessment ("Initial Assessment"), using the criteria listed in the *Procedures Guide*. The Initial Assessment consists in considering whether the issues raised in the RfR merit further examination. The NCP does not make determinations on the implementation of the Guidelines or on the activities of companies. The NCP process is a voluntary, non-judicial grievance mechanism through which the NCP can offer good offices if it is deemed appropriate. The NCP does not make legal decisions.

4. The NCP's Initial Assessment is the following: (a) the Guidelines apply to the grouping of Canadian companies listed in the RfR; (b) the issues raised in the RfR are material to the Guidelines and substantiated; and (c) therefore, the RfR merits further examination. The analysis can be found in the *NCP's Initial Assessment* section below.

5. The Procedures Guide provides that where the issues raised are considered to merit further examination, the NCP shall respond to the parties and offer its good offices to facilitate a dialogue on the issues raised. Consequently, the NCP now offers the Notifier, and the Canadian companies included in the RfR, access to consensual and non-adversarial dialogue facilitation to assist the parties in exploring and developing options aimed at finding resolution to the identified issues. The NCP requests that the parties respond no later than **[date to be determined based on parties' response to draft Initial Assessment]**, indicating their willingness to engage in this dialogue facilitation process. Should the NCP not receive the agreement of

parties to engage in a facilitated dialogue, the NCP will proceed to the Final Statement phase of the RfR process.

6. While participation in the NCP's dialogue facilitation process is voluntary, it should be noted that as part of the Government of Canada's policy on corporate social responsibility, measures are applied in cases of non-participation, or lack of good faith engagement in the Government of Canada's dialogue facilitation mechanisms, including the NCP process. The non-participation, or lack of good faith engagement, by a company in the NCP process will be taken into consideration in any application by that company for advocacy support from the Trade Commissioner Service and/or Export Development Canada financial services, should one be made.

7. This Initial Assessment will be included in part, or in full, in the Canadian NCP's Final Statement, and will be published on the NCP website at the closure of the process.

### **Issues Raised in the Request for Review**

8. The Notifier is the Bruno Manser Fund (BMF), an NGO based in Basel, Switzerland. According to its website, BMF is committed to safeguarding the rights of Sarawak's indigenous peoples in the Malaysian Borneo and protecting Borneo's rainforests including through creating transparency in the global timber trade.

9. The Notifier's Request for Review alleges that the "Sakto Group" is a real estate and investment group headquartered in Ottawa (Ontario, Canada), with global assets and with links to politically exposed persons from Malaysia. The RfR also states that the "Sakto Group" comprises at least eleven Canadian companies and eighteen subsidiaries/related parties in seven jurisdictions outside Canada (United States, United Kingdom, Australia, Malaysia, British Virgin Islands, Hong Kong, and Jersey). The complete list of companies that are included in the RfR can be found in ANNEX 1.

10. The RfR alleges that the "Sakto Group" breached the Guidelines' voluntary principles on disclosure and does not publish financial information, information on its beneficial owners, on group structure and intra-group relations, on related party transactions, on its accounting standards and its auditors. In addition, the Notifier also alleges that the "Sakto Group" does not publish sufficient information on its activities and its governance and that it is actively attempting to conceal its ownership, group structure, governance and finances.

11. In the Request for Review, the Notifier cites the following sections of the OECD Guidelines:

#### **Chapter III: Disclosure** (page 27 of the 2011 Edition)

Paragraph 2: *Disclosure policies of enterprises should include, but not be limited to, material information on:*

- a) the financial and operating results of the enterprise;*
- b) enterprise objectives;*
- c) major share ownership and voting rights, including the structure of a group of enterprises and intra-group relations, as well as control enhancing mechanisms;*
- d) remuneration policy for members of the board and key executives,*

*and information about board members, including qualifications, the selection process, other enterprise directorships and whether each board member is regarded as independent by the board;*  
*e) related party transactions;*  
*f) foreseeable risk factors;*  
*g) issues regarding workers and other stakeholders;*  
*h) governance structures and policies, in particular, the content of any corporate governance code or policy and its implementation process.*

*Paragraph 4: Enterprises should apply high quality standards for accounting, and financial as well as non-financial disclosure, including environmental and social reporting where they exist. The standards or policies under which information is compiled and published should be reported [...].*

12. In the RfR, the Notifier requests that the “Sakto Group” disclose financial information on the companies’ beneficial ownership, group structure, intra-group relations, activities, governance, related party transactions and accounting standards and auditors. For each of these categories, the RfR includes specific information for which it requests the disclosure.

### **Sakto Corporation’s response**

13. Sakto Corporation’s position in response to the RfR has been provided by the company’s legal counsel, Mr. David Sherriff-Scott, of the firm Border, Ladner Gervais LLP. Counsel for Sakto Corporation has provided two (2) confidential submissions on behalf of the President of Sakto Corporation and director of other companies listed in the RfR, on the issues raised in the RfR.

14. Sakto Corporation’s position is: (a) the complaint is unfounded as the OECD Guidelines have no application to the company or other named companies; (b) there is no such entity as “Sakto Group” which operates internationally, the “Sakto” companies listed in the RfR are not multinational enterprises within the meaning of the Guidelines, and other Canadian companies identified in the RfR are either not multinational entities or the information which the Guidelines recommend be disclosed about them is already in the public domain; (c) the OECD disclosure provisions do not apply to privately owned companies; and (d) the Notifier has breached the confidentiality of its undertaking with the NCP by, inter alia, publishing statements on the internet that “Canada’s Sakto Group has breached OECD standards”.

### **Summary of the Initial Assessment Process**

15. The Initial Assessment determines whether the RfR as presented merits further examination. It is not a decision whether a company or companies meet the principles set out under the Guidelines.

#### **16. Timeline:**

- 11 January 2016: NCP receives the RfR from Bruno Manser Fund
- 15 January 2016: NCP meeting with Notifier in Ottawa; additional (confidential) documents provided to the NCP
- 4 March 2016: NCP shares the RfR with Sakto Corporation
- 25 April 2016: Meeting with Sakto Corporation’s legal counsel

- 7 June 2016: Response of Sakto Corporation's legal counsel
- 27 June 2016: Additional submission by Sakto Corporation's legal counsel
- 26 October 2016: NCP shares draft Initial Assessment with the parties

17. Documents provided in the RfR were shared with Sakto Corporation and the other companies through the Sakto Corporation's legal counsel. The Notifier provided additional information to the NCP that they asked not to be shared with the companies. The companies' legal counsel directed the NCP not to share their two submissions with the Notifier.

18. Where a RfR involves companies linked to other countries that adhere to the Guidelines, it is standard practice to collaborate with the NCPs of those countries. Given that companies based in the US, UK, and Australia are identified in the RfR, the Canadian NCP has consulted with the US, UK and Australian NCPs and shared the RfR with them. The Canadian NCP has taken a pragmatic approach by notifying the Canada-based companies listed in the RfR.

### **The NCP's Initial Assessment**

19. The Procedural Guidance chapter of the OECD Guidelines provides that NCPs shall make an Initial Assessment by considering "whether the issues raised merit further examination". The Canadian NCP has first looked at the applicability of the Guidelines to this case and secondly, has considered the RfR against the criteria listed in the NCP Procedures Guide (see Annex 2).

#### Applicability of the Guidelines

20. The NCP has based its determination regarding the applicability of the Guidelines to the grouping of companies included in the RfR on the text in the Guidelines related to multinational enterprises. Chapter 1 of the Guidelines, Concepts and Principles, paragraph 4, reads as follows:

*"A precise definition of multinational enterprises is not required for the purpose of the Guidelines. Multinational enterprises usually comprise companies or other entities established in more than one country and so linked that they may coordinate their operations in various ways. While one or more of these entities may be able to exercise a significant influence over the activities of others, their degree of autonomy within the enterprise may vary from one multinational enterprise to another. Ownership may be private, State of mixed. The Guidelines are addressed to all entities within the multinational enterprise (parent and/or local entities). According to the actual distribution of responsibilities among them, the different entities are expected to cooperate and to assist one another to facilitate observance of the Guidelines".*

21. Regarding the Notifier's use of the name "Sakto Group", it is important to note that the NCP has discretion in interpreting the application of the Guidelines. The Guidelines are not a legal instrument and legal terms and arguments are therefore not decisive in their application.

22. Based on documentation included in the RfR and verified by the NCP, all eleven (11) active Canadian companies identified in the RfR have a common director/president. Moreover, the address of the registered office of these eleven (11) companies is identical (in Ottawa). The NCP considers that these enterprises are linked through the common directorship and the common office location. In addition, they all operate in the commercial real estate sector. The

NCP therefore considers that while having separate legally established corporate identities, these companies are linked and coordinate their economic activities and operations in the sense of paragraph 4 of the Chapter 1 of the Guidelines cited above.

23. The NCP has also looked at the international nature of the activities of the companies included in the RfR:

- a) Based on information included in the RfR, verified and complemented by information obtained by the NCP), the Canadian company Urban Sky Investment Ltd., is the parent company of two (2) companies registered in the UK (London), namely Ridgeford Development, and Ridgeford Properties Ltd., which also operate in the commercial real estate sector.
- b) Based on documentation included in the RfR, the common director of the eleven Canadian companies is also one of the directors or the president of the following companies: Sitehost Pty (registered in Australia), Wallysons Inc (registered in the Washington State, US) and Premier Cottage Sdn. Bhd. (registered in Malaysia). This documentation was obtained from public sources. A document included in the RfR also confirms that the address of the Chairman of Wallysons Inc. (US based), is identical to the registered Ottawa address of the eleven (11) Canadian companies.
- c) The spouse of the director of all the eleven (11) Canadian companies is president or director of Sakto Corporation and Sakto Development Corporation, as well as six (6) other Canadian companies listed in the RfR. This person is also a director and majority shareholder of Sitehost Pty (registered in Australia) and shareholder and director of the companies Bormill Wood, Majaharta Sdn. Bhd. and Tell Media Sdn. Bhd. (registered in Malaysia).
- d) The online Yelp profile of Sakto Development Corporation (accessed on August 12, 2016) provides the following information:

“As President and CEO of Sakto Corporation, a real estate development and management firm based in Ottawa, Canada, Sean Murray has transformed a small single asset entity into an international corporation with holdings not only in Canada, but in the United States, United Kingdom, and Australia”.

24. Based on this information, the NCP concludes that the grouping of Canadian companies referred to by the Notifier as part of the “Sakto Group”, do have economic activities and business links in more than one country. This demonstrates the multinational nature of these companies in the context of paragraph 4 of Chapter 1 of the Guidelines cited above.

25. Regarding the position of Sakto Corporation that the disclosure provisions of the Guidelines do not apply to privately owned enterprises, the NCP has come to the following conclusion. While the companies listed in the RfR are privately owned, as per paragraph 4 of Chapter 1 of the Guidelines cited above, the Guidelines do apply to all enterprises, be they private, State or mixed. The spirit and intent of the Guidelines is that all companies can and should continuously enhance their responsible business practices by adhering to the principles set out in the Guidelines.

26. Once it is determined that a company falls within the scope of the Guidelines, all chapters and provisions apply and there is no distinction to be made between certain provisions or chapters, such as disclosure, and others.

27. Therefore, it is the conclusion of the NCP that the grouping of Canadian companies identified by the Notifier as part of the “Sakto Group” falls within the scope of the OECD Guidelines in the context of paragraph 4 of Chapter I -Concept and Principles.

## 28. Criteria

This section outlines how the NCP has considered the RfR against the criteria listed in the NCP Procedures Guide (see Annex 2):

### 1) *The identity of the Notifier and its interest in the matter:*

The Bruno Manser Fund (BMF) has an interest in the issues raised in the request for review in that they are an NGO committed to the conservation of the tropical rainforests in Malaysia and the respect of rights of the rainforest dwellers. One of the strategic objectives of the BMF, as they appear on the organization’s website is “combatting corruption and a commitment to transparent governance”.

### 2) *Whether the issues are material and substantiated:*

The issues in the RfR relate to disclosure of companies’ information. The RfR refers to relevant provisions of the Guidelines as cited above. The NCP therefore considers the issues to be material to the Guidelines. The NCP reviewed the materials presented by both Parties and considers the disclosure issue to be substantiated.

### 3) *Whether there seems to be a link between the companies’ activities and the issues raised in the RfR:*

The RfR raises issues regarding disclosure of information about finances, structure, and activities of several companies, among others. The NCP finds there is a link between the enterprises named and the issues raised in this case.

### 4) *Relevance of applicable law and procedures, including court rulings and how similar issues have been, or are being treated in other domestic or international proceedings:*

The NCP is currently not aware of any relevant parallel proceedings.

### 5) *Whether the consideration of the specific instance would contribute to the purpose and effectiveness of the Guidelines:*

The purpose of the NCP is to promote the Guidelines and contribute to the resolution of issues that arise relating to the implementation of the Guidelines in specific instances. It is the view of the NCP that consideration of the issues raised in the RfR could contribute to a more fulsome discussion and examination of the expectations surrounding the disclosure of information by firms, including privately owned ones.

29. Based on the NCP's review of the documentation provided by the parties, and subsequent analysis of the factors outlined above, the NCP finds that issues presented in the Request for Review are material and substantiated, and that this, therefore, merits further examination.

30. In addition, the NCP had informed the Notifier of the allegations by the company's legal counsel of confidentiality breach by the Notifier. The NCP has also replied to the company that it does not consider that confidentiality has been breached by the Notifier. The Notifier's statements posted online were announcements that inform the public that the Bruno Manser Fund had filed a complaint with the NCP and, in the NCP's view, do not constitute campaigning on the NCP proceedings.

### **Conclusion and Next Steps**

31. This Initial Assessment should not be construed as a judgment of whether or not the corporate behavior or actions in question were consistent with observance of the OECD Guidelines, and should not be equated to a determination on the issues raised in the Request for Review. This Initial Assessment indicates that the NCP considers that dialogue between officers of the companies and the Bruno Manser Fund could provide a beneficial opportunity to address any misunderstandings or disputes related to the issues raised in the RfR.

32. This Initial Assessment will be included, in part or in full, in the Final Statement at the closure of this process.

33. With this Initial Assessment, the NCP has concluded that the issues raised are material and substantiated, and therefore merit further examination. Pursuant to section 3.5 of the Procedures Guide, the NCP will offer its good offices to the parties involved to enter into a dialogue facilitation process with a view to guiding a constructive discussion on possible ways to mutually resolve the issues raised in the Request for Review.

34. The NCP requests that the Notifier and the companies respond in writing no later than [*date to be determined based on parties' response to the draft Initial Assessment*], advising the NCP of whether they are willing to participate in a facilitated dialogue. If both Parties agree to participate, the NCP will follow up with the parties to coordinate the next steps in a dialogue facilitation process.

35. If either or both of the parties are unwilling to participate in this process, the NCP will proceed to prepare a Final Statement which will note: a) that the issues raised in the Request for Review are material and substantiated, and merit further examination; b) the offer by the NCP of its good offices for the purposes of dialogue facilitation; and c) the unwillingness to participate in the process by the concerned party or parties. Final Statements may make recommendations as appropriate. The NCP's Final Statements are made public on the Canadian NCP website, and will be included or referred to in the Canadian NCP's annual report to the OECD Investment Committee.

36. The Government of Canada expects that Canadian companies promote Canadian values and operate at home and abroad with the highest ethical standards. They are expected to respect human rights and all applicable laws, and to meet or exceed widely recognized international standards for responsible business conduct, including and in particular, the OECD Guidelines. While participation in the NCP's dialogue facilitation is voluntary, it should be noted

that measures are applied in cases of non-participation or lack of good faith engagement in the Government of Canada's dialogue facilitation mechanisms, including the NCP process. The non-participation, or lack of good faith engagement, by a company in the NCP process will be taken into consideration in any application by the company for advocacy support from the Government of Canada's Trade Commissioner Service and/or Export Development Canada financial services, should one be made.

37. The NCP believes that communication and dialogue may be useful in working towards the resolution of the issues raised in this Request for Review and the overall advancement of the Guidelines, and of stakeholder and company interests.

**ANNEX 1 – List of companies identified in the Request for Review (from sections 3.1 to 3.8 of the RfR)**

**Canada:**

- Sakto Development Corporation
- Sakto Corporation
- Sakto Investment Corporation (dissolved in 2015)
- Urban Sky Investments Ltd
- Urban Sky Europe Ltd
- 1041229 Ontario Inc.
- 1575 Carling Limited
- Hawkhurst Island Holding Ltd (dissolved in 2015)
- Adelaide Ottawa Corporation
- Preston Building Holding Corporation
- Tower One Holding Corporation
- Tower Two Holding Corporation
- Waterford Property Group Ltd

**United States:**

- Wallysons Inc.
- Sakti International Holdings Inc. (dissolved)
- Sakti International Corporation (dissolved)
- W.A. Boylston Inc. (dissolved)
- W.A. Everett Inc. (dissolved)

**United Kingdom:**

- Ridgeford Developments Ltd
- Ridgeford Properties Ltd
- Ridgeford Consulting Ltd
- Ridgeford Properties Management Ltd
- Ridgeford Properties (Bolsover Street) Ltd

**Australia:**

- Sitehost Pty Ltd
- Golborne Pty Ltd
- Fordland Pty Ltd

**British Virgin Islands:**

- Bexlane Limited
- Courtil Investments Limited
- Norstar Overseas SA
- Pioneer City Enterprises Ltd
- Tattonpark Holdings Ltd

**Hong Kong:**

- Natalite Investment Ltd
- Richfold Investment Ltd (dissolved)

**Jersey:**

- Sogo Holdings Ltd

**Malaysia:**

- Bormill Wood (Trengganu) Sdn Bhd
- Majaharta Snd Bhd
- Premier Cottage Sdn Bhd
- Tell Media Sdn Bhd

## **ANNEX 2: OECD Guidelines and NCP Process in this Specific Instance**

The Procedural Guidance chapter of the OECD Guidelines provides that NCPs shall make an initial assessment by considering “whether the issues raised merit further examination”. In the Canadian NCP’s *Procedures Guide for Canada’s National Contact Point for the Organisation of Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises*, the Initial Assessment process outlined therein notes that in determining whether the issues raised merit further examination, the NCP will determine whether the issues are bona fide and relevant to the implementation of the Guidelines. In this context, the NCP will take into account a number of factors, as outlined below:

- *the identity of the party concerned and its interest in the matter;*
- *whether the issues are material and substantiated;*
- *whether there seems to be a link between the enterprise’s activities and the issue raised in the specific instance;*
- *the relevance of applicable law and procedures, including court rulings;*
- *how similar issues have been, or are being, treated in other domestic or international proceedings;*
- *whether the consideration of the specific issue would contribute to the purposes and effectiveness of the Guidelines;*

The NCP Procedures Guide also specifies that the NCP may also consider a number of other issues including:

- *the request(s) and solution(s) that the notifier(s) is seeking and whether these are possible within the mandate of the NCP; and*
- *what the notifier(s) have indicated about their willingness or unwillingness to participate in a facilitated dialogue with a view to resolving the matter.*

As per the Procedures, the NCP may also review other open source information and consult relevant government departments with knowledge of the issues raised.

The mandate and procedures of NCPs are outlined in the procedural guidance chapter of the OECD Guidelines, and the associated commentaries. These documents may be obtained through the links on the Canadian NCP’s website at: [www.ncp-pcn.gc.ca](http://www.ncp-pcn.gc.ca).