

# KUBERA CROSS-BORDER FUND LIMITED

## Statement of Compliance with the QCA Corporate Governance Code

(This disclosure was last reviewed and updated on 27 September 2018)

### Introduction

The Board of Kubera Cross-Border Fund Limited (the “Company” or the “Fund”) has adopted the QCA Corporate Governance Code (the QCA Code), which we believe provides us with the right governance framework.

#### **Principle 1 Establish a strategy and business model which promote long-term value for shareholders**

The Fund is now in realisation mode. On the 7 January 2013, the Fund’s shareholders passed a resolution to change the Investment Objective to the following:

*The Company’s investment objective and policy is to seek realisation of its portfolio of investment in the ordinary course of business and to return the net proceeds of all such realisations to Shareholders, following which the Company will be wound-up. The Company will make no new investments, except follow-on investments in existing investee companies.*

#### **STATUS OF THE FUND’S PORTFOLIO:**

The Investment Report provides information on progress in implementing the Fund’s realisation policy, and on the performance of each of the Fund’s remaining investments. These are:

**Planetcast Media Services Limited (“PMSL” or “Planetcast”):** Kubera Cross-Border Fund (Mauritius) Limited (‘Kubera Mauritius’) entered into a share purchase agreement with a leading global private equity firm on 20 March 2017 to sell its investment in PMSL. The consideration to be paid to Kubera Mauritius, net of transaction costs, is INR 1,618 million (INR 1,475 million, excluding the former Manager’s co-investment). This is equivalent to US\$ 23.65 million as at 30 June 2018. The realisation proceeds net of transaction costs are expected to be received by 30 September 2018, subject to Kubera Mauritius receiving the required regulatory and ministerial approvals. The value of the investment is US\$ 23.17 million (US\$ 21.12 million excluding the former Manager’s co-investment): this is the realisation value of US\$ 23.65 million discounted to reflect the time value of money, lack of liquidity and credit risks.

**Synergies Castings Limited (“SCL” or “Synergies Castings”):** On 11 August 2017, Kubera Mauritius entered into a share purchase and loan assignment agreement with Jamy LLC, a private buyer, for the disposal of its entire equity and debt interests in SCL for an aggregate consideration in the range of US\$ 14.00 million - \$ 16.00 million depending on the timing of the payments from the buyer. The lower amount, US\$ 14.00 million (US\$ 12.76 million excluding former Manager’s co-investment), has been used in determining the fair valuation of the investment.

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The consideration is to be paid to Kubera Mauritius in four tranches over an 18-month period. The first tranche of US\$ 2.80 million was received on 10 August 2017, comprising US\$ 1.80 million towards the first tranche sale and US\$ 1.00 million as advance sale consideration. All the events and formalities with respect to the sale and transfer of the first tranche of shares were completed prior to 31 December 2017. As at 30 June 2018, US\$ 2.93 million of the second tranche of US\$ 3.60 million had been received. A further US\$ 0.30 million was received on 14 August 2018.

The value of the investment excluding cash received at 30 June 2018 was US\$ 9.21 million (US\$ 8.39 million excluding the former Manager's co-investment). This is the remaining realisation value discounted to reflect time value of money, lack of liquidity and credit risks.

**NeoPath Limited ("NeoPath"):** Kubera Mauritius exited from the business in 2010 and distributed US\$ 0.33 per share to investors from realised cash flows. The acquirer of the business deducted withholding tax of US\$ 15.96 million and deposited it with the tax authority in India. US\$ 5.12 million of this is attributable to Kubera Mauritius. NeoPath is in the process of claiming a refund of the withholding tax, based on its position that the capital gain realized on the sale is exempt from tax in India under the provisions of the India-Mauritius double taxation treaty. Consequently, based on the opinion of tax counsel, the entire amount of US\$ 15.96 million is considered to be fully recoverable by NeoPath. The present value of the estimated tax refund has been included in the fair value estimate of the Kubera Mauritius' investment in NeoPath as at 30 June 2018. The timing of the finalisation and receipt of the tax refund remains uncertain; NeoPath has now directly approached the tax authority for a resolution of the case.

## **Principle 2 Seek to understand and meet shareholder needs and expectations**

In the Company's Admission Document, the Directors committed to give Shareholders the opportunity in 2013 to review the life of the Company, by way of voting on a resolution that the Company should continue as presently constituted. The Directors committed, if such resolution was not passed, to bring forward proposals for the reorganisation of the Company. Following consultation with major Shareholders, it was clear that the majority of Shareholders supported the proposition that the Company should not continue as then constituted; and should seek to realise its investments and return the net proceeds to Shareholders.

Subsequently, on the 17 January 2013 the Shareholders passed a resolution that the Company should not continue in its current form, and to change the Company's investment objective and investment policy to that described under Principle 1.

As an exempted company, there is no statutory requirement for the Fund to hold an annual general meeting of Shareholders every year. However, the Board is committed to maintaining good communication and constructive dialogue with its Shareholders. The Company Secretary can be contacted by Shareholders on matters of governance and investor relations at [PScal@fim.co.im](mailto:PScal@fim.co.im).

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The Company principally communicates with its Shareholders via the Regulatory News Service of the London Stock Exchange, in accordance with its obligations under the AIM Rules for Companies.

Copies of the annual and interim reports are sent to all Shareholders and copies can be downloaded from the Company website, [http://www.kuberacrossborderfund.com/investor\\_reports.html](http://www.kuberacrossborderfund.com/investor_reports.html), alternatively, they are available on request by contacting the Company Secretary at [PScales@fim.co.im](mailto:PScales@fim.co.im). Other Fund information for Shareholders is also available on the website.

The Company also produces a quarterly Newsletter which is available to download at [http://www.kuberacrossborderfund.com/investor\\_reports.html](http://www.kuberacrossborderfund.com/investor_reports.html)

In addition, the Company emails the annual and interim reports, as well as any Fund / Group news to its Shareholders and other interested parties via the email and marketing software package 'Constant Contact' at the Company's expense. There have been no shareholder enquiries to FIM Capital Limited who is the Fund's administrator, registrar and Company Secretary, other than to request copies of Accounts, which are actioned accordingly.

## **Principle 3 Take into account wider stakeholder and social responsibilities and their implications for long-term success.**

The Board has close oversight, accountability and contact with key resources and relationships. In particular, Ramanan Raghavendran receives regular updates from the proposed buyer of Planetcast and the authorities involved in the transaction.

The Group's stakeholders include shareholders, members of staff, and regulators.

The Company does not have a formal feedback mechanism for stakeholders. The principal ways in which feedback on the Group is gathered is through meetings and conversations. Feedback is normally communicated to the Board in the first instance, who respond as appropriate.

It is acknowledged that the value and prospects of the Group's investments in or relating to India may be adversely affected by, amongst other factors, adverse social, economic or political events in India.

## **Principle 4 Embed effective risk management, considering both opportunities and threats, throughout the organisation.**

The Group's investment activities expose it to various types of risks associated with the financial instruments and markets in which it invests. The risk summary below is from page 24 of the 2017 Annual Report. It is not intended to be a comprehensive listing of all risks inherent in investing in the Group. The Fund's admission document provides a more detailed discussion of risks: a copy is provided on the Company website: <http://www.kuberacrossborderfund.com/index.html>

### ***a) Market Risk***

Market risk is the risk that the value of a financial instrument will fluctuate as a result of changes in market variables such as interest rates, foreign exchange rates or equity prices, whether those changes are caused by factors specific to the particular security, or by factors that affect many or all

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securities in the markets. Investments are typically made with a specific focus on India. Political or economic conditions; possible adverse legislation, or currency exchange restrictions could cause the Group's investments and their markets to be less liquid, and/or prices more volatile, than would otherwise be the case. The Group is exposed to market risk on all of its investments.

## ***b) Industry Risk***

The Group's investments may have concentration in a particular industry or sector, and performance of that particular industry or sector may have a significant impact on the Group. The Group's investments may also be subject to the risk associated with investing in private equity securities. Investments in private equity securities may be illiquid and subject to various restrictions on resale and there can be no assurance that the Group will be able to realize the value of such investments in a timely manner.

## ***c) Credit Risk***

Credit risk is the risk that an issuer/counterparty will be unable or unwilling to meet its commitments to the Group. Financial assets that are potentially subject to significant credit risk consist of cash and cash equivalents. The maximum credit risk exposure of these items is their carrying value.

## ***d) Currency Risk***

The Group has assets denominated in currencies other than the US Dollar, the functional currency. The Group is therefore exposed to currency risk as the value of assets denominated in other currencies will fluctuate due to changes in exchange rates. The Group's cash and cash equivalents are held in US Dollars. The Group does not hedge against foreign exchange fluctuations.

## ***e) Liquidity Risk***

The Group is exposed to liquidity risk as a majority of the Group's investments are largely illiquid. Illiquid investments include any securities or instruments which are not actively traded on any major securities market, or for which no established secondary market exists where the investments can be readily converted into cash. Reduced liquidity resulting from the absence of an established secondary market may have an adverse effect on the prices of the Group's investments and the Group's ability to dispose of them where necessary to meet liquidity requirements. However, the Group maintains sufficient cash and marketable securities, and aims to maintain flexibility in funding.

## ***f) Political, Economic and Social Risk***

Political, economic and social factors, mainly changes in Indian laws or regulations and in India's relations with other countries, may adversely affect the value of the Group's investments.

The Board has overall responsibility for the Company's internal controls and for reviewing their effectiveness and ensuring the day to day operations. These controls aim to ensure that assets of the Company are safeguarded, proper accounting records are maintained and the financial information used within the business and for publication is reliable.

## **Principle 5 Maintain the board as a well-functioning, balanced team led by the chair.**

There is no statutory requirement for a Cayman company to hold an AGM, therefore, the Directors are not subject to re-election. In view of the Fund's realisation policy, the Board will remain

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unchanged in the interests of cost effectiveness, while providing the necessary combination of skills and experience.

Due to the size and activities of the Fund the Board agreed in January 2016 there was no statutory requirement to continue to have an Audit Committee, or for a Remuneration Committee to be established. Decisions normally reserved for an Audit Committee are made by the Board as a whole.

The Board comprises: the Chairman and Independent Director, Martin Adams; Independent Director, Michael Tyler; and Ramanan Raghavendran, a Director. Martin Adams and Michael Tyler are both considered to be Independent Directors. This provides the balance of skills and experience necessary for a Fund of this size. All the Directors' biographies are published on the Fund's website and outlined below: <http://www.kubercrossborderfund.com/boardofdirectors.html>

The Directors devote sufficient time to ensure the Company's affairs are managed as efficiently as possible. The Board holds meetings four times per annum, either formally in person or informally by telephone, plus additional ad hoc meetings as required. Going forward the Fund intends to report annually on the number of Board meetings held during the year and the attendance record of individual Directors.

## **Principle 6 Ensure that between them the directors have the necessary up-to-date experience, skills and capabilities.**

The Board currently consists of three Directors as described above. The Board believes it has the correct balance of skills, reflecting a broad range of commercial and professional skills across geographies and industries that is necessary to ensure the Fund is equipped to deliver its investment objective. Each Director has experience in public markets and in public-company governance. Full Biographies of the Board are available on the Company's website as follows:

### **Martin Adams - Independent Director, Chairman of the Board:**

Mr. Adams was the founder and Managing Director of Vietnam Fund Management Company group (VFMC), which previously managed The Vietnam Fund Limited – the first institutional private equity fund to specialise in Vietnam – and Beta Viet Nam Fund Limited. Mr. Adams is also currently the Chairman of Eastern European Property Fund Limited, Trading Emissions Plc and Trinity Capital Plc and a non-executive Director of Aberdeen Latin American Income Fund Limited, Metage Funds Limited, Terra Catalyst Fund, VinaCapital Vietnam Opportunity Fund Limited and Marwyn Value Investors Limited. Prior to establishing VFMC, Mr. Adams worked for the Lloyds Bank Group in the United Kingdom, the Netherlands, Portugal and Hong Kong. Mr. Adams holds an MA in Economic Science from the University of Aberdeen, where he specialised in International Economics, Economic Development and Public Finance.

### **Michael Tyler - Independent Director:**

Mr. Tyler is a Senior Managing Director of Essex Lake Group LLC, a global provider of operational and analytic services to the financial services industry (especially banks, card issuers and insurance companies), and the retail and telecom industries. He is active in developing new modes of operation in service businesses, including telcos, cellular/wireless and cable TV; and has contributed to formative

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developments such as online delivery of transaction services and the launch of direct-to-home satellite TV. Mr. Tyler has played a key role in devising and closing major investment transactions, and especially in developing the use of leveraged leases as a financial tool in telecoms and IT: this has included lease transactions of over \$2 billion for each of Swisscom, SNCF (French railways) and DFS (German air traffic control). He has served on the boards and audit committees of several public companies, including Telecommunications Corporation of New Zealand (Telecom NZ), the principal telephone company in New Zealand and number three in Australia; and ALC Communications, a US long-distance telephone company formerly traded on NASDAQ and subsequently acquired by MCI. Mr. Tyler was formerly Managing Director of Tyler & Company, an international provider of analytical services in telecoms and IT; and senior partner and member of the Executive Committee at Booz, Allen & Hamilton. He has also served as Sloan Associate Professor of Technology and Public Policy at New York University, and as an adjunct member of the faculty (Instructor) at the Massachusetts Institute of Technology (MIT). Mr. Tyler began his career at BT (British Telecom). Mr. Tyler holds an MA in Natural Sciences (Physics) and Economics from Cambridge University.

## **Ramanan Raghavendran – Director:**

Mr. Raghavendran founded Kubera in December 2006 together with Kumar Mahadeva. Prior to founding Kubera, he was responsible for leading the successful cross-border investing efforts at TH Lee Putnam Ventures (THLPV) as a Senior Partner and continues to oversee the THLPV portfolio today. Ramanan was formerly a Senior Partner at Insight Venture Partners where he invested in business process outsourcing and enterprise software companies, including cross-border investing via Connect Capital, an Insight affiliate. Prior to joining Insight, he was a senior member of the investment team at General Atlantic where he initiated the Internet-related investment effort and also led sector efforts in technology services and enterprise software. Ramanan began his career at McKinsey & Company. Ramanan co-founded and co-managed Impact Partners, the first Indian venture philanthropy fund. Impact provided funds to nine non-profit organizations that today impact 1.5 million lives (primarily underprivileged children). Ramanan is the chairman of the advisory board of Magic Bus, an NGO that assists at-risk children across India; it was incubated in his Mumbai office. He has served on several non-profit boards in India and the U.S. over the last 20 years. Ramanan is a Trustee of the University of Pennsylvania; is an Overseer of the School of Arts and Sciences at Penn; serves on the boards of Penn's two India centers; and chairs two alumni interview committees for Penn Admissions. Ramanan holds a BS in Finance from the University of Pennsylvania's Wharton School and a BSE in Computer Science from the University of Pennsylvania's Moore School of Engineering.

The Directors are able to take independent professional advice in respect of their duties, if necessary, and they all have direct access to the advice of FIM. FIM provides specialist fund administration and company secretarial services to a variety of closed ended funds and collective investment schemes. Many of the closed ended funds are quoted on the London Stock Exchange.

In January 2016 the Audit Committee was disbanded. The Board carefully considered the need for an Audit Committee and agreed that in view of the size of the Fund, and of the Fund being in realisation mode, all decisions normally reserved for an Audit Committee would be made by the Board as a whole.

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## **Principle 7 Evaluate board performance based on clear and relevant objectives, seeking continuous improvement.**

There are no formal board evaluation or succession planning systems in place. However, the Board internally monitors their contributions to ensure they are relevant and committed, and that independence is maintained. The Independent Directors, Martin Adams and Michael Tyler have remained independent throughout their office. In view of the status of the fund, it is not proposed that any formal board evaluation or succession systems be introduced.

## **Principle 8 Promote a corporate culture that is based on ethical values and behaviours.**

The Board recognises that their decisions regarding strategy and risk impact the corporate culture of the Fund as a whole, and that this can impact the performance of the Fund. The Board is mindful that the tone and culture set by the Board can impact many aspects of the Fund, and also the views and behaviour of stakeholders.

The Fund's main stakeholders are its Shareholders, third party service providers and the employees of the service providers. The Board welcomes the views of all stakeholders, and in particular its Shareholders who can contact the Directors and / or the Company Secretary by email / telephone.

The corporate governance arrangements that the Board have adopted are designed to ensure that value is delivered to its Shareholders in line with its investment objective.

As noted in the admission document: service businesses are dependent on their employees to provide superior value to clients. This is particularly true for cross-border businesses that have to manage multiple locations in different time zones, each of which has a unique and distinct geography, culture and labour practice. The Board believes that its management experience and established relationships with industry professionals have enhanced an Investee Company's ability to recruit, train and retain key management in India and in developed markets.

The Fund adopted, with effect from the date on which its shares were admitted to AIM, a share dealing code for directors' dealings in securities of the Company that is in accordance with the requirements of the Market Abuse Regulation.

In order to comply with legislation or regulations aimed at the prevention of money laundering the Fund adopted anti-money-laundering and anti-bribery procedures. The Bribery Act Policy was adopted on 26 September 2014.

## **Principle 9 Maintain governance structures and processes that are fit for purpose and support good decision-making by the board.**

As previously described, no Board Committees currently exist. The Board carefully considered the need for separate Committee functions, and did not deem these to be appropriate, in view of the current size and activity of the Fund.

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The Board has joint authority and decision making powers for all aspects of the Funds activities. The Board has adopted appropriate delegations of authority.

The Non-Executive Chairman is responsible for the effectiveness of the Board together with the responsibility to oversee the Company's corporate governance practices.

The responsibility for the Company's day-to-day operations has been delegated by the Board to Ramanan Raghavendran.

Whilst there has been no formal adoption of matters reserved for the Board, the Directors review and approve the following:

- Strategy and management
- Policies and procedures
- Financial reporting and controls
- Capital structure
- Contracts
- Shareholder documents / Press announcements
- Adherence to Corporate Governance and best practice procedures

The services of each of Martin Adams, Ramanan Raghavendran and Michael Tyler as directors are provided under the terms of their letters of appointment between each of them and the Fund dated 21 December 2006.

## **Principle 10 Communicate how the Company is governed and is performing by maintaining a dialogue with shareholders and other relevant stakeholders.**

As an exempted company, there is no statutory requirement for the Fund to hold an annual general meeting of its members each year. However, the Board is committed to maintaining good communication and constructive dialogue with its shareholders.

The website confirms that there are no board committees and all matters reserved for an Audit Committee are considered by the Board as a whole. No Audit Committee report has therefore been produced. Historical information is maintained on the website along with shareholder updates and newsletters.