

ASX Announcement

Friday, 17 November 2023

Diverger and Count amend Scheme Implementation Agreement to provide for increased Scheme Consideration

Diverger Limited (**Diverger** or the **Company**) (ASX: DVR) refers to its ASX announcement on 22 September 2023 stating that it had entered into a Scheme Implementation Agreement (**SIA**) with Count Limited (**Count**) (ASX: CUP) under which Count agreed to acquire 100% of the fully diluted share capital in Diverger by way of a Scheme of Arrangement (**Scheme**).

Diverger is pleased to announce that it has entered into an amending deed with Count (**Amending Deed**) to increase the consideration payable by Count under the Scheme. Diverger shareholders will now receive an implied consideration of \$1.365¹ per Diverger share, comprising:

- Cash consideration: \$0.40 (increased from \$0.367) per Diverger share in cash; and
- Scrip consideration: 1.44 (increased from 1.38) Count shares per Diverger share held,

(**Default Consideration**), with flexibility for Diverger shareholders to elect to receive maximum cash or maximum shares, subject to a scale-back if cap limits are exceeded.

The implied Default Consideration of \$1.365 per Diverger share represents a:

- 52% premium to Diverger's last closing price as at 21 September 2023 (being the last trading day prior to the announcement of the Scheme);
- 52% premium to Diverger's one month VWAP as at 21 September 2023;
- 57% premium to Diverger's three month VWAP as at 21 September 2023; and
- an equity value of \$54.3m.

In addition, Diverger is now permitted to pay a fully franked cash dividend of up to \$0.10 per Diverger share (**Permitted Dividend**) on or prior to implementation of the Scheme, with the Scheme Consideration to be reduced by the amount of any such Permitted Dividend (if declared). The amount of the Permitted Dividend up to the permitted maximum of \$0.10 per Diverger share will be determined by the Diverger Board (in its absolute discretion) having regard to a range of factors, including the availability of retained earnings, franking credits and Diverger's cash reserves and existing funding lines. The Permitted Dividend would also be conditional on the Scheme proceeding.

The potential value in franking credits attached to the Permitted Dividend (if declared) for those Diverger shareholders who can realise the full benefit of franking credits, is up to \$0.043 per Diverger share.

¹ Scrip component of implied consideration is calculated as 1.44 multiplied by the closing price of Count shares on ASX of \$0.67 on 16 November 2023 and therefore is subject to share price movements.

Diverger is also permitted to pay a fully franked cash dividend of up to \$0.02 per Diverger share (**Interim Dividend**). The Diverger Board intends to declare and pay (in its absolute discretion) the Interim Dividend subject to the finalisation of Diverger's interim results for the six months ending 31 December 2023. The Interim Dividend would not be conditional on the Scheme proceeding and will not operate to reduce the Scheme Consideration received by Diverger Shareholders.

Shareholders will receive the Default Consideration (adjusted for any Permitted Dividend), or they may elect to receive 100% cash or 100% Count shares (adjusted for any Permitted Dividend) as their consideration mix, subject to a scale-back mechanism that will cap the total amount of cash consideration to be paid to Diverger shareholders at \$15.9 million (increased from \$14.6 million) less the aggregate amount of any Permitted Dividend and the total number of new Count shares issued to 57.3 million (increased from 54.9 million). Ineligible foreign shareholders and small shareholders (who would receive less than a marketable parcel of Count shares if they received Default Consideration) will receive cash consideration for their Diverger shares (adjusted for any Permitted Dividend).

All other terms of the SIA remain unchanged except as otherwise noted above. A copy of the Amending Deed is attached to this announcement.

Unanimous recommendation of the Diverger Board

The Diverger Board continues to unanimously consider that the Scheme is in the best interests of Diverger shareholders and continues to unanimously recommend that Diverger shareholders vote in favour of the Scheme, in the absence of a Superior Proposal and subject to the independent expert engaged by Diverger to consider the Scheme concluding (and continuing to conclude) that the Scheme is in the best interests of Diverger shareholders. Subject to those same qualifications, each director of Diverger intends to vote all the Diverger shares held or controlled by them in favour of the Scheme.

In making this recommendation, the Diverger Board continues to believe the proposed Scheme provides compelling benefits to Diverger shareholders and is the result of a considered and continuing strategy focused on creating more transformational shareholder outcomes by capitalising on the consolidation opportunity in the advice and accounting market. Specifically, the combined group comprising Diverger and Count is expected to benefit from a significantly strengthened market position, enhanced scale and provides a platform for enhanced market liquidity across both shareholder bases.

In addition, HUB24 Limited, Diverger's largest shareholder with a relevant interest in approximately 34.4% of Diverger shares, Harvest Lane Asset Management with a relevant interest in approximately 5.7% of Diverger Shares and Kevin White (and his associated entities) with a relevant interest in approximately 4.8% of Diverger shares have each separately confirmed to Diverger that they support the Scheme and intend to vote their Diverger shares in favour of the Scheme in the absence of a Superior Proposal and subject to the independent expert concluding (and continuing to conclude) to the effect that the Scheme is in the best interests of Diverger shareholders.

Indicative timetable and next steps

There has been no change to the indicative Scheme timetable communicated to shareholders on 22 September 2023. An Explanatory Booklet containing information relating to the Scheme, the reasons for the Diverger Board's recommendation, the Independent Expert's Report for Diverger shareholders and the details of the Scheme meeting, is expected to be sent to Diverger shareholders holders in mid to late December 2023.

It is expected that Diverger shareholders will be given the opportunity to vote on the Scheme at a Court-convened shareholder meeting in late January 2024. Subject to shareholder and Court approval being obtained and the other conditions of the Scheme being satisfied, the Scheme is expected to be implemented in late February 2024 (this timing is indicative and subject to change). There is no action for Diverger shareholders to take at this stage.

- ENDS -

This announcement has been authorised for release by the Board of Diverger Limited.

For all enquiries, please contact Diverger at 1300 655 695 and info@diverger.com.au



Amending Deed

Diverger Limited

Count Limited

Baker & McKenzie
ABN 32 266 778 912
Level 19
181 William Street
Melbourne VIC 3000
Australia
www.bakermckenzie.com

Title **Amending Deed**

Date 17 November 2023

Parties **Diverger Limited** (ACN 111 695 357) of Level 7, 115 Pitt Street, Sydney NSW 2000 (**Diverger**)

Count Limited (ACN 126 990 832) of Level 8, 1 Chifley Square, Sydney NSW 2000 (**Count**)

Recitals

- A Diverger and Count are parties to the Scheme Implementation Agreement.
- B Clause 21.7 of the Scheme Implementation Agreement provides that the Scheme Implementation Agreement may only be varied by a document signed by or on behalf of each of the parties to that agreement.
- C Diverger and Count wish to amend the Scheme Implementation Agreement and Scheme in the manner set out in this deed.
- D This deed is supplemental to the Scheme Implementation Agreement.

Operative provisions

1. **Definitions and Interpretation**

- 1.1 In this deed, unless otherwise defined below, terms defined in the Scheme Implementation Agreement have the same meaning when used in this deed:

Scheme Implementation Agreement means the scheme implementation agreement between Diverger and Count dated 22 September 2023.

- 1.2 The rules specified in clauses 1.2 to 1.4 of the Scheme Implementation Agreement apply in interpreting this deed as if set out in full in this deed (with such changes as are necessary).
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2. **Amendments to Scheme Implementation Agreement and Scheme**

Amendments

- 2.1 The parties acknowledge and agree that, on and with effect from the date of this deed, the Scheme Implementation Agreement and the Scheme are each amended by:
- (a) deleting the definition of "Cash Consideration" and replacing it with the following:

"Cash Consideration means the amount of \$0.40 for each Scheme Share held by a Scheme Shareholder less the amount of any Permitted Dividend (on a per Diverger Share basis).";
 - (b) deleting the definition of "Cash Consideration Cap" and replacing it with the following:

"Cash Consideration Cap means \$15,907,873 in aggregate less the amount of any Permitted Dividend (on an aggregate basis), which excludes any payments made to Ineligible Shareholders.";

- (c) deleting the definition of "Maximum Cash Consideration " and replacing it with the following:

"Maximum Cash Consideration means the amount of \$1.20 for each Scheme Share held by a Scheme Shareholder less the amount of any Permitted Dividend (on a per Diverger Share basis), subject to the Cash Consideration Cap.";

- (d) deleting the definition of "Maximum Scrip Consideration " and replacing it with the following:

"Maximum Scrip Consideration means the number of Count Consideration Shares for each Scheme Share, calculated in accordance with the following formula:

$$1.44 \times \left(\frac{1.2 \text{ less the amount (expressed as a dollar decimal amount) of any Permitted Dividend (on a per Diverger Share basis)}}{0.8} \right)$$

subject to the Scrip Consideration Cap. For the avoidance of doubt, this equates to 2.16 Count Consideration Shares for each Scheme Share if there is no Permitted Dividend.";

- (e) in the definition of "Scheme Consideration", replacing all references to:

(i) "1.38" with "1.44";

(ii) "2.07" with

$$"1.44 \times \left(\frac{1.2 \text{ less the amount (expressed as a dollar decimal amount) of any Permitted Dividend (on a per Diverger Share basis)}}{0.8} \right)"$$

(iii) "0.367" with "0.40 less the amount of any Permitted Dividend (on a per Diverger Share basis, expressed as a dollar decimal amount)"; and

(iv) "1.10" with "1.20 less the amount of any Permitted Dividend (on a per Diverger Share basis, expressed as a dollar decimal amount)";

- (f) deleting the definition of "Scrip Consideration Cap" and replacing it with the following:

"Scrip Consideration Cap means 57,268,344 Count Shares in aggregate."; and

- (g) deleting the definition of "Scrip Consideration Ratio" and replacing it with the following.

"Scrip Consideration Ratio means 1.44 Count Consideration Shares per Scheme Share."

2.2 The parties further acknowledge and agree that, on and with effect from the date of this deed, the Scheme Implementation Agreement is amended as follows:

- (a) deleting the definition of "Diverger Interim Dividend" in clause 1.1 of the Scheme Implementation Agreement and replacing it with the following:

*" **Diverger Interim Dividend** means a cash only interim dividend declared or paid by Diverger for the period ending 31 December 2023 in an amount not exceeding \$0.02 per Diverger Share."*;

- (b) in the definition of "Diverger Prescribed Occurrences" in clause 1.1 of the Scheme Implementation Agreement, replacing paragraph (f) with the following:

"other than in relation to the Diverger Interim Dividend and the Permitted Dividend, any member of the Diverger Group pays or declares, or announces an intention to pay or declare, any distribution (whether by way of any interim, final or special dividend, capital reduction or otherwise and whether in cash or in specie)";

- (c) adding to clause 1.1 of the Scheme Implementation Agreement in alphabetical order the following definition of "Permitted Dividend":

*"**Permitted Dividend** means any cash only fully franked special dividend of up to \$0.10 per Diverger Share, that may be declared by the Diverger Board and paid by Diverger in accordance with, and in satisfaction with the requirements of, clause 7.5."*

- (d) inserting a new clause 7.5 immediately after clause 7.4:

"7.5 Payment of Permitted Dividend, Diverger Interim Dividend and internal payments

- (a) *Despite any other provision of this agreement, Diverger may in, its sole discretion, declare and pay the Permitted Dividend or the Diverger Interim Dividend (or both) to Diverger Shareholders, provided that:*

- (i) *there cannot be more than one Permitted Dividend or Diverger Interim Dividend;*
- (ii) *the Permitted Dividend is declared (subject to the Scheme becoming Effective and there being sufficient franking credits and Diverger funding from existing cash or debt facilities available) on or prior to the Effective Date, and in any event by no later than the last date permitted by the Listing Rules to declare that dividend such that the record date for that dividend is at least 2 clear days before the Scheme Record Date;*
- (iii) *the payment date for the Permitted Dividend will be the Implementation Date (or such other date as Diverger and Count agree in writing);*
- (iv) *the Permitted Dividend and the Diverger Interim Dividend must be fully franked, and the franking account of Diverger must not be in deficit after the payment of the Permitted Dividend and the Diverger Interim Dividend;*
- (v) *Diverger does not make any variation to the PAYG instalment rate of Diverger without the prior written approval of Count. Such a request for approval by Diverger must include the calculations (and supporting workpapers) of Diverger's instalment income, and varied instalment rate (if applicable);*
- (vi) *the Permitted Dividend and the Diverger Interim Dividend must be paid from accumulated profits, retained earnings or distributable reserves (or a combination of all or some of them) of Diverger existing immediately prior to the declaration of that dividend; and*
- (vii) *payment of the Permitted Dividend and the Diverger Interim Dividend must comply with the Corporations Act.*

- (b) *Despite any other provision of this agreement, Diverger may make any intra group distributions and payments between members of the Diverger Group, in order to be able to declare and pay the Permitted Dividend and the Diverger Interim Dividend in accordance with clause 7.5(a), provided that such distributions or payments do not result in any deficit in the franking account of any member of the Diverger Group and is otherwise in accordance with the Corporations Act.*
- (c) *The parties acknowledge and agree that if the Permitted Dividend is declared in accordance with clause 7.5(a), the Cash Consideration and the Cash Consideration Cap will be reduced by the amount of the Permitted Dividend (disregarding and excluding the value attributed to any franking credits attached to any such Permitted Dividend). In addition, the Count Consideration Shares under any Maximum Scrip Consideration will be reduced in accordance with the formula in the definition of "Maximum Scrip Consideration" in clause 1.1.*
- (d) *The parties acknowledge and agree that if the Diverger Interim Dividend is declared in accordance with clause 7.5(a), the Cash Consideration and the Cash Consideration Cap will not be reduced by the amount of the Diverger Interim Dividend.*

The provisions of this clause 7.5 do not prevent the declaration, determination or payment of a dividend by Diverger if this agreement is terminated."

References

- 2.3 On and from the date of this deed, any reference in any document (other than this deed) to the Scheme Implementation Agreement or Scheme is a reference to the Scheme Implementation Agreement or Scheme as amended under clauses 2.1 and 2.2.

3. Confirmation of Scheme Implementation Agreement

Effect

- 3.1 Clauses 2.1 and 2.2 of this deed are intended only to amend the relevant provisions of the Scheme Implementation Agreement and Scheme and not to terminate, discharge, rescind or replace the Scheme Implementation Agreement. Except as amended under clauses 2.1 and 2.2, the Scheme Implementation Agreement continues in full force and effect.

Continuing liabilities and obligations

- 3.2 Nothing in this deed:
 - (a) prejudices or adversely affects any right, power, authority, discretion or remedy arising under the Scheme Implementation Agreement before the date of this deed; or
 - (b) discharges, releases or otherwise affects the liability or obligation arising under the Scheme Implementation Agreement before the date of this deed.

4. General provisions

Notices

- 4.1 Any notice or other communication to or by a party to this deed must be provided in accordance with clause 20 of the Scheme Implementation Agreement.

Amendment

4.2 This deed may only be varied by a document signed by or on behalf of each of the parties.

Counterparts

4.3 This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart. Each counterpart is an original but the counterparts together are one and the same deed.

4.4 This deed is binding on the parties on the exchange of duly executed counterparts.

4.5 The parties agree that a copy of an original executed counterpart sent by email to the email address of the other party specified in clause 20 of the Scheme Implementation Agreement, instead of the original, is sufficient evidence of the execution of the original and may be produced in evidence for all purposes in place of the original.

Electronic execution

4.6 Each party consents to the signing of this deed by electronic means. The parties agree to be legally bound by this deed signed in this way.

Costs

4.7 Each party will pay its own costs and expenses in connection with the negotiation, preparation, execution, and performance of this deed and transactions contemplated by this deed.

Governing law

4.8 This deed is governed by and will be construed according to the laws of New South Wales, Australia.

4.9 Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales, Australia and of the courts competent to determine appeals from those courts.


Deed is supplemental

4.10 This deed is supplemental to the Scheme Implementation Agreement.

Execution

Executed as a deed.


Executed by
Diverger Limited ACN 111 695 357
in accordance with section 127 of the
Corporations Act 2001 (Cth) by a director
and secretary/director:

DocuSigned by:

F53A9A3BAD3A1B5...

Signature of director

Peter Brook

Name of director (please print)

DocuSigned by:

B56BC053CAFA1AE...

Signature of secretary/director

Nathan Jacobsen

Name of secretary/director (please print)

By signing above, each director or secretary (as applicable) consents to electronic execution of this document (in whole or in part), represents that they hold the position or are the person named with respect to their execution and authorises any other director or secretary (as applicable) to produce a copy of this document bearing his or her signature for the purpose of signing the copy to complete its execution under section 127 of the Corporations Act 2001 (Cth). The copy of the signature appearing on the copy so executed is to be treated as his or her original signature.

Executed by
Count Limited ACN 126 990 832
in accordance with section 127 of the
Corporations Act 2001 (Cth) by a director
and secretary/director:

Signature of director

Hugh Humphrey

Name of director (please print)

Signature of secretary

Doug Richardson

Name of secretary/director (please print)

By signing above, each director or secretary (as applicable) consents to electronic execution of this document (in whole or in part), represents that they hold the position or are the person named with respect to their execution and authorises any other director or secretary (as applicable) to produce a copy of this document bearing his or her signature for the purpose of signing the copy to complete its execution under section 127 of the Corporations Act 2001 (Cth). The copy of the signature appearing on the copy so executed is to be treated as his or her original signature.

Execution

Executed as a deed.

Executed by
Diverger Limited ACN 111 695 357
in accordance with section 127 of the
Corporations Act 2001 (Cth) by a director
and secretary/director:

Signature of director

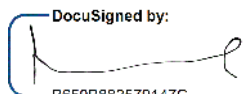
Signature of secretary/director

Name of director (please print)

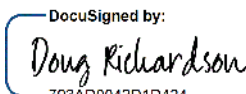
Name of secretary/director (please print)

By signing above, each director or secretary (as applicable) consents to electronic execution of this document (in whole or in part), represents that they hold the position or are the person named with respect to their execution and authorises any other director or secretary (as applicable) to produce a copy of this document bearing his or her signature for the purpose of signing the copy to complete its execution under section 127 of the Corporations Act 2001 (Cth). The copy of the signature appearing on the copy so executed is to be treated as his or her original signature.

Executed by
Count Limited ACN 126 990 832
in accordance with section 127 of the
Corporations Act 2001 (Cth) by a director
and secretary/director:

DocuSigned by:

B659B882579147C...

Signature of director

DocuSigned by:

793AD0042D1D424...

Signature of secretary

Hugh Humphrey

Doug Richardson

Name of director (please print)

Name of secretary/director (please print)

By signing above, each director or secretary (as applicable) consents to electronic execution of this document (in whole or in part), represents that they hold the position or are the person named with respect to their execution and authorises any other director or secretary (as applicable) to produce a copy of this document bearing his or her signature for the purpose of signing the copy to complete its execution under section 127 of the Corporations Act 2001 (Cth). The copy of the signature appearing on the copy so executed is to be treated as his or her original signature.