
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

FORM S-8
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

Mesoblast Limited

(Exact name of Registrant as specified in its charter)

Australia
(State or other jurisdiction of
incorporation or organization)

Not Applicable
(I.R.S. Employer
Identification No.)

Mesoblast Limited
55 Collins Street, Level 38
Melbourne, VIC 3000
Australia
Telephone: +61 3 9639 6036
(Address of principal executive offices, including zip code)

Employee Share Option Plan
(Full title of the plan)

Mesoblast Inc.
505 Fifth Avenue, Third Floor
New York, NY 10017
Telephone: (212) 880-2060
(Name, address and telephone number, including area code, of agent for service)

Copies to:

Andrew S. Reilly
Partner
Baker & McKenzie
50 Bridge Street, Level 27
Sydney, NSW 2000
Australia

Peter T. Howard
General Counsel and Corporate Executive
Mesoblast Limited
55 Collins Street, Level 38
Melbourne, VIC 3000
Australia

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act (Check one).

Large accelerated filer ☐

Accelerated filer ☒

Non-accelerated filer ☐ (Do not check if a smaller reporting company)

Smaller reporting company ☐

Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act. ☐

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered (2)	Proposed Maximum Offering Price Per Share (3)	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Ordinary Shares (1)	15,000,000	US\$1.32	US\$19,800,000	US\$2,465.10

- (1) Ordinary shares, without par value (the “Ordinary Shares”), of Mesoblast Limited (the “Registrant”) being registered relate to the Registrant’s Employee Share Option Plan, as amended and restated in September 2016 (the “Plan”). These Ordinary Shares may be represented by the Registrant’s American Depositary Shares (“ADSs”), each of which represents five Ordinary Shares. ADSs, evidenced by American Depositary Receipts (“ADRs”), each representing five Ordinary Shares of the Registrant, have been registered under a separate registration statement on Form F-6 (File No. 333-207378).
- (2) Represents the maximum number of Ordinary Shares underlying the options that the Registrant expects to be issued pursuant to the Plan. The Plan does not include a limit on the number of options that may be issued pursuant to the Plan. Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the “Securities Act”), this Registration Statement covers an indeterminable number of additional securities as may be offered or issued as a result of the anti-dilution provisions of the Plan.
- (3) Estimated in accordance with Rule 457(h) and Rule 457(c) solely for the purpose of calculating the registration fee on the basis of US\$1.32, the average of the high and low prices for the Registrant’s ADSs as reported on the NASDAQ Global Select Market on October 10, 2017 divided by five (the Ordinary Share-to-ADS ratio).
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PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The information specified in Item 1 and Item 2 of Part I of Form S-8 is omitted from this Registration Statement on Form S-8 (the "Registration Statement") in accordance with the provisions of Rule 428 under the Securities Act of 1933, as amended (the "Securities Act") and the introductory note to Part I of Form S-8. The documents containing the information specified in Part I of Form S-8 will be delivered to the participants in the equity benefit plans covered by this Registration Statement as specified by Rule 428(b)(1) under the Securities Act.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The Registrant hereby incorporates by reference into this Registration Statement the following documents previously filed with the Securities and Exchange Commission (the “Commission”):

- the Registrant’s Annual Report on Form 20-F for the year ended June 30, 2017, as filed with the Commission on August 30, 2017;
- the Registrant’s all other reports filed pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (the “Exchange Act”), since June 30, 2017 (other than information deemed to have been “furnished” rather than “filed” in accordance with the SEC’s rules); and
- the description of the Registrant’s Ordinary Shares contained in the Registrant’s Registration Statement on Form 8-A (File No. 001-37626) filed with the Commission on November 9, 2015, pursuant to Section 12(b) of the Exchange Act, which incorporates by reference the description of the Registrant’s Ordinary Shares set forth in the Registrant’s Registration Statement on Form F-1 (Registration No. 333-207719), as amended, originally filed with the Commission on November 2, 2015, including any amendment or report filed for the purpose of updating such description.

All documents filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act on or after the date of this Registration Statement and prior to the filing of a post-effective amendment to this Registration Statement that indicates that all securities offered have been sold or that deregisters all securities then remaining unsold shall be deemed to be incorporated by reference in this Registration Statement and to be part hereof from the date of filing of such documents; *provided, however*, that documents or information deemed to have been furnished and not filed in accordance with the rules of the Commission shall not be deemed incorporated by reference into this Registration Statement. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any subsequently filed document which also is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

Except as set forth below, there is no provision in any contract, arrangement or statute under which any director, secretary or other officer of the Registrant is insured or indemnified in any manner against any liability which he/she may incur in his/her capacity as such.

Under our Constitution, to the extent permitted by the Australian Corporations Act 2001 (Cth) (“Corporations Act”) we may indemnify or insure any person who is or has been our or any of our subsidiaries’ officer, which indemnity or insurance policy may be in such terms as the directors approve and, in particular, may apply to acts or omissions prior to or after the time of entering into the indemnity or policy. Under Australian law, an “officer” includes any director.

We have entered into Deeds of Indemnity, Insurance and Access (“Indemnity Deeds”) with each director.

Under the Indemnity Deeds, we have agreed to indemnify (to the maximum extent permitted under Australian law and subject to certain specified exceptions) each director and certain of our officers against all liabilities incurred in their capacity as our or our subsidiaries’ director or officer and any and all legal costs incurred by such director or officer in defending an action for a liability incurred in their capacity as our or our subsidiaries’ director or officer. The Indemnity Deeds provide that the indemnities are unlimited as to amount, continuous and irrevocable.

Separately, we have obtained insurance for each of our directors, as required by the Indemnity Deeds, and each of our officers.

There are certain provisions of the Australian Corporations Act that restrict the Registrant from indemnifying directors and certain officers in certain circumstances. These are described below.

Australian Law

Section 199A of the Australian Corporations Act provides that a company or a related body corporate of a company must not indemnify a person (whether by agreement or by making a payment and whether directly or through an interposed entity) against any of the following liabilities incurred as an officer or auditor of the company:

- a liability owed to the company or a related body corporate; or
- a liability for a pecuniary penalty order or compensation order under specified provisions of the Australian Corporations Act; or
- a liability that is owed to someone other than the company or a related body corporate and did not arise out of conduct in good faith; or
- legal costs incurred in defending an action for a liability incurred as an officer or auditor of the company if the costs are incurred:
 - in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified as set out above; or
 - in defending or resisting criminal proceedings in which the person is found guilty; or
 - in defending or resisting proceedings brought by the Australian Securities and Investments Commission (ASIC) or a liquidator for a court order if the grounds for making the order are found by the court to have been established (this does not apply to costs incurred in responding to actions taken by ASIC or a liquidator as part of an investigation before commencing proceedings for the court order); or
 - in connection with proceedings for relief to the person under the Australian Corporations Act in which the court denies the relief.

Section 199B of the Australian Corporations Act provides that a company or a related body corporate must not pay, or agree to pay, a premium for a contract insuring a person who is or has been an officer or auditor of the company against a liability (other than one for legal costs) arising out of:

- conduct involving a willful breach of duty in relation to the company; or
- a contravention of the director, secretary, officer, or employee's duties under the Australian Corporations Act not to improperly use their position or make improper use of information obtained as a director, secretary, officer, or employee to gain an advantage for themselves or someone else or cause detriment to the company.

For the purpose of Australian law as set out above, an "officer" of a company includes (but is not limited to):

- a director or secretary;
- a person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the company;
- a person who has the capacity to significantly affect the company's financial standing; and
- a person in accordance with whose instructions or wishes the directors of the company are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the directors of the company).

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits

<u>Exhibit Number</u>	<u>Description</u>
4.1*	Certificate of Registration of Mesoblast Limited (incorporated by reference to Exhibit 3.1 to the Company's Registration Statement on Form F-1 filed with the Commission on November 2, 2015 (Registration No. 333-207719))
4.2*	Constitution of Mesoblast Limited (incorporated by reference to Exhibit 3.2 to the Company's Registration Statement on Form F-1 filed with the Commission on November 2, 2015 (Registration No. 333-207719))
4.3*	Form of Deposit Agreement dated October 19, 2015 among the Registrant, the depositary and all holders from time to time of the American depositary receipts issued thereunder (incorporated by reference to Exhibit 4.1 to the Company's Registration Statement on Form F-1 filed with the Commission on November 2, 2015 (Registration No. 333-207719))
5.1	Opinion of Baker & McKenzie
23.1	Consent of PricewaterhouseCoopers, Independent Registered Public Accounting Firm
23.2	Consent of Baker & McKenzie (contained in Exhibit 5.1 hereto)
24.1	Power of Attorney (contained on signature page hereto)
99.1	Employee Share Option Plan, as amended and restated in September 2016
*	Previously filed.

Item 9. Undertakings.**A. The undersigned Registrant hereby undertakes:**

- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:
 - (i) To include any prospectus required by Section 10(a)(3) of the Securities Act;
 - (ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and
 - (iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement.

Provided, however, that paragraphs (A)(1)(i) and (A)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in this Registration Statement.

- (2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

B. The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.**C. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.**

EXHIBIT INDEX

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24.1	<u>Power of Attorney (contained on signature page hereto)</u>
99.1	<u>Employee Share Option Plan, as amended and restated in September 2016</u>
*	Previously filed.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in Melbourne, Australia on the 17th day of October, 2017.

Mesoblast Limited

By: /s/ Silviu Itescu

Name: Silviu Itescu

Title: Chief Executive Officer and Executive Director

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Brian Jamieson, Dr. Silviu Itescu, and Peter Howard, and each of them, as his true and lawful attorney in fact and agent with full power of substitution, for him in any and all capacities, to sign any and all amendments to this Registration Statement on Form S-8 (including post-effective amendments), and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney in fact, proxy and agent full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully for all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorney in fact, proxy and agent, or his substitute, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement on Form S-8 has been signed by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Brian Jamieson</u> Brian Jamieson	Chairman of the Board of Directors	October 17, 2017
<u>/s/ Silviu Itescu</u> Silviu Itescu	Managing Director and Chief Executive Officer (principal executive officer)	October 17, 2017
<u>/s/ Paul Hodgkinson</u> Paul Hodgkinson	Chief Financial Officer (principal financial and accounting officer)	October 17, 2017
<u>/s/ William Burns</u> William Burns	Director	October 17, 2017
<u>/s/ Donal O'Dwyer</u> Donal O'Dwyer	Director	October 17, 2017
<u>/s/ Eric Rose</u> Eric Rose	Director	October 17, 2017
<u>/s/ Ben-Zion Weiner</u> Ben-Zion Weiner	Director	October 17, 2017
<u>/s/ Michael Spooner</u> Michael Spooner	Director	October 17, 2017

SIGNATURE OF AUTHORIZED REPRESENTATIVE OF THE REGISTRANT

Under the Securities Act of 1933, as amended, the undersigned, the duly authorized representative in the United States of Mesoblast Limited has signed this Registration Statement in New York, New York, on October 17, 2017.

Authorized US Representative

By: /s/ Michael Schuster

Name: Michael Schuster

Title: Head of Pharma Partnering



Baker & McKenzie
AMP Centre
Level 27
50 Bridge Street
Sydney NSW 2000
Australia

Tel: +61 2 9225 0200
Fax: +61 2 9225 1595
DX: 218 SYDNEY
www.bakermckenzie.com

Exhibit 5.1

October 17, 2017

Mesoblast Limited
Level 38, 55 Collins Street
Melbourne, VIC 3000
Australia

Ladies and Gentleman:

We have acted as Australian counsel to Mesoblast Limited (the "Company") in connection with the Company's Registration Statement on Form S-8 (the "Registration Statement") to be filed under the U.S. Securities Act of 1933 with the U.S. Securities and Exchange Commission (the "Commission") for the registration of 15,000,000 of the Company's ordinary shares, no par value (the "Shares"), issuable pursuant to the Company's Employee Share Option Plan, as amended and restated in September 2016 (the "Plan").

For the purposes of this opinion, we have examined and relied upon a copy of the Plan provided to us by the Company and filed as Exhibit 99.1 to the Registration Statement. We have also examined and relied on the constitution of the Company, a copy of the resolutions (dated September 20, 2016) of the Company's board of directors approving the Plan, a copy of resolutions (dated November 22, 2016) of the shareholders of the Company approving the grant of options by the board of the Company in accordance with the Plan, and an officer's certificate (dated October 17, 2017) provided by the Company Secretary of the Company, certifying the accuracy and completeness of the abovementioned copies of the Plan, the Company's constitution, resolutions of the board of directors and resolutions of the shareholders.

In such examination, we have assumed (a) the genuineness of all signatures; (b) the authenticity of all documents submitted to us as originals; (c) the conformity to original documents of all documents submitted to us as copies (certified or otherwise); (d) the authenticity of the originals of such copies; (e) that all documents submitted to us are true and complete; (f) that resolutions of the directors of the Company that we have relied upon for the purposes of this letter opinion will not be varied or revoked after the date of this letter and that the meetings of the directors of the Company at which the resolutions were considered were properly convened, all directors who attended and voted were entitled to do so, the resolutions were properly passed, and the directors have performed their duties properly and all provisions relating to the declaration of directors' interests or the power of interested directors were duly observed; (g) that any issue of Shares or options under the Plan to a director of the Company will be in accordance with the resolutions of shareholders of the Company referred to above (if any) which specifically approve such issue to that director; (h) the options and Shares to be issued pursuant to the Plan will be duly authorized by the Company's board of directors; (i) the accuracy of any searches obtained from the Australian Securities and Investments Commission in relation to the Company; (j) each natural person signing any document reviewed by us had the legal capacity to do so and to perform his or her obligations thereunder; and (k) each person signing in a representative capacity any document reviewed by us had authority to sign in such capacity.

Based on the foregoing and having regard to the legal considerations we deem relevant, we are of the opinion that the Shares covered by the Registration Statement when allotted, issued, and delivered in accordance with the provisions of the Plan will be duly authorized, validly issued, fully paid and non-assessable (for the purpose of this opinion, the term “non-assessable”, when used to describe the liability of a person as the registered holder of shares has no clear meaning under the laws of the Commonwealth of Australia, so we have assumed those words to mean that holders of such Shares, having fully paid all amounts due on such Shares, are under no personal liability to contribute to the assets and liabilities of the Company in their capacities purely as holders of such shares).

The opinions expressed above are limited to the laws of the Commonwealth of Australia and we do not express any opinion as to the effect of any other laws. This opinion letter is limited to the matters stated herein; no opinion may be inferred beyond the matters expressly stated.

We hereby consent to the filing of this opinion with the Commission as Exhibit 5.1 to the Registration Statement. In giving this consent, we do not hereby admit that we come within the category of persons whose consent is required under Section 7 of the U.S. Securities Act or the rules and regulations of the Commission promulgated thereunder.

Very truly yours,

/s/ Baker & McKenzie
Baker & McKenzie

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in this Registration Statement on Form S-8 of our report dated August 30, 2017 relating to the financial statements and the effectiveness of internal control over financial reporting, which appears in Mesoblast Limited's Annual Report on Form 20-F for the year ended June 30, 2017.

/s/ PricewaterhouseCoopers
Melbourne, Australia
October 17, 2017

Rules of Employee Share Option Plan

Mesoblast Limited
ACN 109 431 870

updated: September 2016

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Mesoblast Limited Employee Share Option Plan

1. The plan

The purpose of the Plan is to provide Eligible Employees with an incentive to remain with the Group and to improve the longer-term performance of the Company and its return to shareholders. It is intended that the Plan will enable the Group to retain and attract skilled and experienced employees and provide them with the motivation to make the Group more successful.

2. Eligibility

The Board may determine at any time that any Eligible Employee is not entitled to participate in the Plan if the Eligible Employee's participation would be unlawful.

3. Participation

3.1 Invitation to participate

Subject to these rules, the Board may invite any Eligible Employee selected by it to participate in the Plan.

3.2 Letter of offer to participate

The Board must give to each Eligible Employee invited to participate in the plan, a letter of offer to participate, together with the following information relating to the Options allocated to the Eligible Employee:

- (a) the date of grant or intended date of grant;
- (b) the total number of Options to be granted;
- (c) the Exercise Period;
- (d) the Exercise Price or the method of determining the Exercise Price;
- (e) the Exercise Conditions attaching to the Options (if any);
- (f) the Disposal Restrictions attaching to any Shares issued on exercise (if any);
- (g) the Forfeiture Conditions attaching to the Options (if any);
- (h) any other terms and conditions relating to the grant which, in the opinion of the Board, are fair and reasonable but not inconsistent with these rules;
- (i) in respect of the initial grant made to an Eligible Employee, a summary, or a copy of these rules; and
- (j) any other information or documents required to be notified by the Corporations Act or the Listing Rules.

3.3 Participant bound by application form, rules and constitution

By completing and returning the Application Form, a Participant agrees to be bound by the terms of the Application Form, these rules and the Constitution.

4. Grant of options

4.1 Grant of options

The Board may grant Options to a Participant on acceptance of a duly signed and completed Application Form.

4.2 No payment for options

Unless otherwise determined by the Board, no payment is required for the grant of Options under the Plan.

4.3 Options non-transferable

An Option granted under the Plan is not capable of being transferred or encumbered by a Participant, unless the Board determines otherwise. The Company has no obligation to apply for quotation of the Options on the ASX.

4.4 Option certificate

The Company must issue a Certificate to a Participant in respect of the Options granted to that Participant. The Company must comply with the provisions of the Constitution, the Listing Rules and the Corporations Act relating to the issue of the Certificate.

4.5 Limit on issues of new shares

The number of Shares that would be issued were Options granted under this rule 4 to be exercised, when aggregated with the number of Shares that would be issued were each outstanding offer or option to acquire unissued shares, being an offer made or option acquired pursuant to the Plan or any other employee share scheme extended only to employees or directors of the Group, to be accepted or exercised (as the case may be), disregarding any offer made, or option acquired or share issued by way of or as a result of an offer to directors of the Company, must not exceed:

- a) In respect of Shares over which US incentive stock options may be issued 10,000,000 and
- b) In respect of options issued to Australian residents, that limit imposed under ASIC Class Order [CO 14/1000]

5. Exercise of options

5.1 Manner of exercise of options

The exercise of any Option granted under the Plan may only be effected in such form and manner as the Board may prescribe.

5.2 Exercise conditions

Subject to rules 5.3 and 6, an Option granted under the Plan may only be exercised:

- (a) if all the Exercise Conditions have been met;
- (b) if the Exercise Price has been paid to the Company or as the Company may direct; and
- (c) within the Exercise Period relating to the Option.

An Option granted under the Plan may not be exercised once it has lapsed.

5.3 Control event

Notwithstanding rule 5.2, the Board may determine that an Option may be exercised, whether or not any or all applicable Exercise Conditions have been met, on the occurrence of a Control Event.

5.4 Issue or transfer of shares on exercise

Following exercise of an Option by a Participant, the Company must, within such time as the Board determines, allot and issue or procure the transfer to the Participant of the number of Shares in respect of which the Option has been exercised, credited as fully paid.

5.5 Shares rank equally

Subject to the satisfaction of any applicable Disposal Restrictions, Shares allotted and issued under the Plan must rank equally in all respects with all other Shares from the date of allotment and issue, including:

- (a) voting rights; and
- (b) entitlements to participate in:
 - (i) distributions and dividends; and
 - (ii) future rights issues and bonus issues,

where the record date for determining entitlements falls on or after the date of allotment and issue.

5.6 Quotation on ASX

The Company must apply for quotation on the official list of the ASX of Shares allotted and issued on the exercise of Options as soon as practicable after the allotment and issue of those Shares, so long as Shares are quoted on the official list of ASX at that time.

5.7 Financial assistance

The Company may financially assist a person to pay for the grant of an Option, to pay any Exercise Price for an Option or to acquire Shares under the Plan, subject to compliance with the provisions of the Corporations Act and the Listing Rules relating to financial assistance.

6. Cessation of appointment/employment and lapsing of options**6.1 Cessation of employment as a Bad Leaver**

If upon the Participant ceasing employment, the Board determines that the Participant is a Bad Leaver, all rights, entitlements and interests in any unexercised Options (including those that are Vested Options) held by the Participant will be forfeited and will lapse immediately.

6.2 Cessation of employment as a Leaver

If upon the Participant ceasing employment, the Board determines the Participant is a Leaver:

- (a) A Leaver may retain Vested Options, however, they must be exercised within 60 days of cessation of employment (or within a longer period if so determined by the Board), after which time they will lapse.
- (b) Unvested Options will normally be forfeited and lapse.

6.3 Liquidation

On Liquidation, all Options which are not Vested Options will lapse.

6.4 Fraud

If, in the opinion of the Board, a Participant (or, where a Participant is a person nominated by an Eligible Employee, the employee or director who nominated the Participant) has acted fraudulently or dishonestly, the Board may determine that any Option granted to that Participant should lapse, and the Option will lapse accordingly.

6.5 Forfeiture conditions

An Option will lapse on the occurrence of a Forfeiture Condition relating to that Option, unless the Board determines otherwise.

6.6 Lost Options

A Participant may submit a request to the Board that an Option granted to that Participant should lapse. On receipt of that request, the Board may determine that the Option should lapse, in which case the option will lapse accordingly.

6.7 End of exercise period

If an Option has not lapsed earlier in accordance with this rule 6, it will lapse at the end of the Exercise Period.

7. Changes in circumstances

7.1 Reconstruction

In the event of any reconstruction (including consolidation, subdivision, reduction, capital return, buy back or cancellation) of the share capital of the Company, the number of Options to which each Participant is entitled and/or the Exercise Price of those Options must be reconstructed in accordance with the Listing Rules. Options must be reconstructed in a manner which will not result in any additional benefits being conferred on Participants which are not conferred on other shareholders of the Company.

7.2 Participation in new issues

Subject to the Listing Rules, a Participant is only entitled to participate (in respect of Options granted under the Plan) in a new issue of Shares to existing shareholders generally if the Participant has validly exercised his or her Options within the relevant Exercise Period and become a Shareholder prior to the relevant record date, and is then only entitled to participate in relation to Shares of which the Participant is the registered holder.

7.3 Adjustment to exercise price - rights issues

Subject to the Listing Rules, if there is a Pro Rata Issue (except a Bonus Issue) to the holders of Shares, the Exercise Price of an Option will be reduced according to the following formula:

$$O' = O - \frac{E[P - (S + D)]}{N+1}$$

where:

O' = the Exercise Price immediately following the adjustment;

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- O = the Exercise Price immediately prior to the adjustment;
- E = the number of Shares into which one Option is exercisable;
- P = the average market price per Share (weighted by reference to volume) during the 5 trading days ending on the day before the ex rights date or ex entitlements date;
- S = the subscription price for a Share under the Pro Rata Issue;
- D = any dividend due but not yet paid on a Share (except any Share to be issued under the Pro Rata Issue); and
- N = the number of Shares with rights or entitlements that must be held to receive a right to one new Share.

7.4 Adjustment to number of underlying securities - bonus issues

Subject to the Listing Rules, if there is a Bonus Issue to the holders of Shares, the number of Shares over which an Option is exercisable will be increased by the number of Shares which the holder of the Option would have received if the Option had been exercised before the record date for the Bonus Issue.

8. Amendment

Subject to the Listing Rules, these rules may be amended or supplemented by resolution of the Board. Unless the resolution of the Board expressly states otherwise, any amendment or supplement to these rules will not apply to any Options granted under these rules which have not yet been exercised.

9. Powers of the Board

9.1 Powers of the Board

The Plan will be managed by the Board, which will have power to:

- (a) determine appropriate procedures for the administration of the Plan consistent with these rules;
- (b) resolve conclusively all questions of fact or interpretation arising in connection with the Plan;
- (c) determine matters falling for determination under these rules in its discretion having regard to the interests of and for the benefit of the Company;
- (d) exercise the discretions conferred on it by these rules or which may otherwise be required in relation to the Plan; and
- (e) delegate to any one or more persons (for such period and on such conditions as it may determine) the exercise of any of its powers or discretions arising under the Plan.

9.2 Indemnification

The Company must indemnify, and keep indemnified, to the full extent permitted by law, each person who is or has been a director or alternate director of the Company against all proceedings, actions, claims, demands, losses, liabilities, damages, costs and expenses which may be made, brought against, suffered or incurred by the person arising directly or indirectly out of or in connection with the administration of the Plan.

9.3 Commencement of Plan

The Plan will take effect on and from such date as the Board may resolve.

9.4 Termination or suspension of Plan

The Board may terminate or suspend the operation of the Plan at any time.

9.5 Resolution to terminate, suspend, supplement or amend

In passing a resolution to terminate or suspend the operation of the Plan or to supplement or amend these rules, the Board must consider and endeavour to ensure that there is fair and equitable treatment of all Participants.

10. Powers of the administrator**10.1 Appointment of administrator**

The Board may appoint an Administrator and may determine the terms and conditions of the Administrator's appointment. The Board may remove the Administrator.

10.2 Role of administrator

The Administrator must administer the Plan in accordance with these rules and any procedures determined by the Board and agreed to as between the Board and the Administrator.

11. Contracts of employment and other employment rights**11.1 Discretion of board**

It is a condition of these rules that the Plan may be terminated at any time at the discretion of the Board and that no compensation under any employment contract will arise as a result.

11.2 No right to grant of options

Participation in the Plan does not confer on any Eligible Employee any right to a grant of Options.

11.3 Calculation of employee benefits

The value of the Options do not increase a Participant's income for the purpose of calculating any employee benefits.

11.4 No right to future employment etc.

Participation in the Plan does not confer on any Participant any right to future employment and does not affect any rights which the Company may have to terminate the employment of any Participant.

11.5 Acknowledgment by Participant

It is acknowledged and accepted by each Participant that the terms of the Plan do not form part of the terms and conditions of the Participant's employment contract, nor do the terms of the Plan constitute a contract or arrangement (including any related condition or collateral arrangement) in relation to the Participant's employment contract.

12. Connection with other plans

Unless the Board otherwise determines, participation in the Plan does not affect, and is not affected by, participation in any other incentive or other plan operated by the Company unless the terms of that other plan provide otherwise.

13. Notices

Any notice or direction given under these rules is validly given if it is handed to the person concerned or sent by ordinary prepaid post to the person's last known address or given in any reasonable manner which the Board from time to time determines.

14. General

Notwithstanding any rule, Shares may not be allotted and issued, acquired, transferred or otherwise dealt with under the Plan if to do so would contravene the Corporations Act, the Listing Rules, or any other applicable laws.

15. Plan costs**15.1 Plan Costs**

Unless otherwise determined by the Board, the Company must pay all costs, charges and expenses relating to the establishment and operation of the Plan, including all costs incurred in or associated with an allotment, issue or acquisition of Shares for the purposes of enabling Participants to exercise Options granted to them under the Plan.

15.2 Reimbursement

The Company and any Associated Body Corporate of the Company may provide money to the trustee of any trust or any other person to enable them to acquire Shares to be held for the purposes of the Plan, or enter into any guarantee or indemnity for those purposes, to the extent permitted by the Corporations Act. In addition, the Company may require any Associated Body Corporate to enter into any other agreement or arrangement as it considers necessary to oblige that Associated Body Corporate to reimburse the Company for any amounts paid by the Company in connection with this Plan, directly or indirectly, in relation to any employee or director of that Associated Body Corporate.

16. Overseas eligible employees

The Company at the Board's discretion may:

- (a) grant options to Eligible Employees and Participants who are resident outside of Australia; and
- (b) make regulations for the operation of the Plan which are not inconsistent with these rules to apply to Eligible Employees and Participants who are resident outside of Australia.

17. Governing law

The laws of Victoria, Australia, govern these rules.

18. Definitions and interpretation**18.1 Definitions**

In this document, unless the context requires otherwise:

Accounting Standards means the Australian Accounting Standards from time to time and if and to the extent that any matter is not covered by Australian Accounting Standards means generally accepted accounting principles applied from time to time in Australia for a business similar to the Business.

Administrator means the person (if any) selected by the Board to carry out the day to day administration of the Plan as contemplated by rule 10.1.

Application Form means the form that the Board determines is to be used by an Eligible Employee to apply for Options under the Plan.

Associated Body Corporate of the Company means each:

- (a) related body corporate of the Company, within the meaning of section 50 of the Corporations Act;
- (b) body corporate that has voting power in the Company of not less than 20%; or
- (c) body corporate in which the Company has voting power of not less than 20%,

where “voting power” has the meaning in section 610 of the Corporations Act.

ASX means Australian Stock Exchange Limited (ACN 008 624 691).

Bad Leaver is a Participant who ceases to be employed by the Company where the Board determines that the Participant has:

- (a) committed any serious or persistent breach of any provisions of employment;
- (b) been convicted of any criminal offence which involves fraud or dishonesty;
- (c) engaged in any conduct which brings the Company into substantial disrepute;
- (d) committed any wrongful or negligent act or omission which has caused the Company substantial liability;
- (e) engaged in grave misconduct or recklessness in the discharge of the Participant’s duties;
- (f) become disqualified from managing corporations in accordance with Part 2D.6 of the Corporations Act or has committed any act that, pursuant to the Corporations Act, may result in the Participant being banned from managing a corporation; or
- (g) engaged in any other conduct which the Board reasonably considers to be analogous to, or having a substantially similar seriousness to, any of the circumstances specified in (a) to (f) above.

Board means the board of directors of the Company or a committee appointed by the board of directors of the Company.

Bonus Issue means a Pro Rata Issue of Shares to holders of Shares for which no consideration is payable by them.

Certificate means, in relation to a Participant, the certificate or holding statement (in a form approved by the Board) issued to the Participant which discloses the number of Options entered in the register of Option holders in the name of the Participant.

Company means Mesoblast Ltd ACN 109 431 870.

Constitution means the constitution of the Company.

Control of an entity means having the right:

- (a) to vote 50% (or more) of the votes that can be cast on the election or removal of the entity's directors;
- (b) to appoint or remove directors who possess 50% (or more) of the votes exercisable by all directors of the entity; or
- (c) to 50% (or more) of the profits or distributions of the entity or of its net liquidation proceeds.

For this definition, if the entity does not have a board of directors, 'director' means a member of the entity's governing body with a role similar to a board of directors.

Control Event means any of the following:

- (a) an offer is made by a person for the whole of the issued ordinary share capital of the Company (or any part as is not at the time owned by the offeror or any person acting in concert with the offeror) and after announcement of the offer the offeror (being a person who did not Control the Company prior to the offer) acquires Control of the Company;
- (b) any other event occurs which causes a change in Control of the Company; or
- (c) any other event which the Board reasonably considers should be regarded as a Control Event.

Corporations Act means *Corporations Act 2001 (Cth)*.

Disposal Restrictions means, in relation to an Option, the restrictions (if any) determined by the Board that are required to be satisfied before a Share acquired as a result of the exercise of the Option by the Participant can be sold, transferred or otherwise dealt with by a Participant.

Eligible Employee means an employee or a director of any member of the Group who is determined by the Board to be an Eligible Employee for the purposes of the Plan, or any other person who is determined by the Board to be an Eligible Employee for the purposes of the Plan. Notwithstanding the foregoing, the class of Eligible Employees who are eligible to receive a US incentive stock option under the Plan is limited to individuals who are employed by the Company or another member of the Group that qualifies as a "related corporation", as defined in US Treasury Regulations section 1.421(i)(2).

Exercise Conditions means, in relation to an Option, the period of time, performance hurdles and other conditions (if any) determined by the Board that are required to be satisfied before the Option can be exercised.

Exercise Period means, in relation to an Option, the period in which the Option may be exercised specified by the Board under rule 3.2,3.2, subject to any variation under rules 5.3 and 6.

Exercise Price means the price per share that needs to be paid in order for the option to convert to ordinary shares of the company, and will be determined by the Board, and will be subject to any adjustment under rule 7.3.

Forfeiture Conditions means, in relation to an Option, the conditions (if any) determined by the Board that will result in the Option lapsing if satisfied.

Group means the Company and each Associated Body Corporate of the Company.

IPO Price means the price per Share at which Shares are offered under the prospectus issued in connection with the initial public offering of Shares in the Company.

Leaver means a Participant who ceases employment and who is not a **Bad Leaver**. A Leaver will include, but is not limited to, a Participant who ceases employment due to resignation or retirement.

Liquidation means the passing of a resolution for voluntary winding up, or the making of an order for the compulsory winding up of the Company.

Listing Rules means the listing rules (as defined in the Corporations Act) made or adopted by the ASX.

Market Price means, in relation to an Option, the volume weighted average market price of Shares sold on the ASX on the 5 trading days immediately before the date of determination.

Option means a right to subscribe for or acquire a Share, subject to any adjustment under rule 7.4.

Participant means an Eligible Employee who has been invited to participate in the Plan and any other person who is nominated by that Eligible Employee (following receipt of an invitation by the Board under rule 3.1) and who is determined by the Board to be a Participant for the purposes of the Plan.

Permanent Disability means, in relation to a Participant, the inability, by reason of physical condition, mental illness or accident, of the Participant to perform substantially all of the duties of the position in which the Participant has been employed or appointed (as determined by the Board).

Plan means the Mesoblast Limited Employee Share Option Plan established and operated in accordance with these rules.

Pro Rata Issue means an issue which has been offered to all holders of Shares on a pro rata basis.

Share means a fully paid ordinary share in the capital of the Company.

Vested Option means an Option in respect of which all Exercise Conditions have been met or which are otherwise exercisable (including as contemplated by rules 5.3 and 6).

18.2 Interpretation

In these rules, unless the context otherwise requires:

- (a) a reference to any thing (including an amount or a provision of this document) is a reference to the whole and each part of it;
- (b) the singular includes the plural, and vice versa;
- (c) the word 'person' includes an individual, a body corporate, a firm, an unincorporated body, a society, an association and an authority;
- (d) a reference to a particular person includes their legal personal representatives, administrators, successors, substitutes and permitted assigns;
- (e) a reference to 'costs' includes charges, expenses and legal costs;
- (f) a reference to a "rule" or "these rules" is to the rule or these rules (as the case may be) as amended or replaced;
- (g) a reference to the Constitution includes a reference to any provision having substantially the same effect which is substituted for or replaces the Constitution;
- (h) where a Participant is a director of any member of the Group, but is not also an employee of any member of the Group, a reference to the employment with any member of the Group of that Participant is a reference to that Participant holding office as a director of any member of the Group;

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- (i) where a Participant is a person nominated by an Eligible Employee, a reference to the employment with any member of the Group of that Participant is a reference to the employment with any member of the Group of that Eligible Employee;
 - (j) a Participant does not cease to be employed by any member of the Group where the Participant ceases to be employed by one member of the Group but commences employment with another member of the Group provided that the new employment commences within 60 days from the date of termination or such other period as the Board may determine by notice in writing;
 - (k) a reference to 'law' means statute law, common law and equitable principles;
 - (l) a reference to a particular law includes that law and any subordinate legislation (such as regulations) under it, in each case as amended, replaced, re-enacted or consolidated;
 - (m) a reference to an accounting term is to that term as it is used in the Accounting Standards;
 - (n) a reference to 'dollars', '\$' or 'A\$' is to the lawful currency of Australia;
 - (o) a time means that time in Melbourne, Australia;
 - (p) a reference to a day or a month means a calendar day or calendar month;
 - (q) if a period of time starts from a given day (or event), it is to be calculated exclusive of that day (or the day the event occurs);
 - (r) the masculine includes the feminine, and vice versa;
 - (s) the meaning of any general language is not restricted by any accompanying example and the words 'includes', 'including' 'such as' or 'for example' (or similar phrases) are not words of limitation; and
 - (t) headings in this document are for convenience only and do not affect its meaning.

If (but for this rule) a provision of this document would be illegal, void or unenforceable or contravene the law, this document is to be interpreted as if the provision was omitted.