

PEAK INTERNATIONAL LTD
Form 10-K/A
March 31, 2006

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K/A

(Amendment No. 2)

(MARK ONE)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended March 31, 2005

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission file number 0-29332

PEAK INTERNATIONAL LIMITED

(Exact name of registrant as specified in its charter)

Bermuda
(Jurisdiction of Incorporation or Organization)

38507 Cherry Street,
Unit G, Newark,

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

94560

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California
(Address of principal executive office) (Zip Code)
Registrant's telephone number, including area code: (510) 449-0100

Securities registered pursuant to Section 12(b) of the Act: None

Securities registered pursuant to Section 12(g) of the Act:

| Title of each class | Name of each exchange on which registered |
|---|---|
| Common Stock, par value US \$0.01 per share | NASDAQ National Market |

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act 1934 during the preceding twelve months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Act). Yes No

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act.): Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

The aggregate market value of Common Stock held by non-affiliates of the Registrant was approximately \$42,853,066 as of September 30, 2004, based upon the closing sale price of \$5.28 on the NASDAQ National Market reported on such date. This calculation does not reflect a determination that certain persons or entities are affiliates of Registrant for any other purpose.

As of June 9, 2005, the number of shares of Common Stock outstanding was approximately 12,420,388.

EXPLANATORY NOTE

We are filing this Amendment to Form 10-K (the "Amended Report") to amend our Form 10-K for the fiscal year ended March 31, 2005, filed with the Securities and Exchange Commission on June 29, 2005 and amended on July 29, 2005 (the "Original Report") to clarify the conclusions of our chief executive officer's and chief financial officer's evaluation of our disclosure controls and procedures for the quarter ended March 31, 2005. The Amended Report amends Item 9A(a) only and, in order to comply with certain technical requirements of the Securities and Exchange Commission's rules in connection with the filing of this Amended Report, we are including in this amendment the complete text of Item 9A.

As a result of this Amendment, we are also filing as exhibits to this Amended Report the certifications pursuant to section 302 of the Sarbanes-Oxley Act of 2002. Because no financial statements are contained with this Amended Report, we are not including certifications pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

This Amended Report continues to speak as of the date of the Original Report and we have not updated the disclosure contained herein to reflect events that have occurred since the filing of the Original Report. Accordingly, this Amended Report should be read in conjunction with our Original Report and our other filings made with the Securities and Exchange Commission subsequent to the filing of the Original Report.

ITEM 9A. CONTROLS AND PROCEDURES

(a) Evaluation of disclosure controls and procedures. We maintain disclosure controls and procedures, as such term is defined in Rule 13a-15(e) under the Securities Exchange Act of 1934 (the Exchange Act), that are designed to ensure that information required to be disclosed by us in reports that we file or submit under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in Securities and Exchange Commission rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure. In designing and evaluating our disclosure controls and procedures, management recognized that disclosure controls and procedures, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the disclosure controls and procedures are met. Our disclosure controls and procedures have been designed to meet reasonable assurance standards. Additionally, in designing disclosure controls and procedures, our management necessarily was required to apply its judgment in evaluating the cost-benefit relationship of possible disclosure controls and procedures. The design of any disclosure controls and procedures also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions.

Based on their evaluation as of the end of the period covered by this Annual Report on Form 10-K, our Chief Executive Officer and Chief Financial Officer have concluded that, as of such date, our disclosure controls and procedures were effective at the reasonable assurance level.

(b) Changes in internal control over financial reporting. There was no significant change in our internal control over financial reporting (as defined in Rule 13a-15(f) under the Exchange Act) identified in connection with management's evaluation during the last fiscal quarter that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

As discussed in Management's Discussion and Analysis of Financial Condition and Results of Operations, in the third quarter of 2005, we discovered discrepancies in the computation and withholding of both taxes and social insurance contributions for workers at our main production facilities (the Factory), which are located in Shenzhen, the PRC and operated pursuant to a processing agreement with an unaffiliated PRC company that obligates it to provide all of the personnel for the operation of our facilities and to render assistance in dealing with matters relating to the import of raw materials and the export of our products. The discrepancy, which was at the Factory and not at Peak, was discovered as a result of a claim by an employee regarding the computation of wages and withholding. Upon discovery of these discrepancies, we conducted an internal review of the Factory's practices and engaged third party advisors to assist us in assessing the Factory's and our obligations with respect to these discrepancies. Upon completion of this review in the third quarter of fiscal 2005, management concluded that the Factory has a duty to correct certain of these discrepancies that amounted to a total of \$1.3 million. While we believe we are not contractually obligated under the terms of our agreement with our processing partner to pay these amounts and while no claim has been made by any government agency, in the event the Factory was required to pay all or any portion of these liabilities, it is likely that we would voluntarily make such payment in order to avoid the seizure of the Factory's assets and keep it operational. Therefore, we accrued \$1.3 million as additional manufacturing costs for the third fiscal quarter of 2005. As a result of the discovery of these discrepancies and our subsequent review, we were unable to timely file our quarterly report on Form 10-Q for the quarter ended December 31, 2004.

In addition, as a result of a general review of the Factory's controls and procedures, management noted additional areas for improvement in the Factory's internal controls. Although we have no responsibility for the Factory, management, with the oversight of the Audit Committee, has been addressing these issues at the Factory and is committed to effectively improve the internal controls at the Factory as expeditiously as possible. To address these issues:

the Factory is in the process of implementing a more integrated payroll system and new procedures to properly record the number of hours employees work at the Factory;

the Factory has instituted a formal cash management system, eliminated cash payments for material transactions and developed new expense approval procedures for the Factory;

we and the Factory are in the process of hiring additional qualified personnel for our operations in China and Hong Kong and the Factory, respectively. We have recently hired a new President and Chief Operating Officer, and are working to improve certain communications procedures between the Factory and our Hong Kong subsidiary;

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we are instituting revised procedures and additional required approvals at the Factory for the release of Company assets at the Factory;
and

we are reviewing and updating the current standard costs for our finished goods. We will continue to evaluate and monitor the Factory s and our efforts to remediate known Factory s deficiencies and will take all appropriate action when and as necessary to ensure we have effective internal controls over financial reporting.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized on March 29, 2006.

PEAK INTERNATIONAL LIMITED

By */s/ Calvin Reed*
Calvin Reed

Chief Executive Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of Registrant and in the capacities indicated:

| Signatures | Title | Date |
|---|---|----------------|
| <i>/s/ Calvin Reed</i> Calvin Reed | Chief Executive Officer, Chairman of the Board (Principal Executive Officer) and Director | March 29, 2006 |
| <i>/s/ Katie Fung</i> Katie Fung | Chief Financial Officer and Vice President (Principal Financial Officer and Principal Accounting Officer) | March 29, 2006 |
| * | Director | March 29, 2006 |
| Douglas Broyles | | |
| * | Director | March 29, 2006 |
| Christine Russell | | |
| * | Director | March 29, 2006 |
| Thomas Gimple | | |
| <i>/s/ Russell Silvestri</i> Russell Silvestri | Director | March 29, 2006 |
| <i>/s/ Calvin Reed</i> Calvin Reed | | |
| As Attorney-In-Fact | | |