

PEAK INTERNATIONAL LTD
Form PRER14A
October 01, 2004

SCHEDULE 14A INFORMATION

**Proxy Statement Pursuant to Section 14(a) of
the Securities Exchange Act of 1934**

(Amendment No. 1)

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

Preliminary Proxy Statement

Confidential, for Use of the Commission Only

(as permitted by Rule 14a-6(e)(2))

Definitive Proxy Statement

Definitive Additional Materials

Soliciting Material Pursuant to §240.14a-12

PEAK INTERNATIONAL LIMITED

(Name of Registrant as Specified In Its Charter)

Edgar Filing: PEAK INTERNATIONAL LTD - Form PRER14A

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

No fee required.

Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

(1) Title of each class of securities to which transaction applies:

(2) Aggregate number of securities to which transaction applies:

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

(4) Proposed maximum aggregate value of transaction:

(5) Total fee paid:

Fee paid previously with preliminary materials.

Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

(1) Amount Previously Paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

PEAK INTERNATIONAL LIMITED

44091 Nobel Drive

P.O. Box 1767

Fremont, California 94538

(Incorporated in Bermuda with limited liability)

October , 2004

Dear Shareholder:

You are cordially invited to attend the Annual General Meeting of Peak International Limited (the Company) to be held on Wednesday, November 17, 2004, 11:00 a.m. local time, at the Company's principal executive offices at 44091 Nobel Drive, Fremont, California 94538. The Company's Annual General Meeting had previously been scheduled to be held on September 14, 2004 but was subsequently postponed until November 17, 2004 as a result of the selection of BDO McCabe Lo & Company as the Company's independent auditors for the fiscal year ending March 31, 2005.

Details of the business to be transacted at the meeting can be found in the accompanying Notice of Annual General Meeting and Proxy Statement, including information on the Company's new independent auditors, BDO McCabe Lo & Company. The Annual Report for the fiscal year ended March 31, 2004 on Form 10-K is also enclosed.

A shareholder entitled to attend and vote at the meeting is entitled to appoint a proxy to attend and vote in his or her place. A proxy need not be a shareholder of the Company. We hope you are planning to attend the meeting personally and we look forward to meeting you. **However, the vote of each shareholder is of utmost importance and we kindly request that you complete, date and sign your proxy card and return it to us promptly in the enclosed envelope, whether or not you currently plan to attend the meeting.** Your proxy must be received by the Company's transfer agent, Mellon Investor Services, at least 24 hours before the time of the meeting. Completing and returning the enclosed form of proxy will not preclude you from attending and voting in person at the meeting. You may revoke your proxy at any time before it is voted by giving written notice to the undersigned, by filing a properly executed proxy bearing a later date, or by voting in person at the meeting. Please note, if you had previously sent in a proxy card in connection with the notice and proxy statement sent out to the Company's shareholders in July, that proxy is null and void and we kindly request you complete, date and sign the enclosed proxy card.

On behalf of the Board of Directors and the management of Peak International Limited, I would like to extend our appreciation for your continued support.

Sincerely yours,

Calvin Reed

President and Chief Executive Officer

PEAK INTERNATIONAL LIMITED

44091 Nobel Drive

P.O. Box 1767

Fremont, California 94538

NOTICE OF ANNUAL GENERAL MEETING OF SHAREHOLDERS

TO BE HELD NOVEMBER 17, 2004

NOTICE IS HEREBY GIVEN that the Annual General Meeting of Shareholders of Peak International Limited, a Bermuda corporation with limited liability (the Company) will be held at the Company's principal executive offices located at 44091 Nobel Drive, Fremont, California 94538, on Wednesday, November 17, 2004, at 11:00 a.m. local time for the following purposes:

1. To decrease the number of authorized directors on the Company's Board of Directors from six to five members;
2. To elect one director to the Company's Board of Directors;
3. To authorize the Board of Directors to fix the remuneration of the directors of the Company;
4. To approve a proposal to amend the Company's 1998 Share Option Plan to increase the number of shares of the Company reserved for issuance thereunder from 3,250,000 to 3,450,000;
5. To appoint BDO McCabe Lo & Company as the independent auditors for the Company for the fiscal year ending March 31, 2005;
6. To authorize the Board of Directors to fix the remuneration of the independent auditors for the fiscal year ending March 31, 2005; and
7. To transact any other business that may properly be brought before the meeting or any adjournment or postponement thereof.

The shareholders on the Register of Members at the close of business on October 6, 2004 are entitled to notice of, and to vote at, the Annual General Meeting and all postponements or adjournments thereof. Shareholders who have purchased shares since that date should obtain a proxy

Edgar Filing: PEAK INTERNATIONAL LTD - Form PRER14A

from the person from whom they bought their shares. To be valid, a form of proxy for the meeting, together with the power of attorney or other authority (if any) under which it is signed (or a certified copy thereof) must be deposited with the Company's transfer agent, Mellon Investor Services, Proxy Processing, Church Street Station, P.O. Box 1675, New York, New York 10277-1675 before 2:00 p.m. New York time on Tuesday, November 16, 2004.

We look forward to seeing you at the meeting.

By Order of the Board of Directors,

Jack Menache

Secretary

October , 2004

Fremont, California

YOUR VOTE IS IMPORTANT NO MATTER HOW MANY SHARES YOU OWNED ON THE RECORD DATE.

PLEASE COMPLETE, SIGN, DATE, AND RETURN PROMPTLY THE ENCLOSED PROXY CARD IN THE ENCLOSED POSTAGE PREPAID ENVELOPE, WHETHER OR NOT YOU PLAN TO ATTEND THE ANNUAL GENERAL MEETING.

PEAK INTERNATIONAL LIMITED

44091 Nobel Drive

P.O. Box 1767

Fremont, California 94538

(510) 449-0100

PROXY STATEMENT

ANNUAL GENERAL MEETING OF SHAREHOLDERS

TO BE HELD ON NOVEMBER 17, 2004

INFORMATION CONCERNING SOLICITATION AND VOTING

General

The enclosed proxy accompanying this Proxy Statement is solicited by and on behalf of the Board of Directors of Peak International Limited, a Bermuda corporation (which we will refer to as the Company or Peak throughout this Proxy Statement) for use at the 2004 Annual General Meeting of Shareholders of the Company to be held on November 17, 2004, 11:00 a.m. local time, at the Company's principal executive offices located at 44091 Nobel Drive, Fremont, California 94538, and any postponement or any adjournment thereof (the Annual General Meeting). The Company had previously scheduled the 2004 Annual General Meeting for September 14, 2004, but postponed the meeting date to November 17, 2004 after the Audit Committee of the Board of Directors of the Company dismissed its independent auditors, PricewaterhouseCoopers. As a result, the Audit Committee approved, and the Board of Directors ratified, the selection of BDO McCabe Lo & Company as the Company's independent auditors for the fiscal year ending March 31, 2005.

This Proxy Statement, the accompanying form of proxy and Peak's Annual Report on Form 10-K, which contains financial statements and schedules required to be filed for the fiscal year ended March 31, 2004, were first mailed on or about October 14, 2004 to shareholders entitled to notice of and vote at the meeting (the Shareholders or, individually, a Shareholder).

The Company will pay the cost of soliciting proxies, including expenses incurred by brokerage firms and other representatives of beneficial owners in forwarding solicitation materials to beneficial owners. Directors, officers and regular employees may solicit proxies, either personally or by fax or telephone, on behalf of the Company, without additional compensation.

Edgar Filing: PEAK INTERNATIONAL LTD - Form PRER14A

The Company will provide copies of exhibits to the Annual Report on Form 10-K to any requesting Shareholder upon payment of a reasonable fee and upon request of the Shareholder made in writing to Peak International Limited, 44091 Nobel Drive, P.O. Box 1767, Fremont, California 94538, Attn: Jack Menache, Secretary. The request must include a representation by the shareholder that, as of July 19, 2004, the Shareholder was entitled to vote at the Annual General Meeting.

Who Can Vote

Pursuant to Bye-law 45 of the Company's Bye-laws, the Board of Directors has set October 6, 2004 (5:00 p.m. Eastern Daylight Time) as the record date for the meeting (which we will refer to as the Record Date throughout this Proxy Statement). Only Shareholders whose names and addresses appear in the Register of Members on that date will be entitled to receive notice of and attend and vote at the meeting. The only outstanding class of voting securities of the Company is its common stock, par value \$0.01 per share (the Shares). There were Shares outstanding as of the close of business on October 6, 2004.

How You Can Vote

You may vote your shares at the Annual General Meeting either in person or by proxy. To vote by proxy, you should mark, date, sign and mail the enclosed proxy in the prepaid envelope. Giving a proxy will not affect

your right to vote your shares if you attend the Annual General Meeting and want to vote in person. Shares represented by the proxies received in response to this solicitation, and not properly revoked, will be voted at the Annual General Meeting in accordance with the instructions on the proxy. On matters coming before the Annual General Meeting for which a Shareholder specifies a choice on the Proxy Card, the shares will be voted accordingly. If you sign your Proxy Card with no further instructions, your shares will be counted as a vote FOR the director nominated by the Board and FOR approval of the proposals referred to in Items 1, 3, 4, 5 and 6 in the Notice of Annual General Meeting and described in this Proxy Statement. Please note, if you had previously sent in a Proxy Card in connection with the notice and proxy statement sent out to the Company's Shareholders in July, that proxy is null and void and we kindly request you complete, date and sign the enclosed Proxy Card.

Shares held directly in your name as the shareholder of record may be voted in person at the meeting. If you choose to attend the meeting, please bring the enclosed Proxy Card or proof of identification to the meeting. If you hold your shares in a brokerage account in the broker's name (street name), you must request a legal proxy from your stockbroker in order to vote at the meeting.

Revocability of Proxies

A Shareholder who gives a proxy may revoke it at any time prior to its exercise by filing with the President of the Company a written revocation or a duly executed proxy bearing a later date. The proxy may also be revoked if the Shareholder attends the meeting and elects to vote in person. A Shareholder who is the holder of two or more Shares may appoint more than one proxy to represent him/her and vote on his/her behalf at the meeting.

Required Vote

On a show of hands, every Shareholder present in person or by proxy shall be entitled to one vote and on a poll, every Shareholder present or by proxy shall be entitled to one vote per fully paid share. The proposals below shall be decided on a show of hands unless a poll is demanded. In the election of directors, you may vote FOR the nominee, or your vote may be WITHHELD with respect to the nominee. The director is elected by a majority vote, and the person receiving the highest number of FOR votes will be elected. You may vote FOR, AGAINST or ABSTAIN on the other proposals submitted for Shareholder approval at the Annual General Meeting. The other proposals submitted for Shareholder approval at the Annual General Meeting will be decided by the affirmative vote of the majority of the shares present in person or represented by proxy at the Annual General Meeting and entitled to vote on such proposal. Abstentions with respect to any proposal are treated as shares present or represented and entitled to vote on that proposal, and thus will have the same effect as a vote against a proposal.

If you just sign your Proxy Card with no further instructions, your shares will be counted as a vote FOR the director nominated by the Board and FOR approval of the proposals referred to in Items 1, 3, 4, 5 and 6 in the Notice of Annual General Meeting and described in this Proxy Statement.

Quorum; Abstentions; Broker Non-votes

Two (2) Shareholders entitled to vote and present in person or by proxy representing not less than one-third in nominal value of the total issued voting Shares of the Company will constitute a quorum for the transaction of business at the meeting. Abstentions and broker non-votes are counted for purposes of establishing a quorum. A broker non-vote occurs when a nominee (such as a broker) holding shares for a beneficial owner does not vote on a particular proposal because the nominee does not have discretionary voting power for that particular matter and has not received instructions from the beneficial owner. Abstentions and broker non-votes will not affect the voting results, although they will have the practical effect of reducing the number of affirmative votes required to achieve a majority by reducing the total number of shares from which the

majority is calculated.

Audited Financial Statements

Under the Company's By-laws and Bermuda law, audited financial statements must be presented to Shareholders at an annual general meeting of Shareholders. To fulfill this requirement, we will present at the Annual General Meeting audited consolidated financial statements for the fiscal year ended March 31, 2004. Copies of those financial statements are included in our Annual Report on Form 10-K, which is being mailed to Shareholders together with this Proxy Statement. Representatives of BDO McCabe Lo & Company, our independent auditors, are not expected to be present at the meeting. These statements have been approved by the Company's Board of Directors and the Audit Committee of the Board of Directors. There is no requirement under Bermuda law that such statements be approved by the Shareholders, and no such approval will be sought at the meeting.

IMPORTANT

EVEN IF YOU HAD PREVIOUSLY COMPLETED AND RETURNED A PROXY CARD, PLEASE MARK, SIGN AND DATE THE ENCLOSED PROXY AND RETURN IT AT YOUR EARLIEST CONVENIENCE IN THE ENCLOSED POSTAGE-PREPAID RETURN ENVELOPE SO THAT, WHETHER YOU INTEND TO BE PRESENT AT THE ANNUAL GENERAL MEETING OR NOT, YOUR SHARES CAN BE VOTED. THIS WILL NOT LIMIT YOUR RIGHTS TO ATTEND OR VOTE AT THE ANNUAL GENERAL MEETING.

PROPOSAL NO. 1

REDUCTION IN THE NUMBER OF AUTHORIZED NUMBER OF DIRECTORS

The Company's Board of Directors currently has six (6) members. Pursuant to Bye-law 86 of the Company's Bye-laws, unless otherwise determined by the Company in a general meeting, the number of Directors shall not be less than two (2). There shall be no maximum number of Directors unless otherwise determined from time to time by the Shareholders in general meeting. Pursuant to Bye-law 86(6) of the Company's Bye-laws, the Company may from time to time in general meeting increase or reduce the number of Directors; provided however, the number of Directors shall never be less than two (2).

One of the current directors, Jack Menache, will retire from the Board and not stand for re-election effective immediately prior to the time of the Annual General Meeting. In connection with Mr. Menache's retirement, the Company proposes reducing the number of authorized directors from six (6) to five (5) members.

Required Vote

Approval of the reduction in the number of authorized directors requires the affirmative vote of a majority of the votes cast at the meeting by the Shareholders entitled to vote thereon.

THE BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS THAT YOU VOTE FOR THE PROPOSAL TO REDUCE THE AUTHORIZED NUMBER OF DIRECTORS FROM SIX (6) TO FIVE (5) MEMBERS.

PROPOSAL NO. 2

ELECTION OF DIRECTOR

The Company's Board of Directors currently has six (6) members. With the passage of Proposal No. 1, the number of directors of the Company will be reduced to five (5). One of the Company's current directors, Mr. Menache, has decided to retire from the Board of Directors and will not stand for re-election.

Pursuant to Bye-law 87 of the Company's Bye-laws, at each annual general meeting, one-third of the directors for the time being (or, if their number is not a multiple of three, the number nearest to but not greater than one-third) must retire from office by rotation. The Chairman of the Board is not, while holding such office, subject to retirement by rotation or taken into account in determining the number of directors to retire each year. A retiring director is eligible for re-election. The directors to retire by rotation include (so far as necessary to ascertain the number of directors to retire by rotation) any director who wishes to retire and will not stand for re-election. Any further directors to retire are those subject to retirement by rotation who have been longest in office since their last re-election or appointment. As between persons who became or were last re-elected directors on the same day, those to retire will (unless they otherwise agree among themselves) be determined by lot.

Nominees

A majority of the directors that are considered independent under the listing standards of the Nasdaq Stock Market and the rules of the Securities and Exchange Commission has recommended and the Board of Directors has nominated and recommends the election of Christine Russell, who is being re-nominated for election to another term as director. Ms. Russell's age, business background and tenure as a director of the Company is set forth under Directors and Executive Officers below. Ms. Russell will be elected to serve until her successor is elected and qualified. If, at the time of the meeting, should she be unable or decline to serve, the discretionary authority provided in the proxy will be exercised to vote for a substitute recommended by a

majority of the directors that are independent and chosen by the Board of Directors. Ms. Russell has consented to serve, if elected, and the Company has no reason to believe that any substitute nominee will be required.

Required Vote

The nominee receiving the highest number of affirmative votes of the Shares present at the Annual General Meeting in person or by proxy and entitled to vote shall be elected as director.

THE BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS THAT YOU VOTE FOR THE NOMINEE SET FORTH ABOVE.

DIRECTORS AND EXECUTIVE OFFICERS

The following table sets forth information with respect to the directors and executive officers of the Company and their ages as of September 29, 2004.

<u>Name</u>	<u>Age</u>	<u>Position</u>
Mr. Calvin Reed	61	Chairman of the Board and Chief Executive Officer
Mr. Douglas Broyles ⁽¹⁾⁽²⁾	62	Director
Ms. Katie Fung	37	Vice President, Finance, Peak Plastic & Metal Products (International) Limited
Mr. Thomas Gimple ⁽¹⁾⁽²⁾	42	Director
Mr. Frank Lazo, Jr.	60	Vice President, New Products, Peak International, Inc.
Mr. Jack Menache	61	Vice President, General Counsel, Secretary
Ms. Christine Russell ⁽¹⁾⁽²⁾	54	Director
Mr. William Snyder	60	Vice President, Chief Financial Officer and Director
Mr. Darien Spencer	41	President and Chief Operating Officer
Mr. Danny Tong	36	President, Peak Plastic & Metal Products (International) Limited

(1) Member of the Audit Committee.

(2) Member of the Compensation and Stock Option Committee.

Mr. Calvin Reed has served as our Chief Executive Officer and as a member of our Board of Directors since April 1999 and as Chairman of the Board of Directors since October 2001. In May 2004, Mr. Reed stepped down as our President, a position he had held since April 1999. Mr. Reed has over thirty years of experience in the electronics and technology sectors. Mr. Reed was retired prior to joining the Company.

Mr. Douglas Broyles has served as a member of our Board of Directors since May 1999. Since June 2000, Mr. Broyles has served as a general partner of Huntington Ventures, a venture capital firm. From 1996 to March 2000, Mr. Broyles served as president and chief executive officer of Avalon Data, a wireless data communications design and manufacturing company. Prior to that, he was a partner for ten years with Glenwood Management, a venture capital firm based in Menlo Park, California.

Ms. Katie Fung joined the Company's subsidiary Peak Plastic & Metal Products (International) Limited in August 2003 and was promoted to Vice President, Finance in May 2004. From January 2002 to August 2003, Ms. Fung served as Associate Director of Investment and Financing at Kong Sun Holdings Limited, a company listed in Hong Kong. From June 2000 to November 2001, Ms. Fung served as Senior Manager of Auditing and Business Advisory Services at Ernst & Young (Hong Kong). Ms. Fung has a bachelor degree in economics from the University of London.

Mr. Thomas Gimple has served as a member of our Board of Directors since February 2003. Since June 2003, Mr. Gimple has served as chief executive officer and president of Geneva Woods Healthcare Services, a health care services company. From November 1996 to December 2002, Mr. Gimple served as chief executive officer of Tickets.com, an internet entertainment ticket provider and as a director of Tickets.com from November 1996 to September 2004. Mr. Gimple holds a bachelor degree in business administration from the University of Southern California.

Mr. Frank Lazo, Jr. has served as our Vice President of New Products since March 2004. From September 2001 to December 2003, Mr. Lazo served as director of new product introductions at KR Precision, Ltd., a hard disk drive component company. From April 2000 to September 2001, Mr. Lazo was the director of manufacturing at Secogen Corp., an optical company. From September 1991 to April 2000, Mr. Lazo was the vice president of advanced engineering at Western Digital Corp., a disk drive company. Mr. Lazo holds a Bachelor of Science degree in Industrial Systems Engineering from California State University at San Jose.

Mr. Jack Menache has served as Vice President, Secretary and General Counsel since July 1999. Mr. Menache will have served as a member of our Board of Directors from May 1999 until July 1999 and from October 2001 to immediately prior to the Annual General Meeting. From September 1989 until July 1999, he served as vice president, general counsel and secretary for Integrated Device Technology, Inc., an international manufacturer of semiconductors. Mr. Menache holds an LLB degree from George Washington University Law School, and a bachelor of arts degree from the University of the Americas. He is admitted to the Bar in California.

Ms. Christine Russell has served as a member of our Board of Directors since March 2000. Since 2003, Ms. Russell has served as chief financial officer of Ceva, Inc., a company that provides digital signal processing cores for the wireless and multimedia markets. From 1997 to 2003, Ms. Russell served as the vice president and chief financial officer of Persistence Software, a company that provides distributed data management software. She is a graduate of the University of Santa Clara and has a masters degree in business administration in finance.

Mr. William Snyder has served as our Vice President and Chief Financial Officer since January 2003 and as a member of Board of Directors since July 1999. Mr. Snyder served as chief financial officer of Etec Systems, Inc., a multinational capital equipment manufacturer, from August 1997 until March 2000, when Etec was acquired by Applied Materials, Inc. Mr. Snyder has bachelor and masters of science degrees from the University of Illinois and a masters degree in business administration from the University of Arizona.

Mr. Darien Spencer has served as our President and Chief Operating Officer since May 2004 and served as our Vice President, Manufacturing Operations from July 2001 to May 2004. Mr. Spencer was previously employed as president and chief executive officer of PCS Corporation, a contract service provider. From June 1997 to June 2000, he served as senior vice president of operations and development of Spectrian Corporation, a communications equipment manufacturer, and was responsible for the company's RF amplifier operations.

Mr. Danny Tong has served as President of our subsidiary, Peak Plastic & Metal Products (International) Limited, since May 2004. Mr. Tong served as our Vice President of Sales and Marketing of Peak Plastic & Metal Products (International) Limited from March 2002 to May 2004, and has been responsible for the Company's sales and operations in Asia and Europe since March 2002. From 1995 to March 2002, Mr. Tong was the Company's Vice President responsible for the sales in various regions and locations of the Company. Mr. Tong holds a bachelor of applied science degree in mechanical engineering from the University of Toronto.

There are no family relationships between any directors or executive officers of the Company.

INFORMATION ABOUT THE BOARD OF DIRECTORS AND COMMITTEES OF THE BOARD

The Board of Directors held four regular meetings, no special meetings, and acted by written consent eight times during the last fiscal year. The Board has two committees: the Compensation and Stock Option Committee and the Audit Committee. The Compensation and Stock Option Committee did not meet during the fiscal year ended March 31, 2004, but acted five times by written consent. The Stock Option Management Committee acted by written consent six times. The Audit Committee met four times during the fiscal year. Each director has attended at least 75% of the aggregate of all Board meetings and meetings of the committees of which he or she is a member. In 2003, two of our six directors serving on the Board attended the Company's Annual General Meeting of Shareholders.

The Board of Directors formed the Compensation Committee and the Audit Committee in February 1997. The Board has determined that each director who serves on these committees is independent, as that term is defined by applicable listing standards of the Nasdaq Stock Market and Securities and Exchange Commission rules. The Board has approved a charter for both of these committees that can be found on the Company's website under the Investor Relations link. The Board of Directors does not have a formal Nominating Committee. The Board has the independent directors (based on the Nasdaq definition of independence) on the Board make recommendations to the full Board regarding candidates for nomination and the size and composition of the Board. The Board believes that this process effectively serves the functions of a nominating committee, and does not believe there is a need for a separate, formal nominating committee. The directors that participate in the consideration of director nominees are Mr. Broyles, Mr. Gimple and Ms. Russell.

The role of the Compensation Committee is to make recommendations to the Board of Directors relating to salaries and other compensation for the Company's directors, officers and employees and to administer the employee share option and stock purchase plans. The Committee was subsequently renamed as the Compensation and Stock Option Committee and is composed of directors Douglas Broyles, Thomas Gimple and Christine Russell. In July 2003, the Compensation and Stock Option Committee formed a Stock Option Management Committee, to which it delegated the authority to grant options to purchase shares of the Company's Common Stock to non-executive employees up to a certain specified number.

The primary role of the Audit Committee is to review the results and scope of the annual audit and other services provided by the Company's independent auditors, to review and evaluate the Company's internal financial reporting system and control functions, to monitor transactions between the Company and its directors, officers, employees and other related parties and reviews other matters relating to the relationship of the Company with its auditors. It is not the duty of the Audit Committee to plan or conduct audits or to determine that the Company's financial statements are complete and accurate and are in accordance with generally accepted accounting principles. Management is responsible for preparing the Company's financial statements, and the independent auditors are responsible for auditing those financial statements. However, the Audit Committee does consult with management and the Company's independent auditors prior to the presentation of financial statements to Shareholders and, as appropriate, initiates inquiries into various aspects of the Company's financial affairs. The Audit Committee also meets with the independent auditors, with and without management present, to discuss their evaluations of the Company's internal controls, the results of their examination(s) and the overall quality of the Company's financial reporting. The members of the Audit Committee are independent directors Christine Russell, Douglas Broyles and Thomas Gimple.

Compensation of Directors

During fiscal 2004, each director of the Company who is not an employee of the Company or its affiliates received an annual fee of \$15,000 plus a fee of \$1,000 for each Board meeting attended and \$500 for each committee meeting attended. In addition, each such director was annually awarded a fully vested option to purchase 10,000 Shares at a purchase price determined on the date of grant in accordance with the applicable stock option plan. Each member of the Audit Committee was granted an additional fully vested option to

purchase 5,000 Shares at a purchase price determined on the date of grant in accordance with the applicable stock option plan. The chairpersons of the Compensation and Stock Option Committee and Audit Committee were granted an additional fully vested option to purchase 2,000 Shares at a purchase price determined on the date of grant in accordance with the applicable stock option plan. Chairpersons and directors who are also employees of the Company or its affiliates receive no remuneration for serving as directors. All independent directors who provide services to the Company or act to discharge their duties were paid \$1,500 per day plus actual expenses.

On May 13, 2004, the Board of Directors approved an increase in the compensation paid to non-employee directors of the Company. The annual fee paid to each director of the Company who is not an employee of the Company or its affiliates was increased to \$25,000. In addition, subject to the limitation that the total number of shares subject to options granted in any one year to any non-employee director not exceed an aggregate of 20,000 Shares, the chairperson of the Audit Committee shall annually receive an additional option to purchase 1,000 Shares (for a total of 3,000 Shares) at a purchase price determined on the date of grant in accordance with the applicable stock option plan. In all other respects, compensation to the Directors remains unchanged.

Director Nominations

As described above, the independent directors recommend nominees for election as directors. The nominee for election at this Annual General Meeting was recommended by such independent directors. Such independent directors will consider proposals for nomination from shareholders that are made in writing to the Company's Secretary, that are timely received and that contain sufficient background information concerning the nominee to enable proper judgment to be made as to his or her qualifications.

The Board of Directors has as an objective that its membership be composed of experienced and dedicated individuals with a diversity of backgrounds, perspectives and skills. The independent directors will recommend candidates for director based on their character, judgment, diversity of experience, business acumen, and ability to act on behalf of all shareholders. The independent directors believe that a nominee for director must have the following specific, minimum qualifications: (i) experience, such as experience in management or accounting and finance, or industry and technology knowledge, that may be useful to the Company and the Board, (ii) high personal and professional ethics, and (iii) the willingness and ability to devote sufficient time to effectively carry out his or her duties as a director.

Other than the foregoing there are no stated minimum criteria for director nominees. The Company believes, however, that it is appropriate for at least one, and preferably multiple members of the Board, to meet the criteria for an audit committee financial expert as defined by the Securities and Exchange Commission, and that a majority of the members of the Board meet the definition of independent director under the rules of The Nasdaq Stock Market. The Company also believes it is appropriate for certain key members of management to participate as members of the Board.

The independent directors review annually the appropriate skills and characteristics required of Board members in the context of the current composition of the Board. Candidates considered for nomination to the Board may come from several sources, including current and former directors, professional search firms and shareholder nominations. Nominees for director are evaluated by the independent directors, who may retain the services of a professional search firm to assist them in identifying or evaluating potential nominees.

Shareholder Communication with the Board of Directors

Shareholders may send communications to the Board or individual Board members to the offices of the Company, 44091 Nobel Drive, Fremont, California, 94538; Attn.: Jack Menache, Secretary. You must include your name and address in the written communication and indicate whether

Edgar Filing: PEAK INTERNATIONAL LTD - Form PRER14A

you are a shareholder of the Company. The Company will compile all such communications and forward them to the appropriate director or directors based on the subject matter or to the individual director or directors to whom such communication is addressed.

Compensation Committee Interlocks and Insider Participation

During the fiscal year ended March 31, 2004, the Compensation and Stock Option Committee of the Board of Directors consisted of Mr. Broyles, Ms. Russell and Mr. Gimple. Neither Mr. Broyles, Ms. Russell nor Mr. Gimple is an officer or employee of the Company. No member of the Compensation and Stock Option Committee or executive officer of the Company has a relationship that would constitute an interlocking relationship with executive officers or directors of another entity.

Audit Committee Financial Expert

The Audit Committee of our Board of Directors contains at least one audit committee financial expert. The name of the Audit Committee financial expert is Christine Russell, and the Board of Directors has determined that she is independent as that term is defined in Item 7(d)(3)(iv) of Section 14A of the Securities and Exchange Act of 1934, as amended.

PROPOSAL NO. 3

REMUNERATION OF DIRECTORS

The Board of Directors also seeks Shareholder approval to authorize the Board of Directors to fix the remuneration of the directors with respect to their service to the Company as directors. Information regarding the remuneration paid to directors last year is set forth under Information About the Board of Directors and Committees of the Board Compensation of Directors above.

Required Vote

Adoption of this proposal requires the affirmative vote of a majority of the votes cast at the meeting by the Shareholders entitled to vote thereon.

THE BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS THAT YOU VOTE FOR THE PROPOSAL TO AUTHORIZE THE BOARD OF DIRECTORS TO FIX THE REMUNERATION FOR THE DIRECTORS.

EXECUTIVE COMPENSATION AND RELATED INFORMATION

The following Summary Compensation Table sets forth for fiscal 2004, 2003 and 2002 certain information with respect to the compensation of the Company's Chief Executive Officer and the five other most highly compensated executive officers as of the end of the fiscal year ended March 31, 2004, whose salary and bonus for services rendered in fiscal 2004 exceeded \$100,000 (the Named Executive Officers).

Summary Compensation Table

	Year	Annual Compensation			Long-Term Compensation	All Other Compensation
		Salary	Bonus	Other Annual Compensation	Securities Underlying Options/SARs (#)	
		(\$)	(\$)	(\$)		(\$)
Calvin Reed ⁽¹⁾	2004	450,000				
Chief Executive Officer	2003	445,462			170,500	
	2002	415,000			113,417	
William Snyder ⁽²⁾	2004	250,000				
VP and Chief Financial Officer	2003	62,500			175,000	
	2002					
John Haughey ⁽³⁾	2004	220,188				220,000 ⁽⁴⁾
VP, U.S. Sales & Marketing	2003	241,772			125,000	
	2002	9,167				
Jack Menache ⁽¹⁾	2004	250,000				
VP, Secretary and General Counsel	2003	292,808			143,000	
	2002	276,666			34,167	
Darien Spencer ⁽⁵⁾	2004	309,375		3,504 ⁽⁶⁾		163,290 ⁽⁷⁾
President and Chief Operating Officer	2003	292,554		5,256 ⁽⁶⁾	100,000	123,991
	2002	203,869		2,190 ⁽⁶⁾	100,000	128,727
Danny Tong	2004	225,000	110,000			
President, Peak Plastic & Metal Products (International) Limited	2003	194,136			65,000	
	2002	192,603			34,117	

- (1) Effective September 1, 2001, the salaries of Messrs. Reed and Menache were reduced by 15% subject to payment in the form of bonuses if the Company met certain revenue and profitability goals in fiscal year 2002. On April 29, 2002, the salary reductions were eliminated.
- (2) Mr. Snyder joined the Company as an employee in January 2003.
- (3) Mr. Haughey joined the Company in March 2002 and resigned in 2004.
- (4) Represents severance benefits paid pursuant to Mr. Haughey's employment agreement.
- (5) Compensation included in the Summary Compensation Table for Mr. Spencer includes amounts paid to Mr. Spencer by Peak Multi-Products (China) Factory (Peak Multi-Products), the Company's processing partner in the PRC. The Company has decided to include such amounts even though the Company does not have an ownership interest in Peak Multi-Products, since the Company's business interactions with Peak Multi-Products have increased over the last couple of years.
- (6) Represents tax reimbursements.
- (7) Includes a \$116,000 housing allowance, \$25,332 for educational benefits for Mr. Spencer's child, \$12,508 for personal travel and airfare, \$5,238 for storage fees, and \$4,212 for payments made for term life insurance.

Stock Option Information

There were no stock options granted to the Named Executive Officers during the fiscal year ended March 31, 2004.

Aggregated Option/SAR Exercises in Last Fiscal Year

And Fiscal Year-End Option/SAR Values

The following table shows information about option exercises by the Named Executive Officers during the fiscal year ending March 31, 2004, and the value of unexercised options at March 31, 2004. Value at fiscal year end is measured as the difference between the exercise price and fair market value on March 31, 2004, which was \$6.97.

Name	Shares Acquired on Exercise (#)	Value Realized (\$)	Number of Securities		Value of Unexercised	
			Underlying Unexercised		In-the-money	
			Options/SARS		Options/SARS	
			at Fiscal Year End (#)		at Fiscal Year End (\$)	
			Exercisable	Unexercisable	Exercisable	Unexercisable
Calvin Reed			645,014	136,903	\$ 750,681	\$ 422,856
William Snyder			124,333	116,667	256,494	379,351
John Haughey			118,750	0	65,531	0
Jack Menache			268,140	125,027	268,276	417,156
Darien Spencer			120,833	79,167	183,458	215,792
Danny Tong			214,624	34,430	259,501	104,053

Employment Contracts, Termination of Employment and Change-in-Control Arrangements

Calvin R. Reed. Effective April 22, 1999, the Company entered into an employment agreement with Mr. Reed, providing that beginning on that date, he would serve as President and Chief Executive Officer of the Company for an initial term of three years, to be automatically extended by one year on an annual basis unless one party notifies the other of termination. The agreement contains standard provisions relating to benefits, intellectual property, confidentiality, and restrictions on competitive activities and solicitation of Company employees and customers. Pursuant to this agreement, Mr. Reed is entitled to an annual base salary of \$450,000 per year, which may be increased as determined by the Board of Directors. A portion of this salary is paid upon completion of the fiscal year so long as Mr. Reed continues to be employed by the Company at such time. After the second anniversary of agreement, in all cases of termination except those occurring within two years of a change in control, options granted to Mr. Reed shall remain exercisable for a period of one year. Should Mr. Reed be terminated without cause or resign (as a result a reduction in pay or title, the Company's material breach of the employment contract or a relocation of Mr. Reed's offices outside of Southern California), within two years of a change of control or liquidation of the Company, all of Mr. Reed's options shall vest immediately and remain exercisable for a period of one year and he shall receive a severance payment equal to two times his current base salary if termination occurs in the first year of the contract, and three times his current base salary if termination happens thereafter. Mr. Reed is also entitled to a severance payment of three times his current base salary if he is terminated by the Company without cause (as defined in the agreement).

William Snyder, Jack Menache, Darien Spencer and Danny Tong. In January 2003, the Company entered into substantially similar two year employment agreements with William Snyder, Jack Menache, Darien Spencer and Danny Tong. These agreements contain standard provisions relating to confidentiality and restrictions on competitive activities and solicitation of Company employees and customers and do not automatically renew at the expiration of their term. Each agreement also calls for a lump-sum severance payment in an amount equal to 12 months base salary and unused vacation pay, and the vesting of all stock options which would have vested within 18 months of the date of termination with such options remaining exercisable for one year should the employee be terminated without cause or resign because of a reduction in base salary or material adverse change in employment duties. If termination without cause or resignation (resulting from a reduction

Edgar Filing: PEAK INTERNATIONAL LTD - Form PRER14A

in base salary or a materially adverse change in employment duties) occurs in anticipation of or within two years following a change in control or liquidation of the Company, in addition to a severance package similar to that described above, all stock options held by the employee shall immediately vest in full and remain exercisable for a period of one year. The Company recently entered into employment contracts with Messers. Lazo, Spencer, Menache and Tong on substantially identical terms for the period ending December 31, 2005.

REPORT OF THE AUDIT COMMITTEE OF THE BOARD OF DIRECTORS⁽¹⁾

The following is the report of the Audit Committee with respect to our audited financial statements for the fiscal year ended March 31, 2004, which include our consolidated balance sheets as of March 31, 2004 and March 31, 2003, and the related consolidated statements of operations, shareholders equity and cash flows for each of the three years in the period ended March 31, 2004, and the notes thereto. During the fiscal year ended March 31, 2004, the Audit Committee was composed of three independent directors.

The Audit Committee is primarily responsible for reviewing the services performed by the Company's independent auditors and internal finance department, evaluating the Company's accounting policies and its system of internal controls and reviewing significant financial transactions. The Audit Committee operates under a written charter adopted by the Board of Directors.

The Audit Committee recommends to the Board of Directors, subject to shareholder approval, the selection of an accounting firm to be engaged as the Company's independent auditors. The independent auditors are responsible for performing an independent audit of the Company's financial statements in accordance with generally accepted auditing standards and to issue a report thereon. Management has primary responsibility for preparing financial statements and is responsible for our internal controls and the financial reporting process. The Audit Committee is responsible for monitoring and overseeing these processes.

The Audit Committee has reviewed and discussed the Company's audited financial statements with management and with the Company's independent auditors. In addition, the Audit Committee discussed with the Company's independent auditors the matters to be discussed by Statement of Accounting Standards No. 61. The Audit Committee has also received the written disclosures and letter from the Company's independent auditors in accordance with the Independence Standards Board Standard No. 1, and has discussed with the Company's independent auditors their independence. Based on these reviews and discussions, the Audit Committee recommended to the Board of Directors that the audited financial statements be included in the Company's Annual Report on Form 10-K for the fiscal year ended March 31, 2004, for filing with the Securities and Exchange Commission.

The Audit Committee considers at least annually whether the provision of non-audit services by the Company's independent auditors is compatible with maintaining auditor independence. The Audit Committee concluded that the independence of PricewaterhouseCoopers was not compromised by the services provided. On September 7, 2004, the Audit Committee approved a change in the Company's independent auditors and the Board of Directors approved the dismissal of PricewaterhouseCoopers and the selection of BDO McCabe Lo & Company as the Company's independent auditors for the fiscal year ending March 31, 2005. The Audit Committee and the Board of Directors have also recommended, subject to shareholder approval, the selection of BDO McCabe Lo & Company as the Company's independent auditors for the fiscal year ending March 31, 2005.

AUDIT COMMITTEE

Douglas Broyles

Christine Russell

Thomas Gimple

Edgar Filing: PEAK INTERNATIONAL LTD - Form PRER14A

- (1) The material in this report is not soliciting material, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of the Company under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, whether made before or after the date hereof and irrespective of any general incorporation language contained in such filing.

CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

Mr. T. L. Li, Chairman of our Board of Directors until October 2001, through his beneficial ownership of all of the outstanding shares of Luckygold, owns approximately 11% of the Company. Mr. Li owns approximately 40% of the outstanding shares of QPL Holdings, a company incorporated under Bermuda law and listed on The Hong Kong Stock Exchange. QPL Holdings is a holding company of a group of semiconductor companies which includes QPL, QPL (U.S.) Inc. (f.k.a. Worltek International Limited) and Talent Focus Industries Limited and formerly included ASAT and Newport Wafer-Fab Limited. A portion of the Company's sales have been made to companies controlled by Mr. Li, which include QPL and other subsidiaries of QPL Holdings and formerly included ASAT. The Company's product sales to the subsidiaries of QPL Holdings in the year ended March 31, 2004 represented approximately 1.48% of its net sales or \$944,581. QPL and ASAT are customers of the Company and may, from time to time, engage in transactions with the Company that are material to its results of operations.

The Company purchased 656,186 shares of Peak stock from Mr. T. L. Li for approximately \$2,400,000 on May 5, 2003, with the understanding that Mr. Li would use the proceeds from the sale of these shares to facilitate a proposed settlement of the class action lawsuit against Mr. Li and others. The shares repurchased from Mr. Li were immediately retired. The Peak shares were purchased from Mr. Li at a per share price of \$3.66 per share, whic