

# THE THIRD ANNUAL CONFERENCE ON: THE RESOLUTION OF CIS-RELATED BUSINESS DISPUTES

# The Ritz-Carlton Hotel | Tverskaya 3, Moscow SEPTEMBER 12, 2011



- Corruption in the Courts
- Insolvency Litigation
- Professional Responsibility Dilemmas in International Disputes
- Shareholder Rights: Protecting Minorities and Joint Venture Partners
- Third Party Funding of Litigation and Arbitration
- State Entities as Parties in Arbitration
- Choice of Law in Cross-Border Transactions
- Hot Topics and Recent Developments

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# THE THIRD ANNUAL CONFERENCE ON THE RESOLUTION OF CIS-RELATED BUSINESS DISPUTES

### **PROGRAM AGENDA**

All events to be held at the Ritz Carlton located at Tverskaya Street, 3, Moscow, Russia, unless otherwise indicated.

#### 7:30 AM

REGISTRATION AND BREAKFAST

#### 8:30 AM

OPENING SESSION

#### Welcome:

Michael Burke, Chair, American Bar Association Section of International Law, Arnall Golden Gregory LLP, Washington, DC USA

#### **Opening Remarks:**

The Honorable Aleksander Vladimirovich Konovalov, Minister of Justice of the Russian Federation, Moscow, Russia (*Invited*)

**The Honorable John Beyrle**, U.S. Ambassador to the Russian Federation, Moscow, Russia

#### 9:00 AM – 10:30 AM PLENARY SESSION The Battle Against "Legal Nihilism": Dispatches from the Frontlines

President Medvedev has called for an end to "legal nihilism," declaring that "we should take steps to help the courts gain their proper place in our system of values." Chairman of the High Arbitrazh Court Anton Ivanov has pursued initiatives in the area of "electronic justice," aimed at expanding transparency and reducing corruption. These include the posting of court decisions and court schedules on line and the development of mechanisms for electronic filing. How effective are these? How pervasive is judicial corruption in reality? How accurate are perceptions of the problem? As a practical matter, what can litigation or fabrication of evidence? A panel of experienced Russian litigators and other experts will offer their perspectives on these issues and share hard-earned lessons on ensuring a fair hearing for their clients.

#### Program Chair and Moderator:

Thomas A. Firestone, Law Enforcement Section, Embassy of the United States, Moscow, Russia

Speakers:

Timur Aitkulov, Clifford Chance LLP, Moscow, Russia The Honorable Anton Ivanov, Chief Justice, Supreme Arbitration Court, Moscow, Russia (Invited)

Yelena Panfilova, Transparency International, Moscow, Russia Genri Reznick, President, Moscow City Bar Association, Moscow, Russia (Invited)

#### 10:30 AM

#### NETWORKING BREAK

#### 11:00 AM - 12:30 AM

**CONCURRENT SESSION No. 1** 

#### International Insolvency Proceedings in an Uncertain Financial World: Harmonizing the Rights and Obligations of Multinational Debtors, Creditors, Management and Equity Holders

Issues such as enforcement of bankruptcy judgments, liability of principals, claw backs and priority of positions have been dealt with quite differently by courts in the U.S, England and Russia. In an age when international insolvency laws seek comity, divergent opinions from local courts interpreting the same agreements may have a significant impact on international commercial transactions, capital markets and present forum shopping issues. The panel, comprised of a leading judge, attorneys and advisors who have direct experience in these cases, will examine the issues created by contrary decisions being rendered by the courts of England and the United States, their interrelationship with developing Russian insolvency law and practice and their

impact upon Russian investors, debtors and creditors who may participate in foreign bankruptcy proceedings or seek to enforce their rights in Russia.

#### Program Chair:

Charles D. Schmerler, Fulbright & Jaworski L.L.P., New York, New York USA

#### Moderator:

David L. Barrack, Fulbright & Jaworski L.L.P., New York, New York USA

#### Speakers:

**Grigory Chernyshov**, Egorov, Puginsky, Afanasiev & Partners, Moscow, Russia

Max Frangulov, Alvarez & Marsal CIS LLP, Moscow, Russia Ian S. Grier, Sprecher Grier Halberstam LLP, London, United Kingdom U.S. Bankruptcy Judge (invited)

## Resolving Ethical and Professional Responsibility Dilemmas in International Disputes: A Primer for Russian Lawyers

International disputes often force Russian lawyers to face ethical rules imposed by western jurisdictions. While these rules are essential to maintaining the fairness and integrity of the adjudication proceedings, they may be unusual and difficult to comply with. To add to the confusion, it is far from clear which rules apply in multi-jurisdictional cases.

For instance, which country's code of ethics should govern, say, a lawyer based in London and licensed to practice law in both New York and England, who is advocating before an arbitration tribunal seated in Moscow, where the arbitrators hale from Russia, England and Germany, opposing counsel is licensed in Germany, the substantive law governing the dispute is English, and one of the parties is Russian and the other is German? Would the advocates' conduct be governed by the rules of their respective home jurisdiction(s)? If so, is this fair? What if the professional rules of England, the U.S., and Germany differ with respect to such issues as preparing witnesses to testify, contacting employees of an adverse corporate party, bringing adverse legal authority to the attention of the tribunal, attorney-client privilege, ex parte communications with the tribunal, dealing with experts and other issues? Does this create an unlevel playing field? To what extent should the rules of the venue govern conduct? If there are no rules of conduct applied generally to all of the lawyers in the case, what implications does this have for the proceedings and the prospects for rendering proper justice?

The panel focuses on several real-life situations presented in a lively theatrical format with international experts addressing these and other ethical issues which increasingly arise in the world of cross-border dispute resolution.

#### Program Chair and Moderator:

Gene Burd, Arnall Golden Gregory LLP, Washington, DC USA

#### Speakers:

Michelangelo Cicogna, De Berti Jacchia Franchini Forlani, Milan, Italy Andrew Clark, Allen & Overy LLP, London, United Kingdom Laura Hardin, FTI Consulting, Houston, Texas USA Alexander Muranov, Muranov, Chernyakov & Partners, Moscow, Russia Salli A. Swartz, Giraud Naud Amiot & Swartz, Paris, France

#### 12:30 PM

#### NETWORKING LUNCHEON

Lunch will be in "stand-up" format, allowing you to freely mingle and mix with your colleagues.

#### 1:45 PM – 3:15 PM CONCURRENT SESSION No. 2

Shareholder rights: Protecting Minorities and Joint Venture Partners

Effective protection of shareholder rights (particularly those of minority shareholders and joint venture partners) plays an essential role in attracting investment. Businesses today have an ever wider choice of where to invest and how to structure their investments. When exercising this choice a particularly important factor is the level of shareholder protection available in any given jurisdiction and under any particular structure or choice of law.

Russia has passed significant changes to its company law recently designed to increase the protection afforded to shareholders of Russian companies, including amendments in 2009 to its Federal Laws On Joint Stock Companies and On Limited Liability Companies which recognize shareholder agreements in those companies.

A panel of leading international practitioners will analyse the corporate climate in which businesses in Russia now operate and the role that various laws (in particular Russian, Cypriot, English and Dutch law) may play in shareholder disputes

The issues covered in this session will include: the interaction between shareholders' rights under contract and statute; dealing with deadlock situations; the arbitrability of shareholder disputes; minority shareholder relief (unfair prejudice petitions, derivative claims, winding up petitions etc); parallel proceedings (the problems they raise and how to deal with them); and interim relief in the context of shareholders' disputes.

Program Chair and Moderator:

Rupert D'Cruz, Littleton Chambers, London, United Kingdom

#### Speakers:

Dmitry Dyakin, Magisters, Moscow, Russia Marielle Koppenol-LaForce, Houthoff Buruma, Rotterdam, The Netherlands Dominic Pellew, Baker Botts LLP, Moscow, Russia Soteris Pittas, Soteris Pittas & Co., Limassol, Cyprus

#### State and State Entities as Parties to Arbitration

States and state-owned enterprises are active players in international trade and finance and feature prominently in the caseloads of many arbitral institutions. Their significance is highlighted by the ICC's recent creation of a Task Force on Arbitration Involving States or State Entities. Many claims involving state parties have monstrously high stakes and are connected to strategic industries or public-private partnerships for infrastructure projects. Others involve more routine commercial matters. Regardless, the practitioner facing a dispute with a public sector party must be aware of the potential traps and plan accordingly. An expert panel will address some of the major issues, including immunity and vicarious liability of states for economic activities of state entities, the conduct of arbitration proceedings involving such parties, determining the identity of states and state entities, binding a government through an arbitration clause signed by a public institution or state-owned corporation, and other such matters.

#### Program Chair and Moderator:

Ilya Nikiforov, Egorov Puginsky Afanasiev & Partners, St. Petersburg, Russia

#### Speakers:

Miriam Harwood, Curtis, Mallet-Prevost, Colt & Mosle LLP, New York, New York USA

Michael McIlwrath, General Electric Oil & Gas, Florence, Italy Eduardo Silva Romero, Dechert LLP, Paris, France John Savage, King & Spalding LLP, Singapore, Singapore 3:15 PM

**NETWORKING BREAK** 

#### 3:45 PM – 5:00 PM CONCURRENT SESSION No. 3 Third Party Funding of Litigation and Arbitration: The Future of Global Dispute Resolution or Ethical Quagmire?

Third-party funding of litigation and arbitration involves the financing of legal disputes by entities which are neither party to nor necessarily even related to the dispute itself. While the principal interest of such providers of funding generally is the purely mercenary and capitalist objective of financial profit, the availability of financing has begun to allow for the prosecution and defense of significant disputes by parties which otherwise would not have had the resources to proceed. Third-party funding therefore may become a powerful and innovative mechanism for reducing or avoiding the legal fees, expenses, arbitrator fees and other costs generally associated with international litigation and arbitrations which have become the focus of clients and attorneys around the world.

This panel, comprised of leading experts on third-party funding, will examine the growth and impact of funding of litigation and arbitration by third parties and the opportunities and risks to clients and potential funders in the CIS and around the globe, as well as the availability of alternative mechanisms such as contingent and conditional fee agreements. The program also will include a thorough consideration of the ethical obligations of lawyers, including confidentiality and privilege, professional independence and splitting of fees, which has led the American Bar Association to create a working group to report on the potential ethical issues and the United Kingdom to commission a government-sponsored report, released in early 2010, on the costs of civil litigation.

#### Program Chair and Moderator:

Charles D. Schmerler, Fulbright & Jaworski L.L.P., New York, New York USA

#### Speakers:

Jeffrey Golden, The London School of Economics and Political Science, London, United Kingdom *(Invited)* Charlie Gollow, IMF Australia Ltd., Perth, Australia *(Invited)* Dmitry Kurochkin, Herbert Smith CIS LLP, Moscow, Russia

#### Making An Informed Choice of Law Decision In Cross-Border Transactions

Dispute resolution and choice of law clauses are typically an afterthought in corporate deal-making, but drastically affect the options available to the parties when a conflict arises. In particular, the choice of <u>applicable</u> <u>substantive law</u> (i.e. the law of the contract) is a crucial matter, but is often decided reflexively without an in-depth examination of the consequences.

This panel, composed of dispute resolution specialists from different jurisdictions, intends to look behind basic stereotypes to address the true implications of choosing English law, New York law, or Russian law for the interpretation and enforcement of a contract. The panelists will consider a number of key issues, such as:

(1) existence of mandatory rules that render certain contractual provisions null and void

(2) existence of implied rights or duties in a contractual relationship

(3) the rules of contractual interpretation

(4) the remedies available to the prevailing party, including piercing the corporate veil

The discussion may also examine the interplay between the choices of substantive law and procedural rules in dispute resolution, although procedural rules of different jurisdictions and arbitral institutions will not be a focus of the session. In order to promote a healthy debate, the panelists and the audience members will be asked to consider how companies in different circumstances might gain from or be harmed by a particular choice of legal regime.

#### Program Chair and Moderator:

Dmitri Evseev, Arnold & Porter LLP, London, United Kingdom

#### Speakers:

Denis Bykov, Pepeliaev Group, Moscow, Russia John Fellas, Hughes Hubbard & Reed LLP, New York, New York USA Ian Meredith, K&L Gates, London, United Kingdom Igor Tsibelman, GazpromNeft, Moscow, Russia

#### 5:00 PM - 6:00 PM

#### PLENARY SESSION

Fresh Off the Press! An Open Mike Debate About Hot Topics in Litigation and Arbitration

The moderators will engage the audience in an interactive discussion about some of the most recent developments in litigation and arbitration in Russia and the CIS. The debate will conclude with electronic voting on some of the most critical questions that emerge during the course of the day. Don't miss your chance to contribute, support, disagree, vote, and make a difference.

#### Program Chair:

Glenn P. Hendrix, Arnall Golden Gregory LLP, Atlanta, Georgia USA

#### Moderators:

Irina Paliashvili, RULG-Ukrainian Legal Group PA, Kiev, Ukraine and Washington, DC USA

#### 6:00 PM Closing Remarks:

Glenn P. Hendrix, Past Chair, American Bar Association Section of International Law, Arnall Golden Gregory LLP, Atlanta, Georgia, USA

#### 7:00 PM

SPASO HOUSE RECEPTION No. 10 Spasopeskovskava Square

Spaso House has been the residence of American ambassadors in Moscow since the establishment of diplomatic relations between the United States and the former Soviet Union in 1933. The Spaso House stands one mile west of the Kremlin and not far from the Arbat, an ancient region of Moscow. It was completed in 1914 for Nikolay Aleksandrovich Vtorov, a wealthy merchant and manufacturer. The reception will be held in the main hall, which features a soaring domed ceiling and reputedly the largest house chandelier in Moscow, said to be the handiwork of the famous silversmith Mishakov. Russian writer Mikhail Bulgakov attended a party at the main hall in 1935, which inspired the scene of the Devil's Ball in The Master and Margarita. The event promises to be a memorable opportunity to network with new friends and old.

NOTE: Simultaneous translation in Russian and English will be provided for all sessions.



#### THE THIRD ANNUAL CONFERENCE ON THE RESOLUTION OF CIS-RELATED BUSINESS DISPUTES REGISTRATION FORM

Online registration is strongly encouraged. Pre-registration closes on Friday, August 26, 2011.

	- <i>C</i>	
uctropt	Inform	ntion

ABA ID # (if applicable):	
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#### **II. Conference Registration Fees**

Fees include admission to the Closing Reception at Spaso House (subject to availability on a first come, first served basis), the luncheon and to all CLE/CPD program sessions.

Check one of the following: Early		Early Bir	/ Bird by 8/12		<u>8/12</u>
	ABA Member	\$	550	\$	650
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	Corporate Counsel	\$	225	\$	295
	CIS-only Practitioners *	\$	450	\$	550
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#### **IMPORTANT DEADLINE**

Due to security reasons, only those registered before August 26, 2011 will be admitted to the Closing Reception at Spaso House.

NOTE: A VISA is necessary for entry into Russia from the United States and many other countries. Further information can be obtained from the Russian Embassy (http://www.russianembassy.org/) or through a commercial VISA service.

#### III. Guest Social Events Fees

Guest Social Events include all coffee breaks, the luncheon, and the Closing Reception at Spaso House, but not CLE/CPD programming sessions. Only one guest is allowed per regular conference registrant. The deadline for guest registration is **August 26**, **2011**. Security procedures for entry to the Spaso House do not permit any exceptions to this deadline.

#### Name of Guest: \_\_\_\_\_

Firm/Organization: \_\_\_\_\_

Guest Social Events Registration @ \$140.00 each

#### **IV. Purchase Extra Conference Materials**

Conference Materials will be provided to registrants on a CD-ROM at no extra cost. If you would like to purchase an additional CD-ROM or are unable to attend the meeting but would like to purchase the CD-ROM, please indicate the number below and submit payment.

□ Additional USB Drive @ \$80.00 each

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<u></u>

Qty\_\_\_

#### V. Make Your Payment

Refunds will not be issued for cancellations received after August 26, 2011.

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Please include the following information when making payment via credit card. Return this form by mail, fax (202.662.1669) or email to jessica.smith@americanbar.org.

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#### PAYING IN RUBLES:

The Section is working with a local partner in Russia – Russian National Committee of The International Chamber of Commerce – the World Business Organization (ICC Russia) to offer the option to make payment in Rubles. Additional information can be found at <a href="http://iccwbo.ru/actions/311/">http://iccwbo.ru/actions/311/</a>. If you prefer paying in Rubles, please contact ICC Russia at phone: +7 495 7205080, fax: +7 495 7205081 or e-mail: <a href="mailto:iccoffice@iccwbo.ru">iccoffice@iccwbo.ru</a> to make all necessary arrangements.

Please note, that if you chose this option, you will be requested to confirm your registration through acceptance of the Addendum to this Registration form provided by ICC Russia, and pay to ICC Russia (acting on our behalf) the Ruble amount equal to appropriate fees stipulated in item II, III, IV of the Registration form at the official exchange rate of the CBR as of the date of payment plus VAT 18%.

#### **VI. Refund Policy**

Cancellations must be made in writing and received by the Section office by August 26, 2011, for a full refund of fees, less a \$100 administration fee. No refund of registration will be granted after that date except in the case of medical emergency or extenuating circumstances approved by the Section in its sole discretion.

When a completed registration form and payment have been submitted to the Section office either by mail, email or fax, the registration is considered to be a firm commitment and you will be expected to pay the registration and any ticketed event fees, unless a written cancellation is received as set forth above. Any refunds issued will be processed to the credit card on file for individuals who made registration payment via credit card.

#### VII. Travel Information

Please note that a VISA is necessary for entry into Russia from the United States and many other countries. Further information can be obtained from the Russian Embassy (http://www.russianembassy.org/) or through a commercial VISA service.

Should you require overnight hotel accommodations, a block of rooms is being held at the Ritz-Carlton Hotel, Moscow at a special low per night group rate of **11,000 RUB for single occupancy** and **12,500 RUB for double occupancy**. Rates are subject to VAT of 18%. For additional information about the hotel, visit <a href="http://www.ritzcarlton.com/en/Properties/Moscow/Default">http://www.ritzcarlton.com/en/Properties/Moscow/Default</a> and to complete your hotel reservation please see the attached Hotel Booking Form.

You are encouraged to make your airline reservations online via the American Bar Association (ABA) travel site where you automatically receive specially negotiated ABA airfare and car rental discounts from a variety of carriers. This site makes it easy to view and purchase low fare options including web fares. Simply visit <u>www.abanet.org/travel</u> to make your travel arrangements. If you have not used this site before, it only takes a few moments to establish a username and password allowing you to immediately book your reservations.

#### VIII. MCLE/CLE Credit and CPD Hours

#### MCLE/CLE CREDIT:

You will be required to fill in your <u>State License Number</u> on the MCLE/CLE sign in sheet at the 2011 Moscow Dispute Resolution Conference. Please come to the meeting with your license number(s) for those states you will be obtaining MCLE/CLE credit.

MCLE/CLE credit has been requested. For delegates where MCLE/CLE is mandatory, a Certificate of Attendance will be provided onsite.

CPD hours have been requested: For delegates from countries where CPD hours is mandatory, a Conference Certificate of Attendance will be provided onsite. For questions regarding MCLE/CLE credit and CPD hours please visit the Registration Table at the Meeting.

Please indicate if, under the Americans with Disabilities Act, you require specific aid or service during your attendance at the 2011 Moscow Dispute Resolution Conference: 

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iX. Let Us Know If You Require Assistance

Online registration is strongly encouraged. Pre-registration closes on Friday, August 26, 2011. Please allow up to three (3) weeks for processing.

Mail to: ABA Section of International Law 2011 Moscow Dispute Resolution Conference Attention: Jessica Smith 740 Fifteenth Street, NW Washington, DC 20005 USA or fax to 202.662.1669

If you are completing the hard copy registration form and require a receipt please contact the Section office via email at jessica.smith@americanbar.org. Receipt and confirmation of registration will not be available until payment is received and processed.

Addendum to Registration Form		ABA Section of International Law		
Russia		Conference: «THE THIR RESOLUTION OF CIS-F Septe The Ritz-Carlton F	RELATED B mber 12, 2	SUSINESS DISPUTES» 2011
Ado	lendum	to the Conference Registration	on Form	
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(please fill in th	s form i	n Russian to be properly invo	iced and re	gistered)
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The Company wishes to order and pay for the services related to the Company's representatives participation in The Third Annual Conference on the Resolution of CIS-Related Business Disputes; the Organizers (ABA Section of International Law) shall provide the Company such services (Conference-related services); and ICC Russia acting as an agent and on behalf of the Organizers accepts the payments for the Conference-related services and arranges settlements with the Organizers.

#### Registration fees, as provided by Item II of the Registration form.

#### Delegates Information. Please provide details for each delegate:

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2				
То	tal amount (\$)			

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N⁰	Full name	
1		
2		
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#### Extra Conference Materials, as provided by Item IV of the Registration form:

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#### AGREED AND ACCEPTED:

#### TOTAL AMOUNT (\$, VAT excluded): \_

#### Authorized signature and the Company's seal, Name, Position

#### **Terms of payment:**

- ICC Russia acting on behalf of the Conference Organizers shall invoice the Company based on the information provided in the Registration form and the present Addendum to the Registration Form.
- Payment for the Conference-related services under the invoice issued by ICC Russia shall be made in Rubles at the official exchange rate of CBR as of the date of payment, plus VAT 18%.
- 100% of total amount for the ordered services shall be paid under the issued invoice not later than 5 days after receipt of the invoice, and in any case
  within the time limits established by the Conference Organizers and specified in the Registration Form.
- Delegate's substitution and Refund policy are established by Organizers and specified in the Registration Form. Exceptional cases, as defined by Item VI of the Registration Form, are to be agreed with the Organizers.

To complete the process of registration for the Conference please send filled in the Registration Form and the present Addendum to ICC Russia by fax: **+7(495) 720 50 81** or e-mail: <u>iccoffice@iccwbo.ru</u>.

Please make sure that your message is delivered successfully by ICC Russia phone: +7(495) 720 50 80.



#### **Moscow Dispute Resolution Conference 2011**

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- □ Superior Room 11 000 rubles for single occupancy
- □ Deluxe Room 13 000 rubles for single occupancy
- □ Executive Room 17 000 rubles for single occupancy
- $\Box$  Club Room 19 000 rubles for single occupancy
- □ Executive Studio Suite 27 000 rubles for single occupancy

□ Double occupancy surcharge is 1500.00 rubles per day, excluding VAT

*The above rates exc	clude breakfast and VAT (18%)
Arrival date	Departure date
Your preferences: □ Sm (Please mark)	oking 🗆 Non-Smoking
(1.10000 1.10111)	$\square$ Room with a king-sized bed $\square$ Room with two beds
First Name	Last Name
Contact telephone num	ber
Contact fax number	Contact email:
Reservation is guara	nteed by a credit card.
Credit Card type	Credit Card #
Signature	Expiration Date
If you require a lette Passport Number	r to obtain a visa to Russia, please fill this section:
Issue date	Expiry Date
Citizenship	
Date of Birth	City of Departure
Telephone	Fax
Airport pick-up req	uired
Flight Detail	Airport of arrival:  SVO  SVO2  DMD  VVO
Flight Departure	Flight Arrival
Reservation must be	canceled 72 hours prior to arrival to avoid billing of one night's room and tax.
Check in time 3:00 pm Check out time 12:00 a	m
Please, complete the fo Or to Svetlana.Fenina	rm and send it to our Reservations Department at <b>7 (495) 225-8400</b> . a@ritzcarlton.com
Please forward your res	ervations early in order to ensure the availability of the room. The Hotel will be selling out.
Reservations are acc	epted until August 18, 2011. After this date, reservations are subject to room and rate availabilit