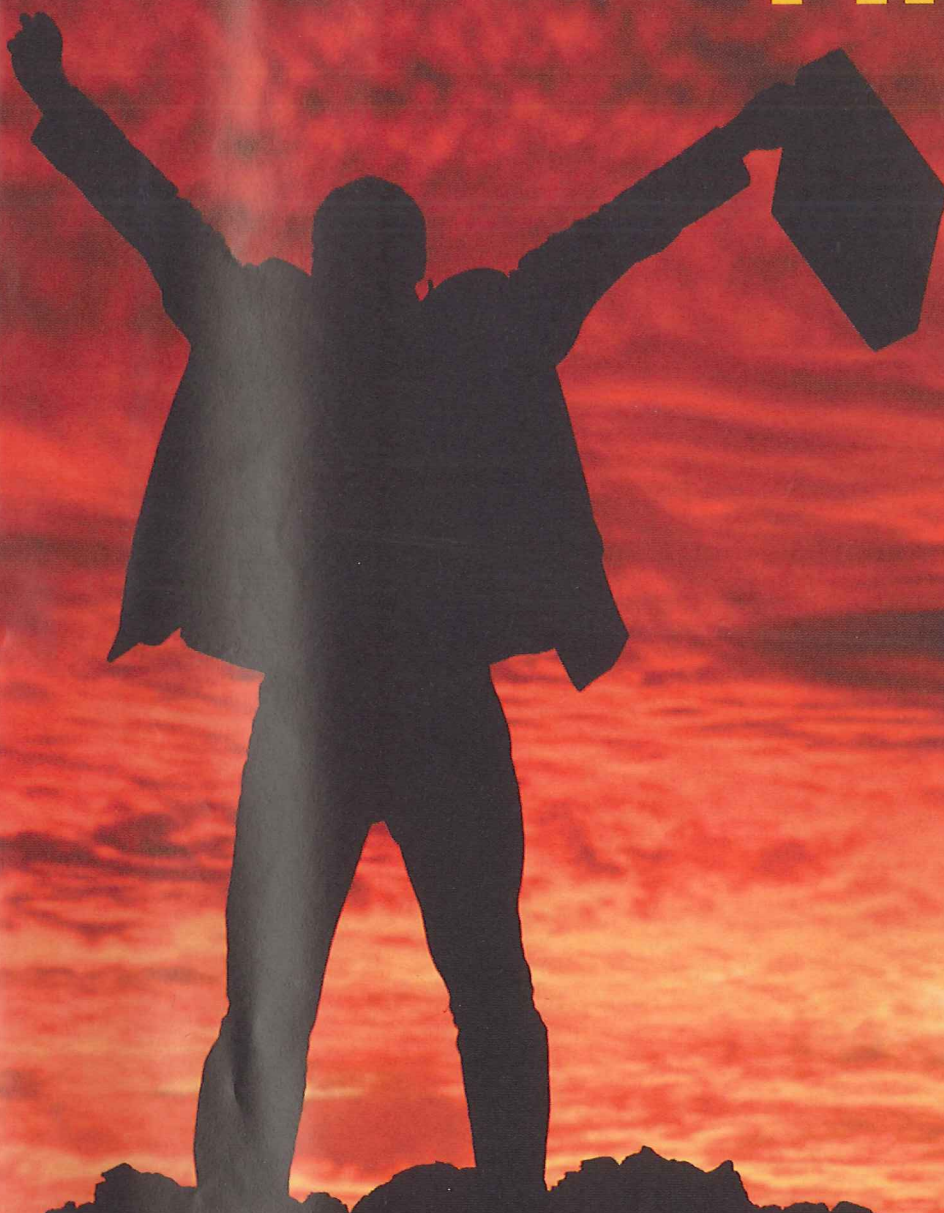


# InterContinental

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# FINANCE

September 2010



**SPECIAL REPORT**  
Professor Susan J Smith  
on housing derivatives

**INSIDER INFO**  
Legal reports from  
across the globe

**IN FOCUS**  
Second quarter analyses  
of M&A activity and  
private equity funds

**EXCLUSIVE**

# International Leading Advisors & Financiers Report 2010

## US

Now is a good time to think about franchising, says Tom Pitegoff

**P**itegoff Law Office PLLC is a franchise law boutique firm in the New York metropolitan area with a high quality international transactional practice that assists foreign franchisors in the launch and expansion of their franchise operations in the US and in their acquisition of US franchise companies. Because the firm focuses on franchise law, it works easily with other law firms that handle other aspects of the company's legal representation in the US.

Pitegoff also helps US firms establish new franchise offerings and expand their businesses through franchising both within and outside the US, consulting with local counsel in the destination country. In addition, the firm helps US and non-US companies establish distribution and licensing systems that are not franchises, and advise companies whose businesses may inadvertently fall within the scope of the franchise laws.

They represent franchise companies from Asia, Europe and Canada in their US operations, including: Beard Papa's (cream puffs - Japan), Proshred (document shredding - Canada) and Engel & Voelkers (real estate brokerage - Germany). US franchise clients with franchises outside the US include KidzArt (children's art programs) and Famous Famiglia (quick serve pizza), among others.

"As a professional service firm, our challenge is to help our clients succeed", says Tom Pitegoff. "For them, I see the global downturn as an opportunity. For those companies that have capital, this is a great time to invest in future growth. Real estate prices are low. Many good people are looking for employment. The challenge is to find the right opportunities and the right people, and to execute the right business plan well. Franchising is not magic and does not always succeed. On the other hand, it is a proven way that businesses can expand with the investment of others who are motivated to grow the franchisor's brand because that growth is synonymous with their own success.

"Our challenge is to help clients understand the costs, the risks and the opportunities, and to navigate the same legal landscape that we always do, regardless of the economic climate."



Pitegoff Law Office PLLC  
Tel: +1 914 681 0100  
Fax: +1 914 206 6003  
Email: info@pitolaw.com  
www.pitolaw.com

## CHINA

Ella Cheong and May Chan give an update on franchise law in China

**T**he Regulations on Administration of Commercial Franchises (the Regulations) enacted on May 1, 2007 are currently in force. Two decrees were simultaneously released on 1 May 2007 by the Ministry of Commerce, namely, the Administrative Measures for Information Disclosure of Commercial Franchising and the Administrative Measures for Archival Filing of Commercial Franchises (the Decrees).

The basic elements for franchising are: the franchisor owns operation resources such as registered trademark, enterprise logo, patent and know-how; and it is a contractual relationship between the franchisor and the franchisee. The franchisee is to run the business with a uniform business model and the franchisor is to pay a fee to the franchisor for use of these resources for developing the business.

To engage in franchising activities, the franchisor shall be an enterprise, possess a mature business model and is capable of providing operational guidance, technical support and business training to franchisees, and owns two sale stores which have been in operation for over one year.

Pursuant to the Regulations:

- franchisor and franchisee must enter into a written contract;
- the franchisor and franchisee shall provide in the contract that the franchisee may unilaterally terminate the contract within an agreed period of time; and
- The term of validity of the contract shall be no less than three years, except with express agreement of the franchisee.

Obligations of franchisor

- Provide the franchisee with all relevant information and a copy of the franchising contract 20 days before concluding such contract.
- Information provided by the franchisor must be comprehensive, accurate and audited by an independent accounting firm.
- Report to the Ministry of Commerce within 15 days of signing the first franchising contract.

Obligations of franchisee

The franchisee shall not assign the franchise right or disclose or permit others to use the commercial secrets of the franchisor without written consent from the franchisor.



Ella Cheong (Hong Kong) Ltd  
Tel: +852 2810 0558  
Fax: +852 2810 0933  
Email: mchan@ellacheong.com  
www.ellacheong.com

## US

The current economic climate has impacted on how franchisors operate, says Michael Daigle of Cheng Cohen LLC

**C**heng Cohen LLC is the industry's foremost boutique franchise law firm whose lawyers not only have decades of experience with one of the world's largest law firms, but also executive level business experience with some of the world's largest and most aggressive franchise companies. This unique combination allows Cheng Cohen to provide expert legal advice that is based on first-hand knowledge of the business realities and the impact lawyers and legal decisions have on the client's business. The firm's objective is to be with its franchisor clients through the entire life cycle of the franchise system, whatever that might look like.

As Cheng Cohen's clients' international franchise programs mature, they have become more involved in dispute resolution. While effort is focussed on helping clients find business solutions to disputes, the firm has recently been involved in direct representation of clients in courts in the US on issues arising out of clients' international programs, as well as working with and directing local counsel's efforts in foreign litigation involving international franchise programs in places such as Turkey.

The industry has seen three significant outflows from the economic crisis: franchisors are becoming more involved in the process of finding available lenders and, in some cases, becoming lenders themselves; are taking advantage of the opportunity to strengthen their base of franchise operators through transfers and consolidations; and are more focused on smart growth rather than growth for growth's sake.

Those outflows have affected and drive the types of issues the firm, as counsel for the franchisor, deal with on a regular basis. Also, the franchise model provides the failed business owner with a built-in scapegoat. If the business fails, blame is often directed at the franchisor rather than on other likely culprits (bad economy, undercapitalisation, changes in demographics, reduced consumer demand, and deficient operations). When franchised businesses fail, the very fact that there is a franchisor at whom to direct blame make those failures more likely to trigger litigation.



Cheng Cohen LLC  
Tel: +1 312 957 8366  
Fax: +1 312 243 1721  
Email: michael.daigle@chengcohen.com  
www.chengcohen.com