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Transforming law firms into publicly traded corporations is a risky business

By Jacob Simon

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From Mr Jacob Simon.

Sir, Your editorial "Equity in Law" (June 16) neglects to highlight the increased potential for conflicts of interest that would inevitably arise if law firms were to become publicly traded corporations.

In the US, a conflict of interest arises if an attorney's duties to a third person could materially harm the interests of that attorney's client. Furthermore, under the so-called "rule of imputation", this conflict is imputed to the entire firm, not just the affected lawyer.

Under corporate law, however, corporate officers and directors have a fiduciary relationship with the corporation's shareholders.

As a result, a managing attorney or an attorney who is serving as an inside director in a hypothetical publicly traded law firm would owe duties to both the firm's shareholders and the firm's clients. Furthermore, the fiduciary relationship owed to the firm's shareholders could potentially conflict with the professional duties that the firm's attorneys owe to their clients, and vice-versa.

This discussion, though, is largely academic - the laws discussed here are those of the US, while the proposed changes would affect only the UK.

However, we should note that since British law is a main inspiration for both US law and the American legal profession, there are parallels that add relevance to this discussion. Both the British and American systems are grounded in the adversarial system of litigation and the nature of the profession in both reflects this.

Transforming a law firm into a publicly traded entity, however, undercuts the adversarial system by allowing parties whose interests are potentially adverse to the firm's clients to purchase a stake in a firm. If such a situation were to arise, a client would have good reason to question whether or not the legal services he is receiving are really benefiting him or covertly aiding his adversary.

All issues of law aside, it is simply poor business sense for a firm - legal or otherwise - to have allegiances that would run counter to those of its customers. I would never engage in any transaction with a business which I felt had interests that were in opposition to my own.

Your editorial is correct in stating that law firms are businesses that seek profit. This notwithstanding, there is nothing in the current partnership model that would preclude a firm from becoming a more efficient business. Indeed, transforming law firms from partnerships into publicly traded entities could give rise to unintended negative consequences.

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