G A _ P
Gómez-Acebo & Pombo

ANALYSIS

Restructuring

Separate restructuring strategies among joint and several co-debtors

The basis for this paper is a slightly modified real-life case, broadened to include all possible forms of plurality of debtors.

ÁNGEL CARRASCO PERERA
Professor of Civil Law, University of Castilla-La Mancha
Academic counsel, Gómez-Acebo & Pombo

April 2026

1. The scenario

There is nothing unusual about two or more debtors being jointly and severally liable for the same debt, i.e. liable in solidum. Thus, D1 and D2 are companies that are jointly and severally liable for a debt. The amount owed may be the same or different, such that D1 and D2 are jointly and severally liable for 20, but D1 owes an additional 10 to the same creditor. These debts may be subject to a restructuring plan under Book II of the Insolvency Act (TRLC), combined or separately. D1 and D2 may or may not form a corporate group. Later we will modify the initial scenario so that F1 is a joint and several surety of D1's debt.

2. D1/D2 variations

1) D1 and D2 are jointly and severally liable for the same amount; the restructuring plans are not combined, and none of them contain rules regarding the future apportionment of liability of D1 and D2 therein.

2) Same case as above, but the restructuring plans treat the historical debt of the two proposing debtors equally, for example, with a similar reduction.

3) The previous case, with unequal treatment of the debt in one and the other restructuring plan.

4) Same case as above, but the historical debt is modified in only one of the restructuring plans.

If neither plan specifies otherwise, joint and several liability applies in all cases up to the lower of the apportioned restructured debt amounts of D1 and D2. Of course, the reduction of (for instance) D1's debt affects D2, not in the sense that D2's debt to the external creditor is also reduced by an equivalent amount, but rather that payor D2's right of contribution will be equal to the amount of the equivalent debts in the other debtor's restructuring plan. D2 will be liable to the extent of its restructuring plan, but will have a recourse claim against D1 (if D2 pays) to the extent of D1's restructuring plan. Each of them must be classified as an ordinary contingent debtor in the other's plan. And since each is "affected" by the other's restructuring plan, "each" plan may operate without conditions on the debt it restructures, for example, by eliminating joint and several liability. For such plans to deprive D1 or D2 of the right of contribution under Article 1145 of the Civil Code, these *affected* parties would have to be in a separate class. And this deprivation of the right of contribution may still be challenged, depending on the case, under Article 654(5) or Article 655(2)(3) of the Insolvency (Recast) Act.

3. D1/F1 variations

D1 and F1 are jointly and severally liable up to the same amount, or F1 is liable for an amount lower than D1's debt. Two separate restructuring plans; not a group situation.

1) D1's debt is cancelled under its restructuring plan. The same is not established in F1's restructuring plan.

2) F1's debt is cancelled in its restructuring plan, but the same is not established in D1's restructuring plan.

3) The debt is reduced equally.

4) The debt is reduced unequally.

Article 1826 of the Civil Code prevents F1's restructured debt from being more onerous than D1's restructured debt, but not the reverse. It cannot be the case that, out of the guaranteed debt of 20, D1 ends up owing 4 and F1 continues to owe an amount greater than 4. In fact, this would be suggested by Article 616(3) of the Insolvency (Recast) Act, but it is not certain; Article 1826 of the Civil Code is much more certain. This cannot happen, even if F1 is "affected" by D1's restructuring plan because, while the plan could eliminate the right of contribution for all contingent debtors (if other conditions are met), it cannot cause F1's debt to exceed that of D1, even if F1 is included in a single class.

4. Other rules

1) Contrary to what it may seem, Article 652(1) of the Insolvency (Recast) Act cannot result in F1 being liable beyond D1, even if the creditor dissents in the vote on D1's restructuring plan, provided that F1's debt is also restructured through a restructuring plan. In such a case, the surety can never end up owing more than the principal debtor, as Article 652(1) of the Insolvency (Recast) Act suggests is possible.

2) If F1 is restructured but not D1, the creditors of both D1 and F1 do not retain the protection of Article 652(1) against F1, except to the extent of the scope of the restructuring plan for F1.

3) D1/D2's or D1/F1's joint and several liability is not extinguished by the fact that the debt is restructured under two separate plans.

4) In the restructuring plan for D1 (or F1), it may be agreed that the restructuring debtor or surety ceases to be jointly and severally liable because, by definition, all D2 creditors also affected as D1 creditors.

5) Suppose that under D1's restructuring plan, all of D1's joint and several liability of 20 is forgiven (that is, 20 is waived). There is no longer any joint and several liability. The same does not apply under D2's restructuring plan. However, if D2 pays 20, D2 has a right of contribution from D1 in the amount by which the ordinary debts subject to contribution are restructured in D1's restructuring plan. But a specific deprivation of the right of contribution of the paying co-debtor would be contrary to Article 654(5) or Article 655(2)(3) of the Insolvency (Recast) Act.