

## CASE – COURSE ON ALTERNATIVE FORMS OF SECURITY

SunDial is a company that produces, sells, and operates solar panels in the Netherlands. They sell solar panels to customers, but also operate solar panels on other people's buildings, and then sell the power generated from those. The company has a simple structure: Jack Ra owns 100% of the shares in SunDial Holding ('**SD Holding**'), which owns 100% of the shares in both SunDial Production ('**SD Production**') and SunDial Services ('**SD Services**'). The company is financed by Intibank, which has provided a loan for which Holding, Production and Services are jointly and severally liable. As security for this loan, all three entities have pledged all their existing and future inventory including claims in the usual manner. Also, SD Holding has by way of notarial deed pledged the shares in SD Production and SD Services.

1. Suppose Intibank asks you for advice. They have heard that all they have now are traditional security rights, but there is also such a thing as 'alternative forms of security'. Intibank is very interested in this, because they have heard that SunDial may expand to Germany, and this makes Intibank very nervous, since they do not believe this will be a profitable venture for SunDial. Their first question is: what are alternative forms of security, and how are they different from traditional forms of security?
2. What kind of alternative forms of security would you recommend to Intibank in this instance, or what forms of security would Intibank have liked to have?

Suppose now that Intibank did not ask you for advice, but simply drafted a negative pledge on their own, which says that all SunDial entities are forbidden from providing any collateral to any other finance provider without prior written permission from Intibank. All existing SunDial entities have agreed to this.

SunDial has requested Intibank for extra financing to start a German adventure, and Intibank has denied such financing. However, HeliosBank, a German Bank, is willing to provide further financing, in the form of a loan to SD Holding and to SunDial Germany B.V. ('**SD Germany**'), the newly to be formed entity which will operate on the German market. SD Holding and SD Germany will be jointly and severally liable for this loan.

3. Can SD Holding pledge the shares in SD Germany to HeliosBank? Will HeliosBank get a first right of pledge? What is the legal position of Intibank in relation to this pledge?

HeliosBank is willing to subordinate its claim to the existing financing by Intibank.

4. Name five topics that Intibank and/or HeliosBank will have to pay attention to when drafting this subordination agreement.