

- McNamara v Flavel (1988) – transferred the business name to advantage his other company.

Section 588G - directors duties to prevent insolvent trading, **four elements need to be satisfied:**

1. **Section 588G(1)** The defendant was a director of the Company when it incurred a debt
 - i. Hawkins v Bank of China
2. **Section 588G(1)(b)** - The Company must be insolvent at the time the debt was incurred
 - i. Section 95A – defines insolvency: the company is unable to pay its debts when they become due and payable
 - ii. ASIC v Plymin (2003) – debt incurred when the contract was made not upon ordering the delivery.
 - iii. Requires proof that the company was insolvent at the time the debt was incurred or became insolvent by incurring the debt.
 - iv. Common indicators of insolvency:
 - a. Continuing loss, liquidity ratios below 1, overdue taxes
 - b. No access to alternative finance and inability to raise further capital
 - c. Creditors unpaid, dishonoured cheques.
 - v. Section 588E (4) presumption of insolvency where the company fails to retain adequate financial records (s286 (1) & s286(2)).
3. **Section 588G(1)(c)** - There was reasonable grounds for suspecting insolvency
 - i. ASIC v Plymin – reasonable means
 - ii. Queensland Bacon Pty Ltd v Rees – suspicion of insolvency, less probable of insolvency compared to the ‘expectation’ of insolvency.
4. **Section 588G(2)** – requires proof that the director failed to prevent the company incurring a debt.
 - i. Inactivity or failure to prevent incurring the debt – ASIC v Plymin (2003)

Defences: Section 588H sets out alternative defences for directors whom contravene S588G

- a. **Reasonable Grounds to Expect solvency – Section 588H(2):**
 - i. If a director can prove that, at the time the debt was incurred, the director has reasonable grounds to expect, that the company was solvent
 - ii. Hall v Pooleman (2007) – director has reasonable grounds to expect that the tax dispute would be resolved and the company would become solvent.
- b. **The Director doesn’t know about the Company’s financial position**