Marsh

Exploring Discretionary Trusts

Reduce Premiums And Costs Through Discretionary Trusts

Are you facing these challenges in this difficult financial climate?

- Increasing premium spend and feel dictated by a hardening insurance market
- No confidence and control over your cash-flow
- Potential premium and excess increases, particularly after a claim has been made
- Insurers perceiving your risks as more than what they are
- Rejected insurance claims due to strict policy conditions and exclusions
- Frustrated that insurers can profit off your premiums whilst you are not rewarded for good risk management
- Expensive risk management initiatives

This can be the reality of traditional insurance. With alternative risk financing, it doesn't have to be this way.

Proven expertise in challenging the status quo

We have a dedicated team of Australian specialists who have extensive Discretionary Trust experience and connections across the legal, finance, analytics and accounting industries.

Discretionary Trusts can be an alternative and innovative risk financing structure

Take control over your own risk financing plan by either pooling together risk with others or forming your own facility.

The discretionary trust framework allows members to contribute funds for working losses to a trust arrangement, independently administered by an ASIC licensed Trustee.

As a member of a Trust, you can enjoy potential savings, consistent pricing, wide protection and the potential return of surplus funds at the end of a good claims year'

Backed by both local and global insurance companies for over 30 years

Since 1986, JLT Group Services Pty Ltd has managed over 80 arrangements for organisations across 12 different insurance lines. Through JLT Risk Solutions, Marsh currently protect over 400,000 members within 45 Trusts.

Trusted framework

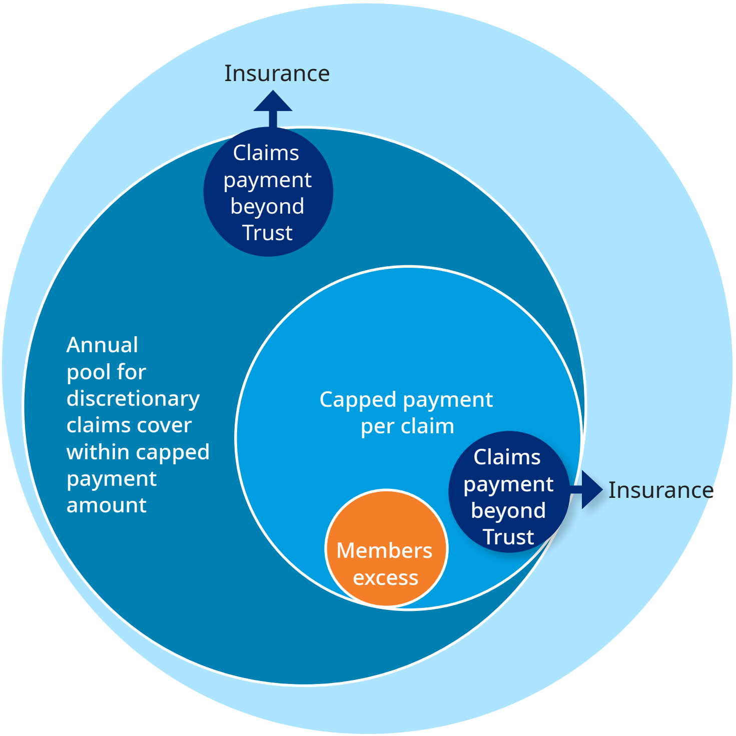
- The Trust grows an initial layer of funds from members' contributions to provide discretionary cover for members' claims. This layer is called the Aggregate
- Insurance is purchased to protect members for large losses above this Aggregate layer, when required
- Funds are held in a designated bank account and managed by a Trustee, covering management and administration costs
- Membership grows over time
- Surplus funds may be returned back to members for their benefit after all claims are paid

Reinvest surplus funds

Surplus profits earned by the Discretionary Trust can be utilised in a number of ways:

- Cost control: Managing the ongoing costs of the arrangement
- Cover and services improvement, provided by the Discretionary Trust
- Risk Management: Funds projects and/or expenses incurred

Concept example



"Our team has delivered surplus returns of more than $146M back to Discretionary Trust clients."

– Andre Kyburz, Head of Alternative Risk Solutions, Marsh Advisory

Purpose built from the ground up

We do not fit businesses into a standardised Discretionary Trust. You can set the level of control, type of risks covered, level of cover, deductible levels and limits.

You are in control. For example, we engage with you to determine your level of involvement and the outsourcing of operational and regulatory issues.

Coverage and product innovation, tailored to your needs

We offer diverse cover to organisations of all shapes and sizes. We can also obtain extended, optimised coverage that isn't necessarily available in the market.

EXAMPLES OF COVER

Property/Business Interruption	General & Product Liabilities	Professional Indemnity	Environmental
Cyber	Construction	Trade Credit	Crime
Plant and Equipment	Directors & Officers Liability (Side B & C)	Employee Benefits	Motor Vehicle

KEY BENEFITS

- Saving costs on stamp duty and levies for fire and emergency management services.
- The Trustee has exclusive discretion to pay claims which insurers may not
- Organisations can be rewarded with left over money in a good claims year to fund initiatives that further reduce costs and claims
- Access broad ranging insurance cover that others can't
- Competitive terms
- Financially capped and protected by an additional layer of insurance
- Reliable and stable member contributions you can depend on
- Dedicated claims and on-the-ground service support
- Control and security of funds with full disclosure of Trust status

Note:
Only the funds that pay for the additional insurance layer attract levies for fire and emergency management services. All other funds held in the Trust for claims do not carry additional charges.

Legal framework that has stood the test of time

Take control over your own risk financing structure by merging risk across group entities and/or locations.

ENTITY/LOCATION A

ENTITY/LOCATION B

ENTITY/LOCATION C

Discretionary Trust

Discretionary Trust issues cover documentation, provides claims handling service and retains risk to desired level.

Policy framework

Discretionary Trust obtains insurance in excess of desired retention. Insurer issues policies.

- Discretionary Trusts are managed investment schemes and are subject to the reporting and product disclosure requirements with ASIC under the Corporations Act 2001
- Exemption from Registered Managed Investment Scheme requirements of the Corporations Act 2001 (section 601ED)
- Each Discretionary Trust is registered with an individual Australian Business Number and Tax File Number
- Each Discretionary Trust is operated in accordance with its own separate Trust Deed and Scheme Rules
- The Trustee is required to consider claims made by the members of the Discretionary Trusts, whether or not the event is covered by any conventional insurance taken out by the Discretionary Trust
- The payment of such claims, which are not covered by the conventional insurance component, is subject to the Trustee's discretion
- The Trustee is bound by the trust deed and can only apply member contributions for the specific purposes of the Discretionary Trust

Discretionary Trusts vs Captives

We understand that every client's risk is different. That's why we spend time to assess the most appropriate risk retention and risk financing strategy for businesses. Sometimes Discretionary Trusts are called on. At other times, Captives prove to be the best course of action. We ensure you make the right decision and avoid costly mistakes.

The below details the differences between two self-insurance frameworks that have stood the test of time.

DISCRETIONARY TRUSTS	CAPTIVES
Trust arrangement established and operated in Australia by the appointed Trustee, removing management responsibilities and exposures from the client.	A Captive Insurance Company is formed off-shore. Singapore is a generally recommended domicile due to its proximity to Australasia, similar time zone and stable regulatory environment.
Discretionary Trust is managed in the best interests of the client by the Trustee.	Owned and controlled by the client and supported by a Captive Manager based in the Country of domicile.
Same as Captive. The layer of self-insurance funds losses up to pre-determined limits. Insurance policies above this layer tops-up the self-insurance for protection to the full limits required.	Same as Discretionary Trust. The layer of self-insurance funds losses up to pre-determined limits. Insurance policies above this layer tops-up the self-insurance for protection to the full limits required.
Unable to issue any insurance policies or certificates of currency.	As a licensed insurance company, has the ability to provide evidence of insurance if required.
Works with the retail insurance markets.	Accesses insurance or re-insurance markets directly.
No capital requirements and establishment costs are in the vicinity of AUD 10,000.	Requires an initial capital investment as determined by the business plan and potentially the regulations (Singapore minimum is SGD400,000). Typically incurs costs of approximately AUD50,000 to AUD75,000 establish, including a feasibility study.
Under the terms of the Deed, must be funded 100% with monies held in Trust.	Better cash flow as it does not have to be funded to its full liability and can often lend funds back to the group.
Tax treatment is the responsibility of the Trustee.	As a subsidiary, it typically falls under Control Foreign Company rules. This means that tax treatment would often be neutralised under the group. Client needs to keep tax changes and treatment in under review.
Monies paid into the Discretionary Trust are generally tax deductible for the client.	Capital held in the Captive is not usually tax deductible for the client.
No individual licencing requirements and can therefore be established in approximately three months. It would not require any direct time imposition by the client other than the process of legally reviewing and agreeing the Trust Deed for execution by the client and the Trustee.	Whilst a captive can be set up within three months (based from when a decision to precede is made), it typically requires a lead time of approximately 6-7 months to establish when considering internal decision making and potential feasibility review. There's also ongoing time obligation from owner, although outsourcing keeps this to a minimum.
Ongoing annual operating costs estimated at AUD 50-75,000 (one line).	Ongoing annual operating costs estimated at AUD 150,000 (one line).
The cover provided by the Discretionary Trust is subject to the terms and conditions of a trust deed which, by its nature, includes an element of discretion in the settlement of claims. For this reason, it is not as widely accepted and requires participation of insurers who are both willing and able to participate.	Re-insurance of a Captive is accepted by a wider range of insurers and reinsurers as it is subject to the terms and conditions of a formal policy wording.

Finding what's best for you

We undertake a discovery period to explore the viability of Discretionary Trusts. Whilst feasibility studies come in all shapes and sizes. Here's what you can expect in the preliminary stages of considering a Discretionary Trust:

1. **Analysing historic, individual losses:**
   Loss scenario analysis, historic losses, industry losses to forecast expected costs.
2. **Modelling:**
   Addressing appropriate limits for claims above the underlying excess up to an additional Any One Event limit, capped at an Aggregate level per period of cover. Both of these limits can be negotiated with the market to achieve optimal results for the client.
3. **Clear picture:**
   We now have a picture of how each year would have turned out in today's dollars, adjusted to reflect the current risk being addressed. We identify the impact of claims on a yearly basis by listing the outcomes for each year after adjustments have been made.
4. **Summary of outcomes:**
   We provide a summary of outcomes (five or ten year period) based on past claims experience, providing a snapshot of total costs under a traditional insurance placement. Premium and government charges. We overlay the same data but incorporate the use of the Discretionary Trust; arrangement and administration costs for the management of the Discretionary Trust, including an estimate of required member contributions, excess insurance premium cost and government charges. GST is removed from all summaries as it does not affect the bottom line results for any option. We provide an estimation of monies available for use by the client to provide a true bottom line comparison between the options.
5. **Decision:**
   We now have an understanding on whether the Discretionary Trust has long-term viability.

Onboarding Roadmap

KEY MILESTONES

- Client to advise Marsh that they wish to consider the Discretionary Trust at renewal
- Updated historical data collected
- Finalised modelling is undertaken (may include a costed proposal)
- Marsh will engage with the client to present findings and discuss the operation of the Discretionary Trust option.
- Decision by the client whether to proceed with the Discretionary Trust, noting Marsh to supply all legal documentation to the client for legal review whilst coordinating the establishment process with the broking team.
- Develop any required documents, reports and procedures specific to the client's requirements.
- Management reporting requirements are agreed by all parties.

Transition With Ease

Here's what a typical timeline might look like after any loss modelling is completed - if required.

[CLIENT] | MARSH | TRUSTEE

Activities	Month 1	Month 2	Month 3	Month 4
Confirm acceptance of Discretionary Trust concept and provide instruction to proceed	[CLIENT]			
Confirm extent of cover requirements	[CLIENT], MARSH			
Marsh provides loss history, [CLIENT] history and cover requirements to Trustee	[CLIENT], MARSH			
Model information provided	TRUSTEE			
Trustee requests information for Trust Deed, [CLIENT] provides requested information and commits to $10,000 establishment costs		TRUSTEE, [CLIENT]		
Draft Trust Deed and forward to [CLIENT] for execution, along with invoice for establishment		TRUSTEE		
Marsh and Trustee work together on viability of program – insurance layer		MARSH, TRUSTEE		
Provide any additional information or assistance required from insurance market		[CLIENT]		
Source insurance layer from the market and provide terms		MARSH	MARSH	
Execute Trust Deed and return to Trustee and pay invoice to establish			[CLIENT]	
Execute Trust Deed, stamp, register and distribute to parties			TRUSTEE	
Establish registrations, bank accounts & audit framework			TRUSTEE	
Formalise all annual operating costs and provide [CLIENT] and Marsh with a full breakdown of costs to formally accept			TRUSTEE	
Accept the 'budget' of costs by formally signing and returning document			[CLIENT]	
Establish all Broking frameworks to commence cover in liaison with Trustee			MARSH	
Put together all disclosure documents and systems in preparation for commencement of cover			TRUSTEE	
Invoice [CLIENT] for Trust and Insurance contributions				MARSH
Pay Invoice				[CLIENT]
Commence Cover				MARSH, [CLIENT], TRUSTEE

Next Steps

Let’s have a conversation

We’re keen to talk you through this information so you can better understand Discretionary Trusts.

What happens next?

We can provide you with a proposal to undertake claims modelling to see whether the Discretionary Trust is fit for you.

Contact your Marsh Risk Advisor/Broker to connect with the JLT Risk Solutions team.

André Kyburz
Head of Alternative Risk Solutions, Marsh Advisory Pacific
M +61 (0)477 285 766
Andre.Kyburz@marsh.com

Tony Mullen
Senior Consultant, Alternative Risk Solutions
t: +61 8 8100 3003
tony.mullen@marsh.com

About Marsh

Marsh is the world's leading insurance broker and risk advisor. With around 40,000 colleagues operating in more than 130 countries, Marsh serves commercial and individual clients with data-driven risk solutions and advisory services. Marsh is a business of Marsh McLennan (NYSE: MMC), the world's leading professional services firm in the areas of risk, strategy and people. With annual revenue over $17 billion, Marsh McLennan helps clients navigate an increasingly dynamic and complex environment through four market-leading businesses: Marsh, Guy Carpenter, Mercer and Oliver Wyman. For more information, visit mmc.com, follow us on LinkedIn and Twitter or subscribe to BRINK.