

ASAP

Legal and Technical Update

Myriad's Last Survivor Death Benefit

History

Momentum realised there is a need for a "last survivor" death benefit in order to provide for estate liquidity and other needs on the death of the last surviving spouse or partner.

At the time the prevailing product solutions only provided for parties to take out two separate policies to address the potential liquidity shortfall as follows:

Policy 1:

Policy owner: Wife

Life assured: Wife

Beneficiary: Husband

Policy 2:

Policy owner: Husband

Life assured: Husband

Beneficiary: Wife

When the wife passes away, the first policy pays to the husband as beneficiary. This would then be used to settle some of the debts and the estate administration costs of the wife's estate; and more often than not, the husband, as surviving spouse, would cancel the policy on his life believing that the policy is no longer necessary.

Research into estate plans have shown

- The first dying spouse would in most instances leave his/her estate to the surviving spouse.
- The surviving spouse would then have an inflated estate.

In reality the section 4(q) deduction and the capital gains tax roll-over relief allowed between spouses merely delays the payment of estate duty and capital gains tax (CGT), but does not avoid it.

In the scenario above, upon the death of the husband as last survivor, assets would unfortunately have to be liquidated in order to provide the executor with sufficient liquidity to wind up the estate of the last survivor.

Momentum created the Last Survivor Death Benefit as a solution

This is a benefit that can be added to any Myriad policy and is not limited to spouses. It is possible to implement the benefit on any two people where their situation supports it.

It will be a Myriad policy that is owned by one of the lives insured. On the death of the first dying, the policy will continue in the name of the survivor and the future premiums will be waived on that benefit. When the surviving life insured dies, the benefit will pay out to the nominated beneficiary or the estate. If it is earmarked to provide for estate costs and taxes, it should pay into the estate of that person.

The various uses of the Momentum Last Survivor Death Benefit (LSDB)

Please note the illustrations below are merely examples and there are other possible uses. This is not an exhaustive list of uses of this benefit. Examples will be used to illustrate the use of the benefit:

1. ESTATE LIQUIDITY

Facts:

- Mr and Mrs Pillay are married in community of property.
- On the death of Mr Pillay his entire estate is bequeathed to Mrs Pillay in terms of his Will. As a result no estate duty or CGT is payable on his death.
Please note that he will still have estate administration costs payable by his estate upon his death and possibly other liabilities and/or obligations which he needs to make separate provision for.
- Their financial adviser did a comprehensive estate plan and it highlighted that there will be a large estate duty and CGT liability on the death of Mrs Pillay as last surviving spouse. Her estate will require liquidity to settle this.
- With no liquidity in her estate, the executor may sell assets to provide the liquid funds required, unfortunately to the detriment of their beneficiaries.

Solution:

- Implement a LSDB on Mr and Mrs Pillay's lives.
- On death of the first spouse, the premium on this benefit is waived.
- On death of the last survivor, the estate duty and CGT are covered by the liquidity provided by the LSDB which pays out to her deceased estate.

Policy Structure:

- Policy owner: Mr or Mrs Pillay
- Lives insured: Mr/Mrs Pillay
- Premium payer: Any of Mr or Mrs Pillay
- Beneficiary: The last survivor's (Mrs Pillay) estate

Important: This policy is a deemed asset in the last survivor's estate and the cover amount must therefore be increased to make provision for the estate duty on the policy.

Additional cover required:

- Mr and Mrs Pillay also have a bond on their house;
- Mr Pillay has a credit card and hire purchases on the motor vehicles;
- Mr Pillay is the sole breadwinner and will have to provide for the maintenance of Mrs Pillay and his children;
- Mr Pillay also requires income protection to protect his income should he become disabled;
- If Mrs Pillay should die before Mr Pillay, he will have to make provisions for an au pair to assist with the children;
- Mrs Pillay's family has a regular occurrence of breast cancer and she requires critical illness cover.

This can result in the policy structure being as follows:

Policy 1:

- Policy owner: Mr Pillay
- Lives insured: Mr Pillay/Mrs Pillay
- Benefits:
 - Death benefit on the life of Mr Pillay to settle liabilities and provide for maintenance;
 - Death benefit on the life of Mrs Pillay to provide for an au pair;
 - Income protection benefit on the life of Mr Pillay;
 - LSDB on both their lives for the settlement of estate costs and taxes.

Policy 2:

- Policy owner: Mrs Pillay
- Life insured: Mrs Pillay
- Benefit:
 - Stand-alone critical illness to provide for cancer risk

2. TRUSTS AND MAINTENANCE OF BENEFICIARIES**Facts:**

- Mr Pollack is the donor of the Pollack Family Trust.
- Both Mr and Mrs Pollack are Trustees of the said family trust, with Momentum as the independent trustee.
- The beneficiaries (both capital and income) of the trust are Mr and Mrs Pollack and their three minor children.
- The trustees agree that liquidity is required by the trust to cater for their financial needs such as the maintenance, school fees, clothing, etc. of the children in the event of death of the last dying parent (Mr or Mrs Pollack).

Solution:

- Implement a LSDB on the lives of Mr and Mrs Pollack.
- On death of the last survivor, the policy proceeds are paid to the family trust as the policy owner.
- The family trust utilises the cash to provide for the needs of the minors, in line with the stipulations of the trust deed.

Policy Structure:

- Policy owner: The Pollack Family Trust
- Lives insured: Mr/Mrs Pollack
- Premium payer: The Pollack Family Trust
- Beneficiary: The Pollack Family Trust.

Important: This policy is a deemed asset in the last survivor's estate and the cover amount must therefore be increased to make provision for the estate duty on the policy.

3. PROVISION FOR GUARDIAN'S OF MINOR CHILDREN

Facts:

- Mr and Mrs Chetty have 4 children, 3 boys and a girl between the ages of 6 months and 6.
- They have nominated Mrs Chetty's sister and her husband, Mr and Mrs Govender, as the guardian of the children should they die simultaneously.
- Mr and Mrs Chetty have sufficient life cover in place to provide for loss of income and the education costs of the children.
- Mrs Govender mentioned to them, that should they have to take in their 4 children, in addition to her own children, she will have 7 children in total, which will have practical implications:
- They will have to buy a new bigger vehicle to transport the children,
- They will have to appoint an au pair to assist with the children,
- They will most likely have to buy a bigger house as the current three bedroomed house they have will be too small as the kids grow up.
- She expressed her fears as they do not have the financial means to provide for all this at any given time.

Solution:

- A LSDB is implemented on the lives of Mr and Mrs Chetty.
- On the death of the last survivor, the LSDB will be applied to assist Mr and Mrs Govender to make lifestyle changes.
- There are various options that can be considered:
 - The policy pays out to an *inter vivos* trust where the children are the income and capital beneficiaries and Mr and Mrs Govender are also income beneficiaries and the trustees of the trust can pay them a monthly income to cover the increased personal expenses;
 - The policy pays out to the deceased estate and the Will determines that a testamentary trust is created for Mr and Mrs Govender's benefit if they accept the nomination as guardian. The trustees will be authorised to make capital and income payments to them to cater for lifestyle changes. The eventual beneficiaries will be the children to receive whatever is left, when the youngest of them are self-sufficient;
 - The portion of the policy pays to them in cash and the rest to a trust for long term expenses;
 - The full policy benefit pays to Mrs and Mrs Govender (the risk exists that they will still receive the benefit even if they do not accept the guardianship).
- Each scenario will have to assessed to determine which is most appropriate for the client. The above list is not exhaustive.

Policy Structure:

- Policy owner: Mr Chetty
- Lives insured: Mr/Mrs Chetty
- Premium payer: Mr Chetty
- Beneficiary: Depends on options selected by clients' – see examples above

Important: This policy is a deemed asset in the last survivor's estate and the cover amount must therefore be increased to make provision for the estate duty on the policy.

4. TRUSTS AND CREDIT LOAN ACCOUNT COVER

Facts:

- Mr Maponya is the donor of the Maponya Family Trust.
- Mr Maponya has lent the trust money to buy a block of flats which will generate large rental income for the trust's beneficiaries.
- Both Mr and Mrs Maponya are trustees of the said trust, with Momentum as the independent trustee.
- Mr Maponya is comfortable to bequeath his loan account, in his Will, to Mrs Maponya on his passing, seeing he has no need for liquidity in his estate.
- However, such loan must be settled upon Mrs Maponya's passing as her estate will require this cash/liquidity.

Solution:

- A LSDB is implemented on the lives of Mr and Mrs Maponya.
- When Mr Maponya passes away, he bequeaths this credit loan account to Mrs Maponya.
- The credit loan account now becomes an asset in Mrs Maponya's estate.
- On Mrs Maponya's death as the last survivor, the policy proceeds are paid to the Maponya Family Trust as the policy owner.
- The trust utilises the proceeds from the policy to settle the loan owed to Mrs Maponya's deceased estate on her passing.

Policy Structure:

- Policy owner: The Family Trust
- Lives insured: Mr/Mrs Maponya
- Premium payer: The Family Trust
- Beneficiary: The Family Trust

Important: This policy is a deemed asset in the last survivor's estate and the cover amount must therefore be increased to make provision for the estate duty on the policy.

5. BUSINESS INSURANCE: Buy-and-sell policies for 100% business owners

Facts:

- Mr Roux is the 100% share owner of a company which provides travel services.
- Mr Roux is married to Mrs Roux who is employed by this company; and she is capable of running this business on her own if Mr Roux passes away.
- Mr and Mrs Roux have no family who may be interested in continuing with the travel business once the last survivor of them passes away.
- Diana is employed by the company and she has shown keen interest in management and aspires to be a business owner one day.

Solution:

- A one-sided buy and sell agreement is entered into by Diana and Mr and Mrs Roux.
- Mr Roux's Will provides that on his death his 100% shareholding in the business is bequeathed to Mrs Roux.
- Diana insures Mr and Mrs Roux's lives with a LSDB for the amount that the business is worth.
- On the death of Mr Roux, the business will continue with Mrs Roux as sole shareholder.

- Diana no longer needs to pay the premium on the LSDB policy as the waiver of premium came into effect on the death of Mr Roux.
- On the death of Mrs Roux, as the last survivor, the policy proceeds are paid to Diana as the policy owner.
- In terms of a buy and sell agreement drafted by a Momentum legal adviser, the LSDB policy proceeds must be used by Diana to purchase the company shares from Mrs Roux's deceased estate; and the executor of the deceased estate must transfer the shares to Diana once the purchase price has been paid.

Policy Structure:

- Policy owner: Diana
- Lives insured: Mr/Mrs Roux
- Premium payer: Diana
- Beneficiary: None

Important: In this example there will be estate duty on the policy as a deemed asset in the last survivor's deceased estate because the buyer, Diana, was not a partner in the business at time of death of the surviving life insured business owner.

6. BUSINESS INSURANCE: Buy-and-sell policies for 100% business owners with descendants

Facts:

- Mr Molepo is a farmer in Limpopo and he is the 100% share owner of a company in which he conducts all his wheat farming operations.
- Mr Molepo is married to Mrs Molepo. Both their Wills state that on death the remaining spouse must inherit all the deceased's assets. Mr Molepo wants Mrs Molepo to inherit the farming company when he dies. It earns large profits and she has decided she will employ a farming manager on her husband's death.
- The Molepo's have a son Thabo who helps his father on the farm; and a daughter Lerato who is a married teacher.
- The Molepo's want their son to inherit the farming company (upon the last dying spouse's death) which is valued at R10million AND they want Lerato to inherit the same amount of cash.

Solution:

- Thabo enters into a one-sided buy-and-sell agreement with the last survivor of his parents.
- To fund the buy and sell transaction, he insures Mr and Mrs Molepo's lives by way of a LSDB for the amount of R10million.
- On the death of Mr Molepo, Mrs Molepo inherits all the shares and the farming business will continue with Mrs Molepo as sole shareholder.
- Thabo no longer needs to pay the premium on the LSDB policy as a waiver came into effect upon the death of Mr Molepo.
- On the death of Mrs Molepo, the policy proceeds are paid to Thabo as the policy owner.
- In terms of a buy and sell agreement drafted by a Momentum legal adviser, the R10million LSDB policy proceeds must be used by Thabo to purchase the company shares from Mrs Molepo's deceased estate and the executor of the deceased estate must transfer the shares to Thabo once the purchase price has been paid.
- Mrs Molepo's Will stipulates that the R10million cash received as the purchase price for the company must be paid to her daughter Lerato.

- This way the Molepo's wishes have been fulfilled: their son, Thabo, has a farming company worth R10million and their daughter inherited R10million.

Policy Structure:

- Policy owner: Thabo Molepo
- Lives insured: Mr/Mrs Molepo
- Premium payer: Thabo Molepo
- Beneficiary: None

Important: In this example there will be estate duty on the policy as a deemed asset in the last survivor's deceased estate because the buyer, Thabo Molepo, was not a partner in the business at time of death of the surviving life assured business owner.

7. BUSINESS INSURANCE: Buy-and-sell policies for 50% business owners

Facts:

- Mr Vlad and Jack Black each owns 50% shares in a company which imports Vodka from Russia.
- Mr Vlad is married to Mrs Vlad who is employed by this company and she is capable of running this business in partnership with Jack Black if Mr Vlad passes away.

Solution:

- A one sided buy and sell arrangement is implemented between Mr and Mrs Vlad and Jack Black.
Note: Can also be structured as a reciprocal buy-and-sell agreement, where Mr and Mrs Vlad will also be able to purchase Jack Black's shareholding at Jack Black's death if he should die before Mr Vlad and/or Mrs Vlad's death – see next example.
- Mr Vlad's Will provides that on his death his 50% shareholding in the business is bequeathed to Mrs Vlad.
- Jack Black insures Mr and Mrs Vlad's lives with a LSDB for the amount that the 50% shares in the business are worth.
- On the death of Mr Vlad the business will continue with Mrs Vlad and Jack Black as shareholders.
- Jack Black no longer needs to pay the premium on the LSDB as a waiver came into effect on the death of Mr Vlad.
- On the death of Mrs Vlad as the last survivor, the policy proceeds are paid to Jack Black as the policy owner.
- In terms of a buy and sell agreement drafted by a Momentum legal adviser, the LSDB policy benefit must be used by Jack Black to purchase the company shares from Mrs Vlad's deceased estate and the executor of the deceased estate must transfer the shares to Jack Black once the purchase price has been paid.
- Mrs Vlad's estate is now liquid with a cash payment which can be used for estate liquidity or a cash bequest, and Jack Black is the 100% owner of the company.

Policy Structure:

- Policy owner: Jack Black
- Lives insured: Mr/Mrs Vlad
- Premium payer: Jack Black
- Beneficiary: None

Important: Provided all other estate duty exemption requirements have been met, there will be no estate duty on the policy.

8. BUSINESS INSURANCE: Buy-and-sell policies for 50% business owner and spouses who have equal shareholding

Facts:

- Mr and Mrs Richman are shareholders in Rich and Poor (Pty) Ltd.
- They are married out of community of property and each hold 25% shares.
- Mr Poorman holds the remaining 50%.
- The market value of Rich and Poor (Pty) Ltd is currently R20million.
- Mr and Mrs Richman are both involved in the business and the intention is that if one of them should die, the surviving spouse should inherit the deceased spouse's shares.
- It is only upon the death of the last surviving of Mr or Mrs Richman that Mr Poorman should be able to purchase their shares.

Solution:

- Reciprocal buy and sell agreement is entered into between the parties.
- The buy-and-sell will be structured to provide for the following:
 - Upon the death of Mr Poorman, Mr and Mrs Richman will purchase his shares in equal shares.
 - Mr and Mrs Richman will insure the life of Mr Poorman for R10million (50% of R20million business value) to fund this purchase.
 - Upon the death of Mr or Mrs Richman as the first dying spouse, the agreement will simply state that their shares will be dealt with in accordance with their last will and testament.
 - They will then have to ensure that their will is updated accordingly.
 - Upon the death of Mr or Mrs Richman as the last dying spouse, Mr Poorman will purchase the last survivor's total shareholding – which will be the total 50% shares.
 - Mr Poorman will insure Mr and Mrs Richman by using the LSDB for R10million. The policy will only pay out on the death of the last survivor of them.
 - If Mr and Mrs Richman were to die simultaneously, Mr Poorman would purchase each party's 25% shares. The last survivor death benefit will still pay out to Mr Poorman as the policyholder and he can apply this to purchase the total 50% shares from the two estates.

Policy Structures:

Buy-and-sell policy on Mr Poorman's life:

- Policy owners: Mr and Mrs Richman
- Life insured: Mr Poorman
- Premium payer: Mr and Mrs Richman
- Beneficiary: None

Buy and sell policy with the LSDB on Mr and Mrs Richmans' lives:

- Policy owner: Mr Poorman
- Lives insured: Mr/Mrs Richman
- Premium payer: Mr Poorman
- Beneficiary: None

Important: Provided all other estate duty exemption requirements have been, no estate duty will be payable.

Cost comparison:

It would be a relatively inexpensive way to fund the buy-and-sell agreement, in relation to Mr and Mrs Richman, using the Myriad Last Survivor Death Benefit. Let us look at the following to illustrate the affordability of the Myriad Last Survivor Death Benefit:

Both Mr and Mrs Richman are 41 age next birthday and do not smoke. This quote has been done on the basis of level premiums and at best applicable rates. The policy fee has been included but the Interactive discount has not been taken into account.

Last Survivor Death Benefit of R10 000 000

Total monthly premium:	R 777.57
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Individual policies of R5 000 000 on each of Mr and Mrs Richman’s life:

Mr Richman - Monthly premium:	R 1 543.54
Mrs Richman - Monthly premium:	R 1 019.89
Total monthly premium:	R 2 563.43

Last Survivor Death Benefit monthly cost R 1 785.86 saving:

(Note: For illustration purposes only – quotations should be prepared for each client and the premiums and savings will differ from case to case.)

Important note:

The LSDB is a stand-alone benefit that can be added to a Myriad policy. Should clients require additional ancillary benefits, for example, disability, critical illness, impairment benefits, etc, it will have to be added to the policy as stand-alone benefits on each of the lives on that policy; or alternatively, depending on the need that is being addressed by the LSDB, it will be taken out as separate policies. There is not a Last Survivor Disability/Critical Illness/Impairment/Income Protection benefit available.