**RESPONSE TO MEDIA QUESTIONS ON CBI ASSESSMENTS**

**FURTHER COMMUNICATION ON SANTAM’S PROCESS FOR SETTLEMENT**

**OF CONTINGENT BUSINESS INTERRUPTION CLAIMS**

Santam has taken note of a number of enquiries that have emerged following communication issued on 4 January 2021 about the assessment and claims process for contingent business interruption (CBI) claims. Santam would specifically like to clarify the following issues:

1. **Acceptance of the courts’ decisions regarding the proximate cause of the losses resulting in the claims**

Santam has previously stated that it respects the decision of the courts and believes that the recent judgments are sufficient to provide legal certainty in terms of the proximate cause of business interruption losses for policies with the same conditions, characteristics and circumstances to the Ma-Afrika and Café Chameleon judgments.

Santam has consistently said that it was pursuing a speedy resolution of the matter. The Santam case was heard on 8 September 2020 and judgment was issued on 17 November. In a related case involving Café Chameleon and Guardrisk, the Supreme Court of Appeal issued its judgment on 17 December 2020. Only at that point could Santam consider the matter as having reached final legal clarity. Following engagement with its stakeholders, Santam announced on 4 January 2021 that it would start assessing business interruption claims that were specifically impacted by the judgments.

The process of seeking legal clarity was agreed by all parties concerned and therefore it is untrue that Santam has attempted to delay the process.

Whilst awaiting legal clarity, Santam paid out R1-billion in interim relief to 2 500 SMEs that had CBI cover.

Santam and a few other South African insurers are the only insurers in the world that are known to have offered interim relief to clients whilst awaiting final legal clarity.

It is important to appreciate that the CBI matters are global in nature, impacting multiple stakeholders including reinsurers who are effectively the insurer’s insurer. In the key jurisdictions, including the UK, this matter has not yet been finalised due to its complex nature.

1. **Appealing the 18-month indemnity period ruling**

It is important to note that the Supreme Court of Appeal judgment in the Café Chameleon case did not and was not required to deal the with the 18-month indemnity period.

The indemnity period refers to the maximum period (in months) for which a policyholder can claim for losses in a business interruption policy.

The judgment of the Western Cape High Court on the indemnity period applies only to the Ma-Afrika policy. Santam’s view is that the indemnity period is limited to three months as stated in the Ma-Afrika policy. However, the court ruled that, for the Ma-Afrika policy, the indemnity period is 18 months.

The Ma-Afrika judgment does not set legal precedent for the indemnity period for all other policies.

Furthermore, it is critically important to understand the following:

1. Businesses generally have an insurance policy that covers property damage by fires, floods and other perils causing physical damage to the insured premises.

In addition businesses have the option to take out cover for loss of revenue for an agreed period while they are not able to operate because of physical damage to their business premises. This is a standard business interruption policy for physical damage. The indemnity period in the standard cover provided by the business interruption section policy in the Ma-Afrika policy is 18 months. This is not common across all policies. Most policies generally have shorter indemnity periods.

1. Some policies offer extensions to the business interruption insurance which covers loss of revenue caused by interruption to the business by a number of events beyond physical damage, including infectious diseases. The indemnity period in respect of this extended cover is clearly stated as three months in the relevant Santam policies.

It is Santam’s view that the Western Cape High Court erred in its judgment in applying an 18-month indemnity period across the entire policy.

1. **Settlement of claims on a three-month indemnity period**

As previously stated, the 18-month indemnity period applies only to the Ma-Afrika policy and can therefore not be construed as legal precedent, particularly in view of Santam’s intention to appeal this ruling.

The Hospitality & Leisure Division policies that are impacted by the recent court rulings and are currently being processed by Santam specifically carry three-month indemnity periods. It is for this reason that Santam is offering full and final settlements in respect of these claims.

1. **Claims by businesses in liquidation**

Santam would like to clarify that businesses that have incurred claimable losses and have gone into liquidation post March 2020 can still claim against their policies with contingent business interruption extensions.

As set out in Santam’s statement of 4 January 2020, the businesses impacted by the Ma-Afrika and Café Chameleon judgments are encouraged to engage with their intermediaries and provide information required for the assessment of claims.

**ENDS**