



LEG Tunnel Works Clause

International Civil Engineering Insurers' Group
Supported by IMIA and The London Engineering Group

An overview

Introduction

The tunnel clause defines the extent of cover for Tunnel Works provided under a Construction All Risk (CAR) policy.

There is a range of tunnel clauses in the insurance market with broadly similar exclusions but with varying approaches to indemnity, the so called Percentage Limit and Monetary Limit approaches and hybrid versions of the two. The feedback from the London Insurance Market (including brokers, loss adjusters and underwriters) was that there was a general lack of clarity within these clauses, leading to disputes over the level of cover offered.

ICEIG (International Civil Engineering Insurers' Group) set up a sub-committee with the remit to review current tunnel clauses and collate feedback from the various users. Following this it was decided to draft a new benchmark tunnel clause with the aim of providing greater clarity whilst not restricting the level of cover currently available.

The new LEG Tunnel Works Clause (TWC) is the result of this exercise.

Key Facts

The clause is structured into three distinct sections:

- Exclusions
- Limits
- Definitions

It is intended that the clause be inserted as an Exclusion to the Section of the CAR policy covering damage to the works.

1. Exclusions.

The Exclusion section is based on Munich Re Endorsement 101 with amendments to reduce ambiguity. Some elements of cover are brought back following indemnifiable events whilst others remain outright exclusions.

2. Limits.

The TWC provides a choice of limits expressed as either percentage or monetary. There is an important distinction between the two choices, the Percentage Limit is exclusive of and the Monetary Limit is inclusive of all the CAR policy extensions that are applicable to the Section of the Policy that covers damage to the Tunnel Works.

The TWC defaults to a Percentage Limit approach unless a specific Monetary Limit is specified. The clause contains a hierarchy of Limits such that, even in the absence of any values being specified, a limit of indemnity can still be calculated.

The TWC allows, but does not require, different limits to be specified for different Tunnel Works Elements (within the table in the Definitions section) but it is clear that in the event of an occurrence affecting two or more separate Tunnel Works Elements, only the single highest limit will apply. Therefore when specifying limits for each Element, careful consideration must be given to potential loss scenarios where one event impacts on more than one Tunnel Works Element, and not just to the consequences as they affect the particular Element under consideration.

The TWC has been drafted in this way so that it can be applied in a sophisticated or simplified manner.

3. Definitions.

Definitions have been introduced to provide clarity to the key words that have previously been the cause of dispute.

Tunnel Works - The definition is consistent with ITIG A Code of Practice for Risk Management of Tunnel Works and clarifies that the TWC does not apply to the non-structural elements of the tunnel construction.

Period of Insurance - This will be defined in the CAR policy but is included as a defined term here to confirm that the TWC applies to the whole of the period of insurance not just during construction of the Tunnel Works.

Percentage Limit - The formula for calculating the limit of indemnity if this option is chosen.

Percentage Multiplier – The multiplier to be applied to the Original Per Metre Construction Cost. If no value is specified here then the multiplier defaults to 100%.

Immediate Damaged Length – This makes it clear that the presence of water or debris is not deemed as Damage in determining the Damaged Length although indemnity may be provided elsewhere within the CAR policy to cover the costs of removing the water or debris.

Monetary Limit and Original Per Metre Construction Cost - The table enables the Insured and Insurers to agree key costs and limits during the underwriting stage so that the level of cover offered is clear. The table can be amended to suit the application and Tunnel Works Elements (or sub-elements) may be added or deleted as required.

A default calculation is provided so a limit of indemnity can still be calculated in the absence of any values being specified.

4. A note on the use of the term "Not Recommended".

The TWC aims to avoid disputes over determining the Original Per Metre Construction Cost by i) breaking the project down in to various Tunnel Works Elements, ii) specifying a value at underwriting stage and iii) not recommending this approach is used for non-linear (ie stations, caverns, cross passages) or vertical (shafts) Tunnel Works Elements.

It is generally possible to derive an Original Per Metre Construction Cost for linear Tunnel Works Elements (bored and mined tunnels) but this is more complicated for non-linear and vertical Tunnel Works. For these elements a Monetary Limit may be a simpler approach and give a more certain result.