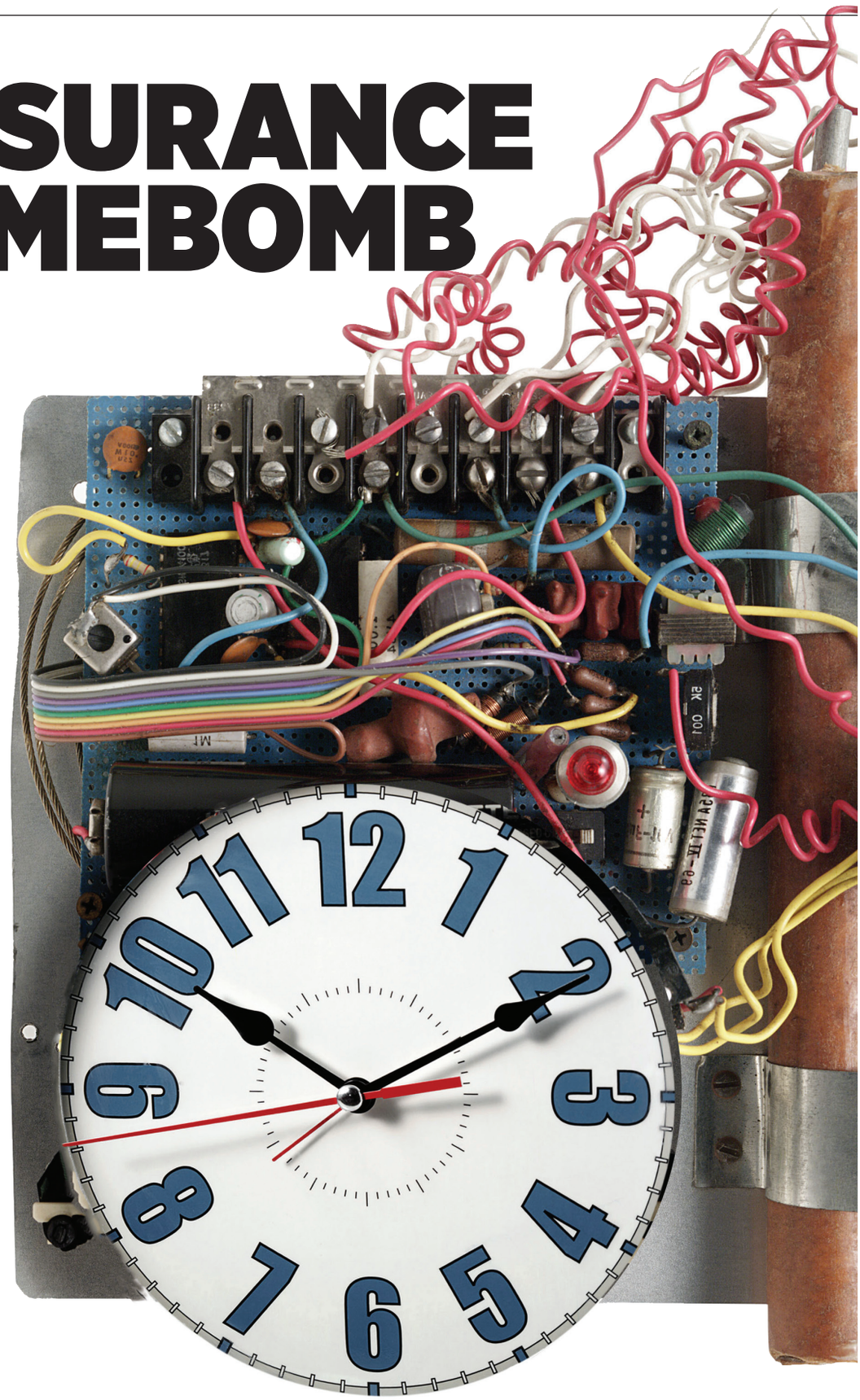
Insurance Act

THE INSURANCE ACT TIMEBOMB

The clock's ticking, and now is the time for the market to get ready for the changes ahead

By John Hurrell



The *Insurance Act* is more than just a legal change — it will reform market practice. New norms need to be established and underwriters, brokers and insurance buyers must work together to establish a common understanding before the Act comes into force.

The *2015 Insurance Act* has been years in the making and is the product of hundreds of rounds of negotiations and legal wrangling over specific clauses. The end product is a fantastic result for all in the market.

If not everyone has followed every twist and turn of the legal process, they can be forgiven. But with the implementation date 12 months away, now is the time for the market to really wake up to the changes that are about the come into force.

The *Insurance Act* represents one of the most significant legal changes in the history of commercial insurance law. The reforms extend well beyond legal process: they will result in substantial changes to market practice as a whole, something that will significantly affect underwriters, brokers and policyholders alike.

From our conversations with the market, Airmic understands many are underestimating this shift. However, if the transition is to be successful, market-wide cooperation is needed to prepare for the changes well in advance of the August 2016 implementation date, and all affected need to recognise this with some degree of urgency.

What will 'fair presentation of risk' entail?
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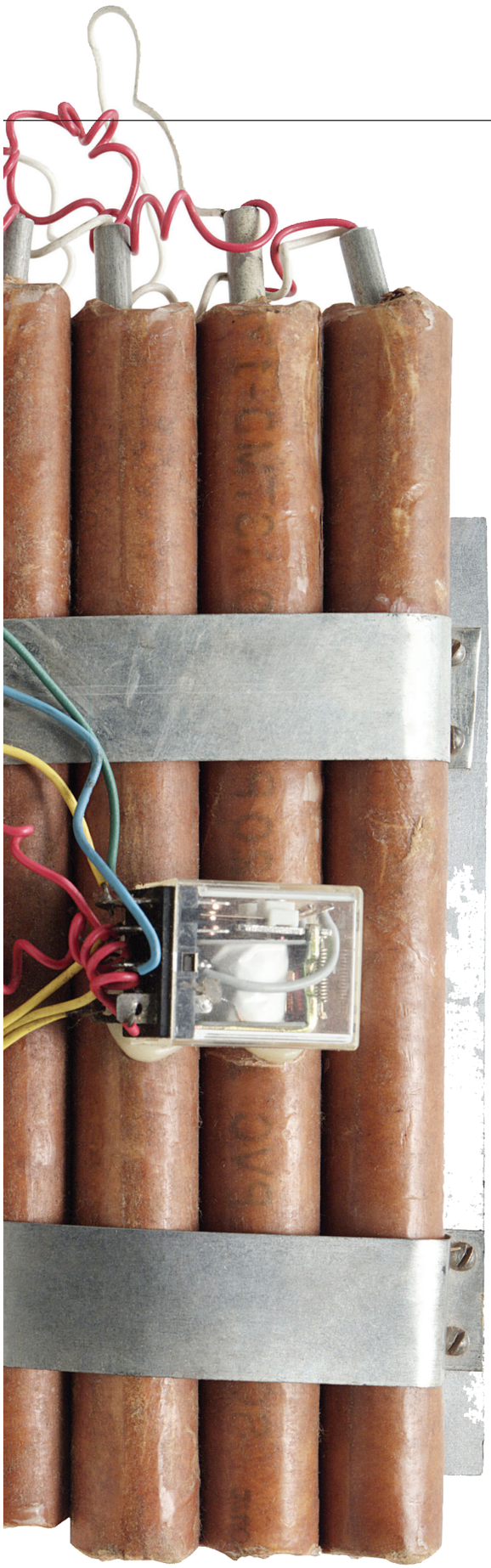

> A common understanding of what market practice should look like needs to be established

Fair presentation of risk

In what way do we expect the Act to affect current market norms? The new disclosure requirements for the 'fair presentation of risk' is one of the most important areas in which we expect to see significant changes to market practice. In fact, they could significantly alter the current underwriting process. In this area, there is a high degree of uncertainty on both sides of the market as to how to interpret the law.

The disclosure changes will place new obligations on both the buyer and the seller of the policies. The buyer, for example, will have a duty to disclose "every material circumstances they know or ought to know", and ensure the information is presented in a "clear and accessible" manner.

Meanwhile, once the buyer has presented their risk information, the onus will then fall on the insurer to make sure they have asked all further relevant questions — before the inception of the policy. They will no longer be able to allege non-disclosure if they fail to follow up on information that a professional and experienced underwriter should have enquired about as a result of information presented by the proposer.

Underwriting process

This has two implications that are particularly notable. First, these requirements will result in a change in the underwriting process, given that underwriters will no longer be able to rely on retrospective (claims) underwriting. This changes a practice that has been in place since the current regime came into force in 1906, and it will require a significant shift in mindset and skillset.

The second change will be one of process. Both sides of the negotiation will have to be satisfied that the full nature of the risks being insured have been thoroughly disclosed and understood by all parties. This will take time, especially during the first few renewal rounds when uncertainty will be high. We are therefore encouraging our members to start the process at least two months earlier. Similarly, underwriters may wish to consider asking questions well in advance of the renewal.

Put together, these changes will mean that underwriting will have to become an iterative process. It is in no party's interest if, at the last minute prior to renewal, the policyholder is faced with a series of requests for more information for which they simply do not have time to adequately respond.

Establish a common understanding

But before that can happen, a common understanding of what market practice should look like needs to be established across the market. These are big changes and given the potential for different interpretations of wording such as "material circumstance" and "clear and accessible", now is the time to start addressing some key questions.

For example, will insurers wish to take a position on the issue of who within the insured will constitute a "knowledgeable person"? What expectations are customers likely to have about insurers' ability to meet the new requirements? And can these be achieved?

Policyholders need to check their insurers are comfortable with their interpretation of what constitutes fair presentation, while insurers should be asking what more they can do to share their views on what they consider acceptable. All sides of the market will need to ask themselves what is an acceptable process for a policyholder to undertake to satisfy a "reasonable search".

The *Insurance Act* undoubtedly places significant new obligations on both the insurer and the buyer. Just as it will not be acceptable for policyholders to be complacent about the extent of their disclosure requirements under the new regime, neither will it be helpful for underwriters to request a vast array of information at the eleventh hour.

We don't expect either of those situations to arise — insurers and policyholders have long-established and healthy relationships. But change brings uncertainty and all players need to work together to ensure we have in place a robust understanding of the new market norm that works for everyone. ■

John Hurrell, chief executive of Airmic