

New Offshore Liability Regime Effective February 26, 2016

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Authors: [Simon C. Baines](#), Tim Syer

The *Energy Safety and Security Act* (ESSA), passed in 2014 by the Harper government, introduced changes to the liability regimes governing Canada's offshore oil and gas industries. These changes are slated to be effective on February 26, 2016, and include increasing the amount of security required to be provided to \$100 million, raising the cap on absolute, or no-fault, liability from \$30 million (\$40 million in the Arctic) to \$1 billion and empowering offshore regulators to issue administrative monetary penalties. We have discussed these changes in greater length in a previous [Osler Update](#).

Since the legislation was passed, the offshore regulators (the National Energy Board, the Canada-Newfoundland and Labrador Offshore Petroleum Board and the Canada-Nova Scotia Offshore Petroleum Board) have issued draft [regulations](#) and [guidelines](#) in respect of the changes implemented by ESSA.

In their current form, the guidelines and regulations indicate that participants in Canada's offshore oil and gas industries will be required to post \$100 million security in respect of *each* operations authorization for the drilling for or development or production of petroleum. While not perhaps initially appreciated, this change in regulatory practice may be one of the most significant changes implemented by ESSA. However, ESSA provides relief from this financial responsibility requirement where participants demonstrate their participation in a pooled fund that is maintained at a minimum of \$250 million.

Participation in a pooled fund that is acceptable to the applicable regulator will satisfy the financial security requirements for any number of authorizations. Moreover, where the same pooled fund is acceptable to more than one regulator, it may satisfy financial responsibility requirements in more than one jurisdiction.

While the establishment of a pooled fund presents a number of challenging commercial issues, its benefits to participants would be significant.

We will discuss these changes in greater detail after they come into effect in upcoming issues of the *Alberta Oil Magazine*, *Alberta Venture* and the *Daily Oil Bulletin*.

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