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# Compliance Audit Program for Maritime Safety and Environmental Requirements

*Risk Management Strategies for Vessel  
Owners, Operators, and Managers*

*Compliance challenges within the maritime industry will increase substantially in the next several years as new regulatory requirements enter into force. The challenges ahead will include requirements for ballast water management, air emissions and fuel oil limitations, new restrictions on garbage discharges, and the U.S. Environmental Protection Agency's ("EPA") 2013 Vessel General Permit requirements. The increased technical, record-keeping, and management requirements associated with these expanding regulatory regimes are being monitored closely by Port State Control officials and will multiply compliance risks and consequences for commercial vessel operators.*

**Blank Rome LLP's Maritime practice group** has extensive experience in successfully representing vessel owners, operators, and managers that have struggled with regulatory compliance issues or have become targets of aggressive enforcement actions. In addition, our Firm specializes in providing proactive compliance counseling to our maritime clients, giving concrete, practical guidance for strengthening their regulatory compliance programs, and minimizing the risk of becoming an enforcement statistic.

To help our clients respond to the expanding scope of safety and environmental regulations, we have developed a Compliance Audit Program to provide comprehensive, targeted compliance counseling on a fixed-fee basis. The program is designed to provide individualized, privileged legal guidance to vessel owners, operators, and managers regarding: 1) current safety and environmental regulatory requirements; 2) new regulatory requirements that have recently become effective or are expected to enter into force in the near term; 3) an analysis of current inspection and enforcement trends in the U.S. Coast Guard's Port State Control program and in the programs of the major port States of the Paris and Tokyo MOUs; 4) concrete, practical recommendations for strengthening compliance programs and Safety Management Systems ("SMS") to both reduce the risk of non-compliance *and* help insulate the vessel interests from involvement in an enforcement action in the event a regulatory deficiency is identified; and, if desired, 5) a targeted audit of a company's current compliance programs with particularized findings for closing any gaps identified and recommendations for strengthening the overall corporate compliance culture.

This program is flexible and scalable; it can readily be adapted to the particularized needs and interests of individual clients. A brief summary of the three basic components of the Compliance Audit Program are provided below.

## Onshore Risk Assessment & Strategies for Risk Reduction

### Review of Current and Upcoming Safety and Environmental Regulatory Requirements with Detailed Recommendations to Minimize Enforcement Risks

This core component of the Compliance Audit Program is a three-hour discussion of the current and upcoming regulatory compliance and enforcement risks confronting the maritime industry, coupled with legal guidance on strategies to minimize those risks. This comprehensive review is designed for DPAs, superintendents, port captains, port engineers, and other shoreside managers who have responsibility for monitoring onboard compliance with safety and environmental regulatory requirements. The presentation includes:

- A review of the current safety and environmental regulatory regimes applicable to the commercial maritime industry, with a focus on the requirements that have historically presented the most significant compliance challenges.
- A summary of the regulatory requirements that have recently become or will soon become applicable to commercial vessels, including the U.S. Coast Guard's ballast water management regulations, the MARPOL Annex VI air emission restrictions and the related low-sulfur fueling requirements, MARPOL Annex V restrictions on garbage discharges and reception facility requirements, and the 2013 EPA Vessel General Permit requirements.
- An overview of recent safety and environmental enforcement actions brought in the United States, and in the major port States of the Paris and Tokyo MOUs, as well as an analysis of the inspection and enforcement trends reflected by those cases.
- The status and trends of MARPOL cases, including of oily water separator cases and whistleblower referrals to the U.S. Coast Guard, with specific recommendations on how to best insulate the vessel owner, operator, and the management company from unscrupulous whistleblower reports.
- Concrete, practical measures to strengthen a company's existing compliance program and/or its SMS, while helping to provide robust legal defenses for the vessel's interests to potential future enforcement actions.

The onshore assessment component of the program is designed to be given in-person to the company's shoreside compliance managers or during scheduled in-house training events. It could also be adapted for delivery via video teleconference in a setting that would be most convenient and cost-efficient for the

company. The onshore assessment itself, if selected as a stand-alone component, does not involve an individualized assessment of a company's existing compliance programs. However, the substance of the discussion is drawn directly from our extensive experience with compliance counseling and maritime enforcement cases, and contains advice and recommendations that have been shown to reduce the incidence of non-compliant operations, while developing a documentation record that will help provide legal defenses for the vessel's interests in the event an enforcement action is initiated. The onshore assessment can also be adapted for use during in-house training events for a company's deck and engineering officers and/or the personnel responsible for providing training to newly-hired officers and crew.

## Compliance Documentation Audit

### Analyze Company's SMS and Shipboard Compliance Documentation

This component of the Compliance Audit Program involves a critical analysis of the relevant sections of a company's existing SMS and a representative sampling of the documentation maintained to demonstrate adherence to the company's SMS and compliance with safety and environmental regulations. The analysis also involves a review of the findings of selected internal compliance audits, Port State Control inspections, or class surveys related to regulatory compliance issues. To ensure accuracy and maximize efficiency, the audit team will conduct the document review and analysis in consultation with shoreside supervisory personnel designated by the company. The primary objectives of the document audit are to evaluate the sufficiency of the SMS and to determine whether there are gaps between the policies and requirements set forth in the SMS and the practices followed by shoreside and shipboard personnel.

Following the Compliance Document Audit, a privileged report containing the audit results will be prepared and submitted to senior company management. If desired, the audit findings can also be incorporated into the onshore risk assessment program described in Section 1 above, along with practical suggestions, tailored to the specifics of the company's existing

compliance programs and practices, to close any documentation or compliance gaps that are identified. The Compliance Documentation Audit will also be offered at a fixed fee, depending on the size of the fleet, and the volume and types of documents required to be analyzed.

## Shipboard Attendance with Superintendents

### Accompany Superintendents during Their Visits to Vessels in Ports

Our experience has demonstrated that the periodic visits by a company's superintendents to its ships are among the most powerful tools available to vessel owners, operators, and managers to monitor and confirm regulatory compliance by shipboard personnel. Accordingly, this component of the program involves members of the audit team accompanying shoreside superintendents during their attendance to a representative number of vessels when they call in port. It would also include interviews of the superintendents, selected shipboard personnel, and the shoreside HS&E manager to discuss the objectives of superintendents' shipboard visits, and an assessment of the results of the superintendents' interactions with shipboard personnel. The ship visits would be preceded by a Compliance Document Audit as described in Section II, above. The inclusion of each of these elements in the Compliance Audit Program will enable the Blank Rome audit team to have full visibility of representative examples of the major components of the company's regulatory compliance program.

Following the Compliance Document Audit and the shipboard visits with the superintendents, a privileged report will be prepared containing the audit results and a specific recommended action plan to address and resolve any compliance gaps or documentation issues identified. This report will be submitted to senior company management and, if desired, the audit findings can also be incorporated into the onshore risk assessment program described in Section I above. These services will be offered on a fixed-fee basis, depending on the size of the fleet, the volume and types of documents analyzed, and the number of ship visits. □

For further information or to discuss how Blank Rome's Compliance Audit Program can be adapted to the needs of your company, please contact one of the following members of the Blank Rome's Maritime practice group.

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