



Association of Inland Container Depot Operators
117, Hunupitiya Lake Road,
Colombo 2, Sri Lanka
Tel: 2438951, Fax: 2438956
Email: johnsd@abcgroup.lk

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BY HAND

Mr. K. D. S. Ruwanchandra
Secretary
Ministry of Ports, Shipping & Aviation
No. 19, Chaithya Road
Colombo 01

Dear Sir

**PROPOSAL FOR THE INCORPORATION OF AN ACT OF
PARLIAMENT TO RECOGNISE CONTAINER DEPOT OPERATORS
AS A SEPARATE SERVICE SEGMENT**

I refer to my letter dated 10th March 2023, and your reply letter MPS/AD/14/01-II dated 13th June 2023, I am submitting the below detailed report on introducing an independent Act of Parliament for the Container Depot Operators.

A. Preamble to the New Bill

The Merchant Shipping Secretariat (MSS) works under the purview of the Ministry of Ports, Shipping and Aviation and issues Licenses to service providers in the shipping sector to act as Shipping Agents, Freight Forwarders, No-Vessel Operating Common Carriers and Container Depot Operators under the provisions of the Licensing of Shipping Agents Act No. 10 of 1972.

Container Depot Operators must be qualified and should be excluded from and within the scope of the previous regulations applicable to other license service providers such as Shipping Agents, Freight Forwarders, Non-Vessel Operating Common Carriers and the need to safeguard and enhance the future development of Container Depot Operators in line with the current day development of the trade. Therefore, it is vital to meet the development trajectory of the Container Depot Operators' trade to be recognized by a separate and distinct Act of Parliament that will register their identity as a separate service provider to the Shipping Trade.

This is required to attract direct investment in building infrastructure and enhancing the quality of service.



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B. Title of the Bill

To provide for the regulation and control of the carrying on of the businesses of a Container Depot Operator's Services by the introduction and operation of a system of licensing, rates and charges for the services rendered by Container Depot Operators and regulating the procedure of imposing and collecting such rates and charges and for matters connected therewith or incidental thereto.

C. Disadvantages of not introducing a new Bill for Container Depot Operators

- i. By not having an independent Act of Parliament for the Container Depot Operators to regulate their business activities by Merchant Shipping Secretariate (MSS), the Container Depot Operators have to face the consequences. Therefore, the Container Depot Operators are not protected under Article 12 (1) of the Constitution which covers equal protection.

Quote

"All persons are equal before the law and are entitled to the equal protection of the law".

Unquote

- ii. By not having an independent Act of Parliament for Container Depot Operators to regulate their business activities by the Merchant Shipping Secretariat, foreign companies are shopping among Container Depot Operators to undercut the rates and charges. Therefore, there won't be any consistency in rates and charges. As a result, USD income to the country will decline considerably. By introducing an independent Act of Parliament for the Container Depot Operators to monitor their business activities through Merchant Shipping Secretariat, can improve the foreign exchange inflow to the country and raise the US Dollar reserves and helps to strengthen the national economy.
- iii. Mega Shipping Lines will bargain with Container Depot Operators on rates and charges by negotiating volume discounts. Therefore, foreign shipping companies will be in a dominant position and thereby they are able to control the Container Depot Business by eliminating competition purely by fixing rates and charges and not by the services.



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- iv. Economical value per square foot rate of the land is very low in this business where major companies can only survive in such a situation. Thereby, a tendency has arisen for small and medium Container Depot Operators to wind up their business activities as they cannot compete with the major business conglomerates. In such circumstances, the major companies take control of the entire Container Depot Operators which will lead to a monopoly situation.
- v. Due to the above fact, there is a high possibility of closing down small and medium Container Depots and there can be a chain of effects as a result, since there are small business entities connected to Container Depots that are earning through providing services, will also be closed down. If this situation occurs, the import containers to Sri Lanka after unloading the cargo, the empty containers have to return to the Port of Colombo for empty storage.
- vi. As a result of the above Item No. (V), Colombo Port Terminals cannot take the maximum usage of the port premises for its core businesses. Since the Port Terminals have been becoming empty container storing yards, transshipment movements in Port Terminals will get badly affected. At the same time, the throughput of Colombo Port will drastically reduce.
- vii. Since the Container Depot Operators are also coming under the provisions of the Licensing of Shipping Agents Act No. 10 of 1972, there are legal disparities between Shipping Agents, NVOCC Operators and Freight Forwarders who are having a bigger scope of activities with Exporters and Importers.

We kindly request to draw your attention to Supreme Court Case No. SC (Spl) LA Application No. 59/2008 filed by the Association of Inland Container Depot Operators. On the direction of the Honourable Chief Justice, the Honourable Attorney General had agreed to amend the existing Act and the Regulations but, up to now it has not been amended. Therefore, it is evident that it was due to the inconsistency of the Licensing of Shipping Agents Act No. 10 of 1972 with the business of the Container Depot Operators.



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- viii. As service providers for Importers and Exporters by Shipping Agents, NVOCC Operators and Freight Forwarders have a vast scope of activities in Shipping and Supply Chain Management whereas the Container Depot Operators are providing services such as handling, storing and repairs of empty containers directly to the foreign Principals which is an entirely different operation. Hence, it is a misnomer to have Container Depot Operators in Licensing of Shipping Agents Act No. 10 of 1972.

When a lawsuit is filed in the Court between Shipping Agents, NVOCC Operators, and Freight Forwarders by Importers and Exporters, Container Depot Operators are also getting badly affected although there is no direct involvement. We kindly request to draw your attention to Supreme Court Case No. S. C. (SD) No. 1/2023 to S.C. (SD) No. 5/2023 recently filed by the Joint Apparel Association.

Therefore, the Director General of Merchant Shipping (DGMS) is unable to make decisions for Container Depot Operators immediately and as a result, decision-making is getting delayed indefinitely. This anomalous situation affects the development of Container Depot Operators and their infrastructure to cater to the needs of modern-day trade, shipping and logistics requirements. Due to this issue, it is imperative to have an independent Act of Parliament for the Container Depot Operators.

- ix. By introducing an exclusive Act of Parliament for Container Depot Operators, it will protect the rights and the interests of the Container Depot Operators' business without conflicting with other service providers who are regulated in the Merchant Shipping Act No. 10 of 1972. In the absence of Container Depot Operators being recognized, and law being provided, it could not make a distinct impetus to the traditionally primitive Container Depot Operators trade.



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D. Advantages of introducing a new Bill for Container Depot Operators

- i. Container Depot Operators generate income in United States Dollars (USD) which are received from foreign countries.
- ii. Since the Container Depot Operators generate foreign currency (USD), this will contribute to the forex reserve in Sri Lanka which is much needed for Sri Lanka's economy in today's context.
- iii. If a new, independent Act of Parliament for Container Depot Operators is introduced, all of the above-mentioned disadvantages will be advantages.

I hope the above information will facilitate and justify the necessity of introducing a new independent Act of Parliament for THE Container Depot Operators.

I respectfully request you to submit this report to the Honorable Minister of Ports, Shipping and Aviation, Mr. Nimal Siripala De Silva to take this up with the Honourable Cabinet of Ministers at his earliest convenience to introduce the above new Act of Parliament for the Container Depot Operators.

Please feel free to communicate with me, if you need any further information.

Thank you

Yours faithfully



JOHN SHIRAN DISSANAYAKE

Chairman

ASSOCIATION OF INLAND CONTAINER DEPOT OPERATORS

Email: johnsd@abcgroup.lk

CC: Ms. C. N. Pankadurugama - Legal Officer
Ministry of Ports, Shipping & Aviation

Received
[Signature]
22/6/2023

