

Intervention Report

The MSE Forum mechanism of addressing regulatory issues pertaining to MSEs

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1. Background

One of Enter-Growth's themes is policies and regulations, which includes encouraging and supporting the MSE Forums¹ in the project Districts to identify and solve regulatory issues pertaining to MSEs. To build the capacity of the MSE Forums in this regard, Enter-Growth has conducted technical sessions on how to address regulatory issues, including advocacy, for the MSE Forums as well as at experience sharing meetings with all four Forums and at the District general stakeholders' meeting organised by each Forum. Enter-Growth has also provided ongoing advice and support at the regular Forum meetings and to specific members so that they can develop and maintain this mechanism of addressing regulatory issues. In relation to this, Enter-Growth has integrated the mechanism with other main activities facilitated by the project such as LOCA² and value chain development (VCD).

This intervention report is about the MSE Forums and to what extent they are working as a mechanism for addressing regulatory issues. It is based on Enter-Growth's observations, project intervention reports as well as a report by ILO's Senior Specialist on Enterprise Policy³.

2. Enter-Growth action and plan

The definition of regulatory issues in this context is issues/problems/constraints with a specific regulation in a certain business sector, but it can also apply to more than one sector. Regulatory issues are identified in LOCAs and VCDs or directly by Small Business Associations (SBAs), Chambers of Commerce or individual enterprises. The idea is that identified issues are brought to the MSE Forum, which includes stakeholders that can take action to solve the issues. Complex issues may require additional research, which Enter-Growth can support and facilitate, in order to be presented to decision makers. Regulatory issues that cannot be solved by the MSE Forum members can be referred to other relevant organisations in the District, Province or at the

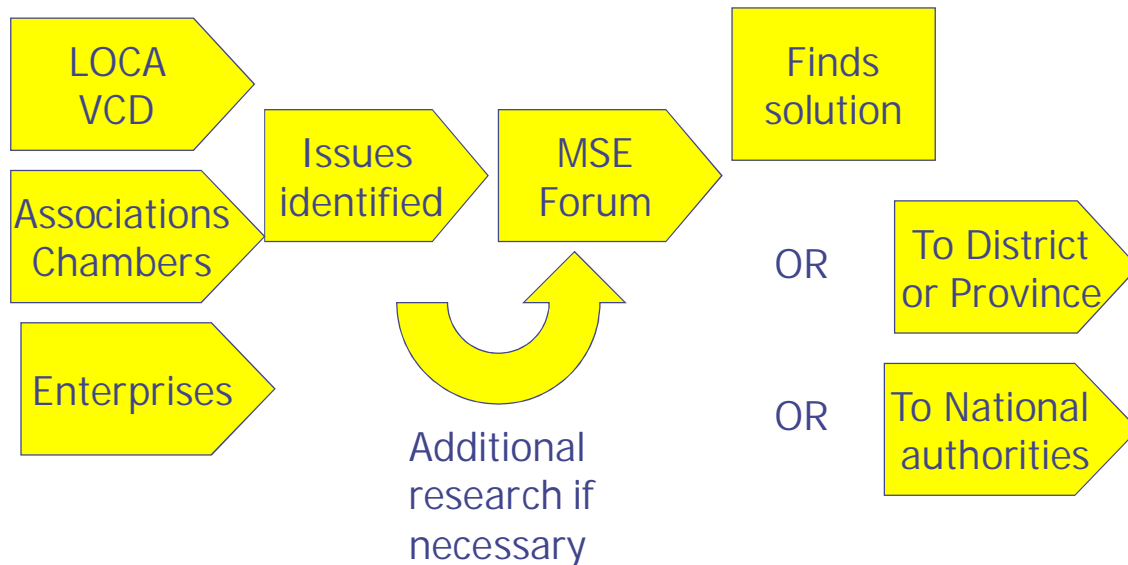
¹ The District MSE Forum is a District-level public-private dialogue forum facilitated by ILO Enter-Growth. Members come from the District government administration, private sector associations, BDS providers and other development partners. The purpose is to exchange information and address issues that concern MSEs, especially market, service and regulatory constraints.

² LOCA is known as PACA (Participatory Appraisal of Competitive Advantage) elsewhere in the world. It is a product of Mesopartner. See www.mesopartner.com.

³ *Intervention Report Micro and Small Enterprise Forums*, MDF, December 2008; *Intervention Report Thambuttegama Traders' Association*, Enter-Growth, March 2008; *Improving the Local Business Environment in Sri Lanka: A Roadmap for MSE Forums*, Graeme Buckley, ILO EMP/SEED, September 2008.

National level in different ways. For example, at the National level, there is a Forum for Enterprise and Export Development, which has been set up by the Ministry for Enterprise Development and Investment Promotion (independently from Enter-Growth) where issues can be addressed directly by the Minister and the relevant authorities. Issues can also be taken up directly with the National authorities concerned. Further, MSE Forum members can link to the National level through their headquarters, mother organisation or other networks, which can put more pressure on the authorities. The mechanism and its supposed process are described in the flow chart.

Flow chart. The MSE Forum mechanism of solving regulatory issues pertaining to MSEs



3. What actually happened

Within this general framework, each MSE Forum has had its own approach and activities. The mechanism has therefore developed in different ways and to different degrees.

Anuradhapura

The MSE Forum in Anuradhapura has been very active in addressing regulatory issues, of which some have also been brought to the Forum for Enterprise and Export Development at the National level. One reason for this high degree of activity is that SBAs, both members and non-members of the Forum, have been very active in raising regulatory issues and the Forum has also encouraged them to bring their issues to its meetings. In addition, there are key members in the MSE Forum who see the potential of addressing the issues, for example the District Secretary and the Chamber of Commerce. The latter has successfully linked to the National level through the Federation of Chambers of Commerce and Industry to make progress on some of the issues, see below.

Enter-Growth encouraged early on all the MSE Forums to form complementary sub-committees to address regulatory issues in a more systematic and

sustainable manner. Anuradhapura MSE Forum followed this advice and has since long a committee for regulatory issues, in which the Chamber of Commerce has the leading role and which also includes the District Secretary. The committee meets after the regular MSE Forum meeting where the issues are addressed. The committee reports to the Forum for feedback and support.

More recently, the District Secretary established three Divisional level MSE Forums, which represent several Divisions, in Thambuttegama, Medawachchiya and Vilachchiya Divisional Secretariats. The chairman of the respective forum is the Divisional Secretary and other members are relevant public officers, SBAs and the Chamber of Commerce. They are meant to address regulatory issues identified in the Divisions with the aim of solving those that can be solved at that level. The other issues are referred to the Anuradhapura Chamber of Commerce (being the District MSE Forum Secretariat) which presents them to the Forum.

Polonnaruwa

In Polonnaruwa, the MSE Forum receives issues from entrepreneurs, business associations, LOCAs and VCDs either through the District Chamber of Commerce, the Secretariat of the MSE Forum, or other members. After a slow start, the Forum is now actively addressing regulatory issues with some achievements. It has recognised its potential and there is no other mechanism to address the issues related to business people in the District.

The Chamber of Commerce has a very important role in the mechanism but is an unstable organisation and needs to be strengthened as Forum Secretariat.

Kurunegala

Several issues have been addressed by the Kurunegala MSE Forum, mainly identified in VCD exercises. Generally, the District MSE Forum has been recognised as the mechanism to address issues related to businesses. Recently, the Forum informed and encouraged all the Divisional Secretaries to collect issues from the field, if possible solve the issues within the Division and send the others to the Forum Secretariat to discuss at the Forum meetings. The MSE Forum has also plans to contact small business associations and obtain issues from them. Further, the idea is to train the Samurdhi Project Manager and Human Resource Development Officer of the Divisional Secretariat on how to collect and analyse information in this regard.

One of the members of the MSE Forum, the Small Enterprise Development Division of the District Secretariat (SEDD), has been very active in identifying regulatory issues through different activities. At the Service Fair 2007⁴, organised by the Forum and Enter-Growth in cooperation, SEDD invited MSEs to the MSE Forum stall to tell about their regulatory problems. In total, 60 issues were collected, including business registration, labour regulations, income tax

⁴ Service fairs were large events that combined stalls of business and financial services providers, small businesses, and entertainment. See also *Case Study: MSE Service Fairs in Sri Lanka*, Matthias Herr, Enter-Growth, January 2009 on www.entergrowth.com/library

and environmental regulations, and SEDD addressed these by providing individual consultation and guidance to the MSEs as a follow-up after the Fair.

Puttalam

Several issues, identified mainly in LOCA and VCD exercises and from business associations, have been presented at the Puttalam MSE Forum. However, the Forum itself has not been so active in addressing regulatory issues but instead, worked through the District Industrial Committee (DIC), which includes more government decision makers (not only District Secretary but also all Divisional Secretaries). Considering the low success rate in comparison with the other three Districts, it is questionable if this has been effective. Further, unlike the other MSE Forums, the Puttalam Forum feels that the regulatory issues that are identified cannot be addressed at the District level and should be addressed at the Provincial or National level instead. In this sense, Puttalam District is at disadvantage since all Provincial authorities are located in Kurunegala and the mechanism of bridging issues to Provincial and National levels is still very weak. Another problem is that the District Secretary was changed and the Forum was without District Secretary for six months. Nevertheless, in some cases, where the District Secretary had the authority to solve the issue, he individually took action.

4. First signs of impact

Since the MSE Forums were formed, they have in total identified and addressed 38 regulatory issues, of which 11 have been solved. As indicated above, the degree of activity and the way of addressing issues differ from District to District and consequently the rate of success.

Table 1. Success rate of the mechanism in the four Districts

Forum	Identified issues	Solved	Success rate
Kurunegala	7	3	42%
Anuradhapura	13	5	38%
Polonnaruwa	7	2	29%
Puttalam	11	1	9%
Total	38	11	29%

The Anuradhapura MSE Forum has identified and solved the highest number of issues but Kurunegala has a higher success rate. The Puttalam Forum has identified many issues but only solved one, see below issue on clay mining. Further, the implementation of that solution was only partly effective since it was solved through a circular of the District Secretary, which in some cases is questioned by the Police, especially when enterprises cross divisional borders with the clay that is subject to environmental laws issued by the Ministry for Environment. One of the issues solved by Kurunegala was also identified in Puttalam and Polonnaruwa but only the Kurunegala Forum contributed to its final solution, even though the other MSE Forums also tried to address it.

The MSE Forums have worked more actively on some of the issues and their prioritisation was based on different, rather random criteria. Some issues were prioritised because they could be easily solved by for example one of the Forum members. Other prioritised issues, on the contrary, are very complex and difficult to solve but are seen as major constraints on MSEs in the District and therefore important to address, for example land and tax issues. As mentioned in the introduction, some issues are solved at the District or Provincial level whereas others have been brought to the National level.

Table 2. Examples of solved issues⁵

Identified issue and involved stakeholders	Procedure and Solution
<p>1. Limited irrigation water. In Polonnaruwa District, irrigation water was not made available for ornamental fish breeding, which is a fast expanding sector. Also, farmers' association opposed to the idea.</p> <p>Stakeholders: Farmers' Association, District Association of ornamental fish growers, Irrigation Department, Mahaweli Authority, Minister of Agriculture</p>	<p>This problem was first identified in a LOCA and later brought to the MSE Forum, by the District association of ornamental fish growers. The Deputy Minister of Agriculture and the District Secretary could take action on the matter. First, farmer organisations were informed about the value of ornamental fish farming and that very little water is consumed for this type of business. Later, the Minister of Agriculture approved to make water available for ornamental fish growers.</p>
<p>2. Carpenters in Anuradhapura not able to register their business. This creates problems in their day to day business and is an obstacle to expansion.</p> <p>Stakeholders: Carpenters' Association in Medawachchiya and Nachchaduwa, District Secretary, Forest Department</p>	<p>The issue was brought to the MSE Forum by carpenters from two Divisions in Anuradhapura. It was difficult for them to register their businesses since they were unable to obtain the required documents from the Forest Officer and since they did not have land title deeds. The District Secretary, the Chairman of the Forum, intervened and collaborated with the Forest Department and as a result, 28 of the affected carpenters registered. As legal businesses they are now able to access markets outside their villages and they report less harassment by rent-seeking officials.</p>

⁵ For more detailed information, see the annex with all identified issues and their progress.

3. Quarantine certificates for flowers difficult to obtain for cut flower growers.

The lengthy procedure is a constraint to cut flower growers who export.

Stakeholders: Cut flower growers/exporters, Export Development Board, Quarantine Department

4. Clay mining limitations for pottery makers. In Puttalam District, there is a regulation against mining clay, aimed at avoiding environmental problems due to large-scale mining for bricks and tiles production.

Stakeholders: Pottery makers, District Industry Committee, District Secretary

5. Land and tax issues in the Mahaweli area. Land and tax issues are affecting the enterprises in the Mahaweli Area, which is administered by the Mahaweli Authority (a Government agency which administrates the country's largest irrigation scheme):

- a) Delayed issuance of long-term lease agreements to business people
- b) Tax anomalies
- c) Tax rates on land and buildings are automatically increased annually.

Stakeholders: Thambuttegama Traders' Association, Export Development Board, Land Ministry, Mahaweli Authority

6. Security checks and clearance at the airport. The lengthy procedure is a big problem for perishable goods exporters.

Stakeholders: Cut flower growers/exporters, Export Development Board (EDB), Minister of External Trade

7. One day duration of tickets to archaeological sites. Anuradhapura and Polonnaruwa Districts are part of Sri

One of the VCD exercises identified the problem and a feasibility study for common collection centres in Kurunegala and Puttalam was conducted by EDB, a member of the Forum. Funds were allocated and one collection centre opened in Kurunegala, which simplifies and makes the procedure faster for obtaining quarantine certificates for export of cut flowers.

Following a LOCA, the MSE Forum through the District Industrial Committee addressed an issue on the clay mining restrictions. The District Secretary, the Chairman of the Forum, made an exception through a circular for small-scale traditional pottery producers, so they could continue their craft, allowing them to mine two cubic meters a month, which has little impact on the environment. However, this circular was not generally accepted by the Police since the limitation originates from a law by the Minister of Environment.

A traders association in Thambuttegama Division, which is a member of the MSE Forum, has together with the Forum addressed these issues in different ways. First, they turned to the National Forum for Enterprise and Export Development, which organised a meeting with the involved stakeholders at the Export Development Board in Colombo. Some issues were partly solved. When there was no further progress, the association staged a local protest directed towards the Mahaweli Authority. Finally, the Mahaweli Board of Directors addressed some of these issues and decided in their meeting to issue the delayed long-term leases to commercial lands and to fix the rates on land and buildings to 4% (it was currently 6% and increased annually).

This was brought up by exporters and growers of cut flowers in a VCD in Kurunegala. The Provincial branch of EDB brought the problem to the National Forum for Enterprise and Export Development. The Ministry of External Trade is now preparing to open a "Green Entrance" at the international airport, for faster security checks on perishable goods. Meanwhile, the exporters can have their goods checked and sealed at their starting location.

This problem was also identified by ornamental fish farmers in Polonnaruwa and fruit and vegetable exporters in Puttalam Districts.

The issue was identified in a VCD on Tourism in Anuradhapura and brought to the MSE Forum. The issue was presented by the Local Tourist Association in the

Lanka's "cultural triangle", which has archaeological sites visited by tourists. The validity of tickets for sites in the "cultural triangle" was just one day, discouraging tourists from staying longer, which had a negative impact on the hotels, restaurants, etc.

Stakeholders: Local Tourist Association, Export Development Board, Director of the Cultural Triangle

National Forum for Enterprise and Export Development. The Cultural Triangle Authority has now extended the validity of the tickets to three days.

The issues that are not yet solved have made different rates of progress where some of them are close to a solution whereas others will require more time and effort by the MSE Forum members and other stakeholders in the Districts. Some of the issues are now "passive", i.e. the MSE Forum does not work on them anymore because they are either not realistic or desirable to solve. Examples of the former are lower interest rates on loans and limited electricity outreach in rural areas. Examples of the latter are environmental or health permits that protect the environment or consumers but are complicated for MSEs to follow. These issues are sometimes addressed in other ways such as awareness raising and training of MSEs or public actors.

One issue which is complex in character but seen as very important for the development of MSEs is land ownership and deeds. In Anuradhapura and Polonnaruwa Districts, this is particularly difficult due to their location in an area of cultural heritage. Both public and private stakeholders have highlighted the problem of obtaining land deeds and its serious impact on the small business environment. This issue will require a lot of time and effort to be solved but there has been some progress. The long-term objective is to improve the regulatory procedure of obtaining land deeds, which today includes 26 different public officers in different authorities. In the meanwhile, the MSE Forum in Anuradhapura is mainly focussing on finding a quick solution to the most urgent problem – to process the thousands of outstanding deed applications. The Forum made considerable progress on this when the District Chamber of Commerce, with help from the Federation of Chambers of Commerce and Industry, organised a meeting with the President. The President appointed a committee headed by the Land Commissioner to "solve" the problem and also committed to the establishment of a special department under the Land Commissioner. Similarly, the issues on taxes and land pertaining to the Mahaweli area are very complex and are serious obstacles for the MSEs located there. One of the members of the Anuradhapura MSE Forum, the Thambuttegama Traders' Association, has been very active regarding these issues, see table 2, which has resulted in some real progress.

4. Conclusions, lessons learnt and recommendations

The experiences to date show that the strategy of addressing regulatory issues pertaining to MSEs in the District MSE Forums has to some extent proven effective. Improvements have been realised, new issues are identified and there is continuous progress on many of the identified issues. However, the MSE Forums have different approaches and some are much more active in making use of this opportunity and developing the mechanism than others. The experience is also that the MSE Forums solved many issues in the beginning of their existence. After this period of "quick wins", they had more complex issues to address, such as problems in obtaining land deeds, which require much more time and involvement of more stakeholders both in the Districts and at the National level.

When the MSE Forum mechanism was surveyed⁶ by ILO's Senior Specialist on Enterprise Policy, he concluded that: "the MSE Forums are an excellent vehicle for promoting public-private dialogue and problem identification in the area of business environment reform. They have great potential for influencing the way laws and regulations are *administered* and, in some cases, can actually promote dialogue on the *reform* of business related policies, laws and regulations".

As concluded in this statement, MSE Forums and the District/Province level have the ability to solve issues and especially problems of administrative, procedural and implementation character. Actual laws and regulations are more difficult to change and need often to be brought to the National level. From this perspective, Enter-Growth should probably have assisted the MSE Forums to focus more on how to improve the implementation and administration of regulations rather than on the regulations themselves.

The sub-committee formed by the MSE Forum in Anuradhapura has been a very fruitful development of the mechanism and allows for a certain focus on identified issues. This type of sub-committee is a very good support to the MSE Forum, which is still responsible but has delegated the ongoing work and follow-up to some of the members with relevant competence and skills. Therefore, it is surprising that the other MSE Forums have not formed similar committees despite encouragement and support from Enter-Growth.

It is interesting that both Anuradhapura and Kurunegala, which are fairly large Districts, are encouraging the Divisional level actors to address regulatory issues within the Division, when this is possible. It is too early to conclude if this works well, but it fulfils the principle of subsidiarity where issues are solved on the lowest government level possible in order to increase efficiency. Also, the Divisions are closer to the community and therefore interact with the MSEs to a greater extent than the District level, which should provide an even better opportunity to identify regulatory issues. Whether this is the case, is still to be seen.

The main threat to this mechanism of addressing regulatory issues pertaining to MSEs is the sustainability of the MSE Forums and the Forums' ability to address these issues in the future even if they continue to exist. There is a strong indication that the MSE Forums as such will continue to exist beyond the project period and it also seems that at least three of the Forums have the intention to continue to address regulatory issues. This was confirmed by the intervention report on the MSE Forums⁷, stating that:

- MSE forums are sustainable, independent bodies with equal representation (public/private/NGOs).
- They have a mandate to facilitate improvements in the MSE sector and meet regularly to do so.
- The MSE forums are successful in brokering solutions to regulatory problems, both through direct interventions by high-placed authorities in the Districts (though these are often short-term solutions) as well as by channelling District-level issues to National/Parliamentary levels.

⁶ Graeme Buckley: *Improving the Local Business Environment in Sri Lanka: A Roadmap for MSE Forums*, ILO, EMP/SEED, September, 2008.

⁷ Intervention Report Micro and Small Enterprise Forums, MDF, December 2008

However, the report also concluded that there are limitations to what can be achieved. One threat to the mechanism is that the degree of activity and success depend on certain members of the Forum. The District Secretary plays a very important role and much depends on how active, committed and well-connected she or he is. Moreover, the District Secretary may intervene directly but sometimes only with a short-term solution which does not always lead to permanent solutions (see the example of clay mining in table 2). Also, the input, i.e. the identification of new issues by representatives of enterprises is crucial to the mechanism. Though, more recently it seems that the role of the MSE Forums to address regulatory issues in at least Anuradhapura, Polonnaruwa and Kurunegala has become more cemented since the Forums see themselves, and are seen by others, as the place for solving issues pertaining to businesses. They therefore have the legitimacy required to continue.

One of the main challenges has been to establish ongoing experience sharing between the MSE Forums as well as joint initiatives, for example together advocating for reform. Closer coordination between the Forums should result in “replication” of solutions and practises across Districts or collaboration on common issues and hence in a much more effective mechanism. This was also concluded by ILO’s Senior Specialist in his report, mentioned above: “For some issues, there will be considerable benefit for the MSE Forums to share experiences (perhaps at specific quarterly meetings) and to develop joint initiatives”. Therefore, it is discouraging that despite several experience sharing workshops as well as technical training, where collaboration between Districts has been highlighted as a great opportunity, this has not taken place.

Another challenge with great potential is the linking up to the National level to solve regulatory issues. The Forums have been somewhat successful in this, one such example being the Forum for Enterprise and Export Development, which has been used by some of the MSE Forums. Another is how the Anuradhapura Chamber of Commerce involved the Federation of Chambers of Commerce and Industry, which in turn managed to bring the attention of the President to the land issue. However, there is much more potential for National linkages that are not yet tried. Further, the MSE Forums should more often collect information about the issues identified, making it easier to prove the negative impact on MSEs and to lobby for change among decision makers. This is specifically true when bringing the issues to the National level.

One important weakness of the mechanism is the lack of structure in terms of systemised priorities and processes (objectives, research, progress follow-up, etc.). The intervention report on the MSE Forums highlights this weakness as well. The MSE Forums could be more successful in addressing regulatory constraints by having a more consistent approach, for example by following the OECD checklist for regulatory impact assessment:

1. Is the problem (that regulation is meant to address) correctly defined?
2. Is government action justified?
3. Is regulation the best form of government action?
4. Is there a legal basis for regulation?
5. What is the appropriate level (or levels) of government for this action?
6. Do the benefits of regulation justify the costs?
7. Is the distribution of effects across society transparent?

8. Is the regulation clear, consistent, comprehensible, and accessible to users?
9. Have all interested parties had the opportunity to present their views?
10. How will compliance be achieved?

Altogether, the most important achievement is that public-private dialogue has become a reality through the MSE Forums, and that it is a mechanism for addressing MSEs' regulatory issues. It indicates that such dialogue can be productive and result in business environment improvements that are of direct benefit to local MSEs.

The learning experiences of Enter-Growth in promoting this mechanism can be summarised as follows:

- The MSE Forums constitute a good place for addressing regulatory issues and the Forums have developed the legitimacy to do so. However, the mechanism must be further improved and strengthened in the existing Forums.
- The mechanism is unstable since it depends on a few champions in the MSE Forum.
- Only one of the MSE Forums has successfully developed and enhanced the mechanism with a sub-group for better focus and result. Two Forums are encouraging complementary mechanisms at the Divisional level.
- Some issues can be solved quickly and these quick wins can work as motivators to continue with the more complex issues that take longer time to address.

In order to be more successful and sustainable in the long-term, it is recommended that MSE Forums:

- Work more systematically when addressing regulatory issues and conduct more research to back up their cases.
- Use existing networks of Forum members to bring issues to the National level.
- Immediately start collaborating and sharing experiences between the Districts in order to replicate solutions and practises as well as come to joint action. Given the role of Chambers of Commerce in the Forums, the Federation of Chambers of Commerce and Industry may be well-place to play a role here.
- Focus more on how to improve the process of implementation and not only on the regulations as such.