

**Sixth Meeting of the
The Economic and Employment Council**

Agenda Item 4 : Review of Cinema Licensing

Purpose

This paper presents the findings and major recommendations of the review of cinema licensing⁽¹⁾. The review recommends, inter alia, greater use of private certification in the licensing process, modernizing the licensing requirements, strengthening the relationship with cinema trade, and enhancing public awareness of the licensed cinema premises.

Concerns of the cinema industry

2. The cinema trade has expressly raised concern on the need to –
 - cut down on the lead time to obtain a new licence and approval for alteration works;
 - simplify the licensing procedure; and
 - bring the licensing requirements in tune with the development of the industry.

As reflected from a sampling case exercise, an average of 10 months was taken to obtain a new cinema licence. For alteration works in licensed cinemas, a lead time of 5 months was taken to secure consent, and another 11 months to complete and obtain approval from the Licensing Authority.

The existing licensing regime

3. The licensing process for cinemas largely comprises of the following activities –

⁽¹⁾ The Subgroup on Business Facilitation of the Economic and Employment Council commissioned a review of cinema licensing last year and the Business Facilitation Division of the Economic Analysis and Business Facilitation Unit commenced the review work in November 2004.

- (a) Inspection of the premises and issuing licensing requirements by the Food and Environmental Hygiene Department (FEHD), Buildings Department (BD) and Fire Services Department (FSD)⁽²⁾;
- (b) Issue of the revised licensing requirements due to layout change, if any;
- (c) Carrying out of fitting-out works by the cinema operator;
- (d) Certification by professionals and contractors on building safety and fire service installations respectively;
- (e) Inspections by FEHD and FSD to confirm full compliance; and
- (f) Rectification of defects identified in the course of inspections.

4. The Director of Food and Environmental Hygiene is the Licensing Authority authorized by the Secretary for Home Affairs under the Places of Public Entertainment Ordinance. In addition to enforcement actions, the Licensing Authority advises applicants on licensing requirements and checks the completed works prior to the issue of a cinema licence. In case of any revision to the layout plan, the Licensing Authority and stakeholding departments will revisit the licensing requirements and advise the applicant of any revision required. **Annex 1** depicts the existing licensing process.

Recommendations

5. An efficient licensing process requires effective interactions and close co-operation of government departments, the applicant and its agents including Authorized Persons⁽³⁾ (AP) and registered specialist contractors (RSC). Timely action of the respective parties will speed up the overall time taken for licensing.

6. This review has focused on activities (a), (b) and (e) outlined in para. 3 above and any other areas where government departments could improve upon without compromising public safety.

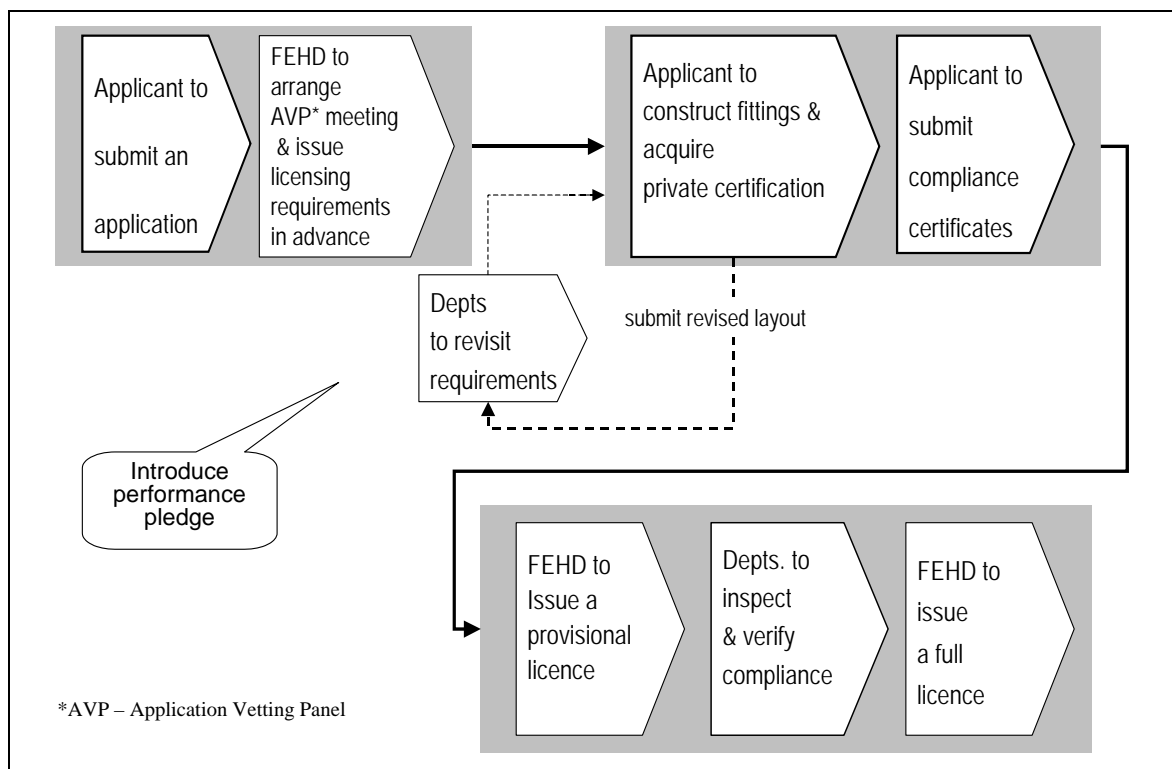
⁽²⁾ Inspection by the Electrical and Mechanical Services Department is required if laser equipment is installed in a cinema.

⁽³⁾ Authorized Persons are registered with the Buildings Department who are qualified to perform duties and functions of an authorized person in accordance with the Buildings Ordinance. The authorized persons' register contains a list of architects, engineers and surveyors.

Speeding up the licensing process through private certification

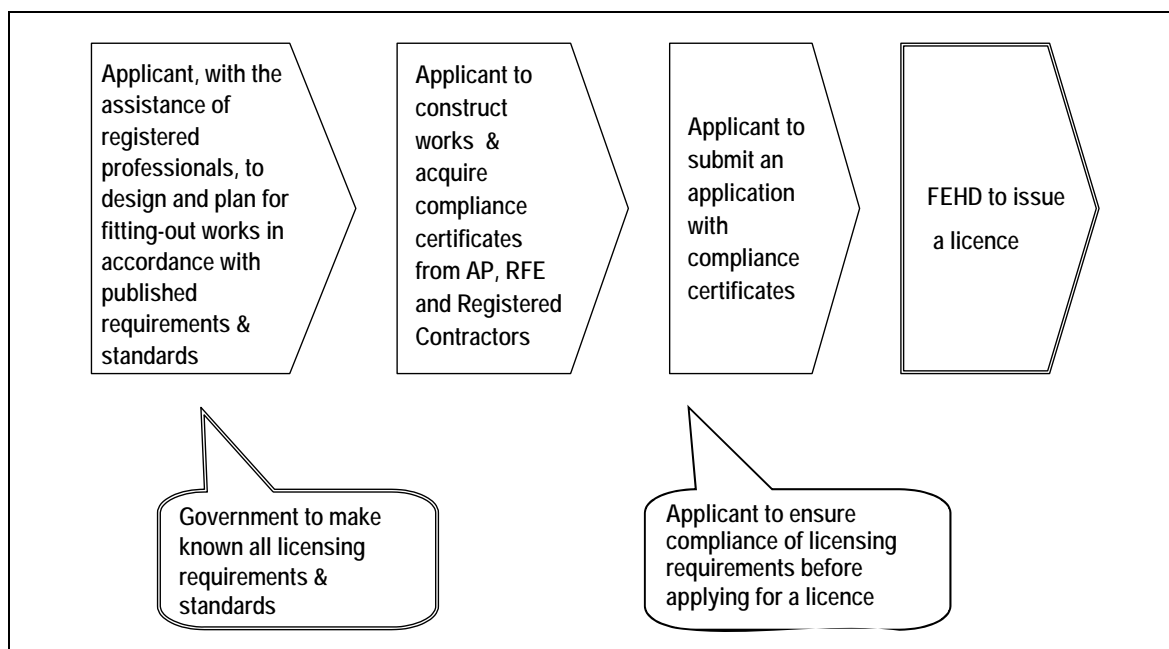
7. There has been a track record of letting registered personnels, through their high standard of professionalism and efficiency, come up with economical yet effective services in checking and confirming compliance of regulatory requirements. We believe that this well-tested practice of private certification should go further to cover cinema licensing.

8. As an immediate solution, we **recommend** that the Government instigate a provisional licensing regime, similar to that of restaurant licensing, by which a provisional licence is issued upon receipt of certification of compliance by AP and RSC on building safety, hygiene, fire safety and ventilation aspects. The Government will subsequently check the private certification through audit / site inspections before the issue of a full licence. Based on the findings of the case sampling exercise, it is estimated that a cinema may legally commence business in half the time normally taken to obtain a cinema licence. We also **recommend** that performance pledges be introduced on the processing time if applicants revise layouts and prior approval is needed.



Interim solution for new applications

9. In the long run, we **recommend** the introduction of a new licensing framework by which professionals in the private sector will play a more prominent role in both advising applicants on licensing requirements and certifying compliance. The cinema trade may engage AP and Registered Fire Engineer (RFE) to work out the licensing requirements of the premises and to plan, design and fit out the premises according to published standards and guidelines. The Licensing Authority will issue a licence upon receipt of certification of compliance by AP, RFE and RSC. This longer-term solution will give applicants even greater control of the time to commence business and the Government will focus more on setting and enforcing licensing standards. The following is a schematic view of the proposed long term solution –



Long-term solution for new applications

10. There are however pre-requisites to the proposed long-term solution. This proposal will require –

- the publication of a set of comprehensive licensing requirements and conditions, covering hygiene, ventilation, building and fire safety aspects. The requirements should include formulae, criteria and approaches for addressing the more common site-specific issues;
- putting in place a mechanism for the registration, administration and sanction of “Registered Fire Engineers” who can be delegated

authority by the Director of Fire Services to issue fire safety certificates; and

- strengthening the penalty clauses under the respective legislation for cinema licensing and the registration of APs and RSCs to ensure that there is adequate deterring effect on non-compliance or fraudulent certification.

Speeding up approval for alteration works

11. There has been an increasing trend for cinemas to carry out alteration works to meet the changing demand of customers. In the last three years, the number of applications for alteration works nearly doubled the number of new licence applications.

12. Alteration works can take different forms, ranging from minor fitting-out, removal of a few seats to splitting houses and entire redevelopment of the premises. At present, there is no performance pledge for giving consent for these works to commence nor approving the finished works. We **recommend** that the Government improve on the process by –

- Rationalizing the need for approval of alteration works so that minor works could be exempted from the consent/approval process;
- For major works (e.g. redevelopment) where business will be suspended, giving operators the option to terminate the existing licence such that the provisional licensing regime could be adopted;
- For other works which affect part of the business and there are no fire safety implications, issuing approval upon receipt of the required certification from AP; and
- Introducing performance pledges for the consent/approval process for alteration works.

Modernizing the licensing requirements

13. The review has highlighted a persistent gap between the expectation of the cinema industry and the public service delivery. The industry desires flexibility in the regulatory regime by which enterprising installations different from the prescribed requirements could be used, so that it would better respond to the needs of customers and to keep pace with the development in other leading cities. The industry has also called for a regular updating of the licensing requirements and conditions to dispense with outdated items⁽⁴⁾.

14. We **recommend** that stakeholding departments regularly update their respective licensing standards, in the light of the experience of licensing applications and the development of the cinema industry. A central database can be set up to advise on common problems and “lessons learnt” in the licensing process for sharing among the licensing front-line staff, professionals and the trade.

15. We also **recommend** the issue of a “multi-year licence”.

Strengthening partnership with the cinema industry

16. Enhancing the efficiency of the licensing process requires cooperation of all parties concerned. The review has identified a need to strengthen the relationship between the Licensing Authority and the cinema industry and to align the understanding of the licensing requirements and conditions amongst parties concerned. We **recommend** that a forum comprising representatives from stakeholding departments and the cinema industry be established to facilitate exchange of views on issues of mutual concern at regular intervals. There should also be regular technical sessions between stakeholding departments, registered professionals and registered contractors to review the licensing standards.

⁽⁴⁾ Cinema operators cited the following examples to illustrate the “outdatedness” of the licensing requirements. These include whether there is still a need for –

- (i) battery rooms as most lightings are backed by the uninterrupted power supply;
 - (ii) self-closing toilet doors;
 - (iii) independent staircase leading to the ground level; and
 - (iv) the limit of 3 m distance from each seat to the gangway.
- These items have been resolved in the course of the review.

Enhancement of public awareness

17. To alert cinema-goers of the need to patronize licensed establishments, we **recommend** that –

- (a) the list of licensed cinemas be uploaded on the web-site of the Licensing Authority; and
- (b) the licence number be displayed at eye-level of each ticketing booth or printed on tickets.

Other improvement measures

18. The review has also identified a list of other improvement measures to enhance the efficiency and effectiveness of the licensing operation. Details are at **Annex 2**.

Comments of EEC Subgroup

19. Initial recommendations were reported to the Subgroup on Business Facilitation on 25 April. Subgroup Members endorsed the direction of greater use of private professional practitioners in the licensing process. They also urged for a more transparent system where the regulatory/licensing authorities reveal internal guidelines on processing licensing applications so as to facilitate businesses in meeting regulatory requirements.

Comments of the stakeholding bureau / departments

20. The stakeholding bureau /departments agree to the implementation of provisional cinema licensing. They also support other improvement recommendations, including specifically –

- (a) Implementing measures to streamline the alteration work approval process and introducing performance pledges;
- (b) Greater use of private certification in the approval process for alteration work;

- (c) Multi-year licensing;
- (d) Establishing regular forums for exchange views with the trade and professionals;
- (e) Periodically updating licensing requirements and standards and developing a central database on common problems and “lessons learn” for sharing among the licensing staff, professionals and the trade;
- (f) Uploading a list of licensed cinemas onto Government web-sites and demanding the display of licence numbers at ticket booths or on tickets; and
- (g) Other measures as listed in Annex 2.

21. Provisional licensing can be implemented promptly as it requires amendments only to subsidiary legislation. The Home Affairs Bureau is preparing for amendments to subsidiary legislation with a view to making a submission to the Legislative Council before the end of the year.

22. Due to the implications of the proposed long-term licensing framework, the Licensing Authority requires more extensive consultation with the cinema trade and professionals prior to a decision on the way forward. FSD is exploring the feasibility of introducing “Registered Fire Engineers” to advise on fire safety requirements and certify fire safety compliance.

Discussion with Industry

23. The Hong Kong Theatres Association welcomes provisional licensing and the long-term solution as such measures would significantly speed up the licensing process. They are confident that AP and RSC are capable of defining and interpreting the licensing requirements as well as certifying full compliance.

24. The Hong Kong Institute of Architects, the Hong Kong Institution of Engineers, the Hong Kong Institute of Surveyors, the Hong Kong Registered Ventilation Contractors Association and the Association of Registered Fire Service Installation Contractors of Hong Kong support private certification in the licensing process. On the long-term solution, some

professionals however prefer to follow the current practice whereby the Licensing Authority defines and issues licensing requirements on a case-by-case basis, thus mitigating disputes on the interpretation of licensing requirement. Their views are at **Annex 3**.

Advice sought

25. Members are invited to give their views on the findings and the recommendations.

EEC Subgroup on Business Facilitation
June 2005

Existing Cinema Licensing System

The Food and Environmental Hygiene Department (FEHD), as delegated by the Home Affairs Bureau (HAB), is the Licensing Authority (LA) for cinemas. As at 31 December 2004, there were 59 licensed cinemas. Although the number of cinemas had dropped from 121 to 59 since 1989, the number of screens had increased from 170 by 16% to 197 as a result of the emerging multi-screen cinemas. Such evolution necessitates alteration works to be carried out in licensed cinemas. Twelve new licence applications and 23 applications for alteration works were received in the last three years.

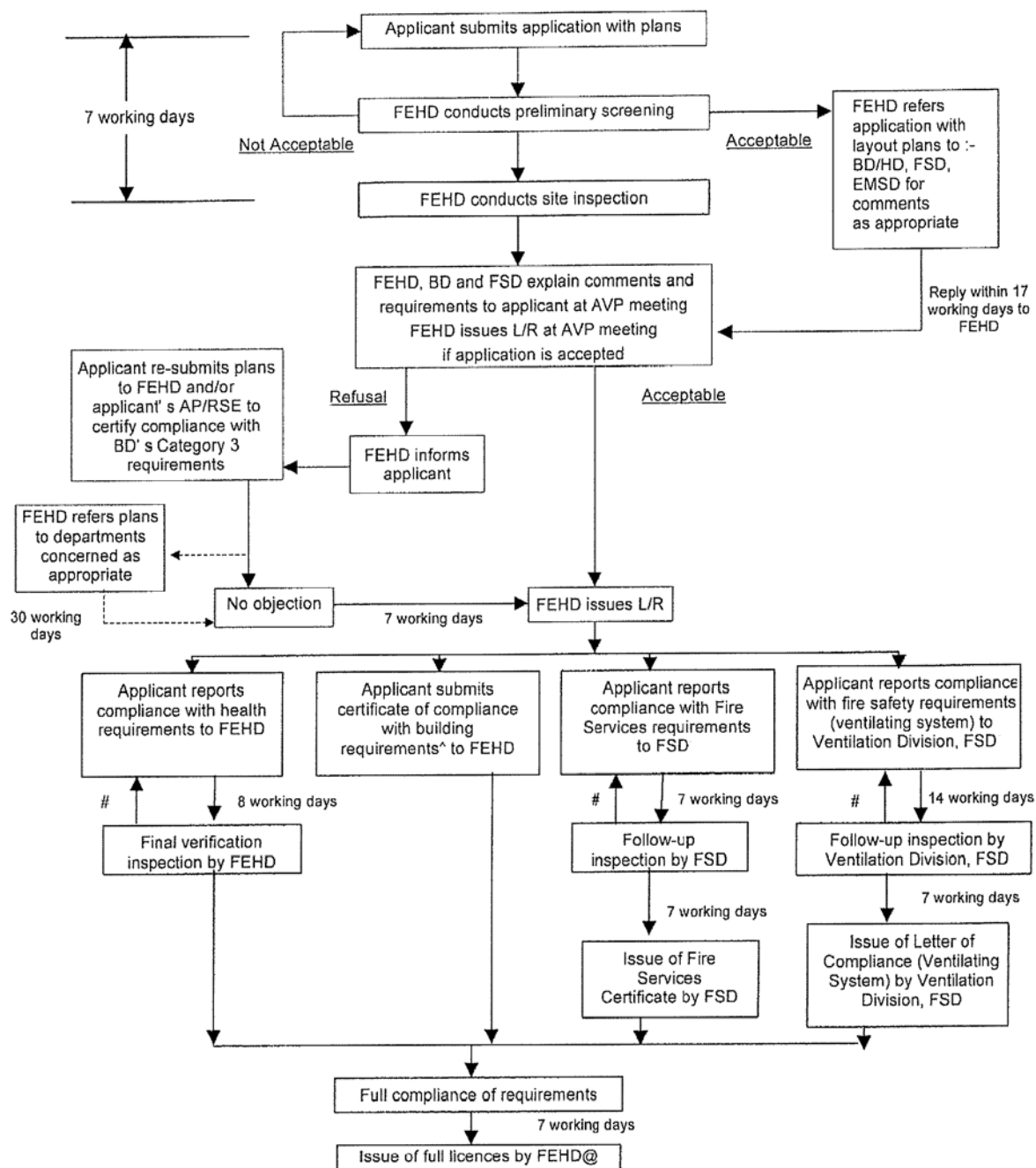
2. The licensing system aims at protecting public health and safety. An applicant needs to satisfy the health, fire and building safety requirements specified by FEHD, FSD and BD respectively prior to the issue of a cinema licence.

3. The process of an application for a new cinema licence has 3 main components –

- ◆ Stage 1 – Issue of licensing requirements
- ◆ Stage 2 – Checking compliance by respective stakeholding departments
- ◆ Stage 3 – Issue of a 1-year licence by LA upon receipt of confirmation of compliance by respective stakeholding departments

A process flow diagram of the licensing regime is overleaf.

Flow Chart Showing Processing of Application For Places of Public Entertainment Licence (Cinema/Theatre)



Legend

: If there are still outstanding requirements
 @ : BD randomly audits certificate of compliance
 ^ : Including supporting documents required by BD
 AP : Authorized Person
 RSE : Registered Structural Engineer
 L/R : Letter of Requirements

FEHD : Food and Environmental Hygiene Department
 BD : Buildings Department
 HD : Housing Department
 FSD : Fire Services Department
 AVP : Application Vetting Panel

Other Improvement Measures

The review also **recommends** that –

- (a) Stakeholding departments to review items that need to be shown on the layout plan and elaborate on situations where approval of alteration or change in layout is needed.
- (b) Stakeholding departments to replace paper-based communication with e-mails or fax.
- (c) The Licensing Authority to step up legal actions on unlicensed business. Consideration should be given to shorten the statutory notification period of a Prohibition Order and a Closure Order and advancement of the effective days¹.
- (d) The Licensing Authority to simplify the procedures for granting permission for transfer of licence.
- (e) Applicants to highlight changes in revised layout plans when seeking further advice on licensing requirements.
- (f) The Licensing Authority to do away with “bring-up” inspections² prior to the issue of a licence.
- (g) Under the interim solution, stakeholding departments to issue licensing requirements in advance to allow for a fruitful discussion at the Application Vetting Panel Meeting.

¹ Under the PPE Ordinance, notice of intention should be served 14 days before applying to the court for a Prohibition Order (PO) or a Closure Order (CO). The PO and CO will be effective on the 8th day after being served.

² “bring-up” inspections are visits to the licence applicant every 3 months to check work progress. This is considered unnecessary as it is the responsibility of the applicant to finish fitting-out works as soon as possible and to report compliance.

Discussion on the Cinema Licensing

Discussion sessions and focus groups were conducted with cinema operators, their Authorized Persons (APs), The Hong Kong Institute of Architects, the Hong Kong Institution of Engineers, the Hong Kong Institute of Surveyors, The Hong Kong Registered Ventilation Contractors Association and The Association of Registered Fire Service Installation Contractors of Hong Kong in order to collect views on private certification.

Cinema operators' views

2. The Hong Kong Theatres Association welcomed the provisional licence and the new licensing framework as this would speed up the licensing process. They were confident that APs, registered fire service installation contractors and registered specialist (ventilation) contractors were capable of defining and interpreting the licensing requirements as well as certifying full compliance.

APs' views

3. APs supported self-certification. It is a system similar to that for provisional restaurant licensing, whereby the Licensing Authority serves as the “final checker” to ensure that safety standards are met prior to the issue of a full licence. APs however pointed out some pre-requisites to make the system work –

- (a) ***Uniformity of standards*** – Hong Kong Institute of Engineers and Hong Kong Institute of Architects worried that individual government officials might apply different yardsticks in the course of audit inspections although professionals had already certified compliance, thus resulting in disputes. Both professional bodies stressed the importance of making known the government standards and details of licensing conditions and requirements.

- (b) ***Liabilities*** – Hong Kong Institute of Architects was keen to see a clear definition of the extent of liabilities to be borne by each party should a problem arise. There was a suggestion that main contractors should be required to certify workmanship of their work while APs should confirm compliance of requirements on design¹.

4. On the feasibility of APs advising on licensing requirements direct, all professional bodies had expressed reservations. They would prefer to follow the current practice whereby the Licensing Authority defines and issues licensing requirements on a case-by-case basis. This would mitigate disputes on the interpretation of licensing requirements and give them greater assurance on the work to be done.

5. Third party certification is a system by which compliance of a project is certified not by the APs who carry out the work, but by independent accredited professionals. This would remove the Government's role in final checking for compliance. Both cinema operators and Hong Kong Institute of Architects however believed that third party certification would not speed up the licensing process and would result in additional cost.

Registered contractors' views

6. The Hong Kong Registered Ventilation Contractors Association and the Association of Registered Fire Service Installation Contractors of Hong Kong welcomed self certification by professionals and registered contractors who carried out the works. They were also confident that their members were acquainted of the Government's licensing standards and requirements. They would accept full liabilities should any problem arise from their work. Both Associations did not express views on certification by third party certifiers.

¹ For reference, compliance of Fire Services requirements in the case of provisional restaurant licensing is certified by registered contractors and endorsed by APs. But it is not the case for the certification on ventilation, which does not require APs' endorsement.