

Aiming to clear advocacy confusion

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A BILL making it clear that parties to an arbitration agreement may be represented by someone of their choice was introduced into the Legislative Council yesterday.

Moving the second reading of the Arbitration (Amendment) Bill 1989, the Attorney-General, Mr Jeremy Mathews, said the position was in line with practices in other major centres of arbitration.

Arbitration is essentially a private contractual arrangement for the resolution of a dispute other than by court proceedings.

Mr Mathews said under common law a party in an arbitration might be represented by someone of his choosing whatever his profession.

But doubts had been cast on the common law position in Hongkong as a result of sections 44, 45 and 47 of the Legal Practitioners Ordinance, he said.

Section 44 provided that any unqualified person acting as a barrister should be guilty of an offence and section 45 provided that no unqualified person should act as a solicitor, he said.

Section 47 provided that no unqualified person should prepare certain legal documents.

Some lawyers argued that only solicitors and barristers admitted in Hongkong should have a right of audience and others maintained the provisions did not prevent anyone from appearing in arbitration proceedings.

Confusion existed and the situation was clearly unsatisfactory, Mr Mathews said.

He said the bill, if enacted, would remove the uncertainty by clearly stating that sections 44, 45 and 47 of the Legal Practitioners Ordinance did not apply to arbitration proceedings and parties were free to choose any persons to represent them.

Debate on the bill was adjourned.