Second Reading

THE FOUNDATIONS BILL
(No.X of 2012)

Speech of the Hon. Attorney General, Yatindra Nath Varma

Mr Speaker, Sir,

“Moving the Nation Forward” is the motto of Government and in that endeavour, we shall leave no stone unturned.

The introduction of the Foundations Bill is more than welcome and the Hon. Vice Prime Minister and Minister of Finance deserves all our congratulations.

This new piece of legislation will add to the island’s offering as a centre for international wealth management and attract new business from high networth and institutional investors. It will provide our financial services industry with an additional tool to explore new business opportunities.

Mr Speaker, Sir,

The Foundations Bill provides for the establishment of foundations which are an alternative to trusts as vehicles for holding assets.

Mauritius has a reputation as a credible and trustworthy International Financial Centre of substance. As foundations offer greater familiarity and comfort for individuals and families from civil law countries, we will be offering a flexible alternative to that of the traditionally used trust.

Foundations, Mr Speaker, Sir, have long been associated with Civil Law jurisdictions, Austria, Switzerland, Panama and Malta. Recent years, however, have seen many Common Law jurisdictions such as the Bahamas, Jersey, Isle of Man and Guernsey introduce legislation allowing the establishment of foundations.

Foundations were originally used for charitable or religious purposes. In modern times they have quickly evolved to become a much sought financial product,
especially for wealth management, tax planning, asset protection and succession planning.

Mr Speaker, Sir, what do we actually mean when we refer to foundations?

There are a number of jurisdiction-specific features of foundations, but broadly speaking, a foundation is a self owning legal entity separate from its founder, officers and beneficiaries, and which has a Council that is responsible for its administration. The foundation may hold assets in its own name, is capable of suing and being sued and usually has the rights, powers and privileges of a natural person. This is in contrast to a trust which does not have separate legal personality, does not beneficially own assets and cannot be made personally liable for trust debts.

A foundation is created by a founder who dedicates property to the purpose of the foundation and sets out in the charter or its articles how the assets should be administered and how they are to be dealt with. A foundation may have named beneficiaries or be established for charitable purposes. The particularity of the Mauritian foundation is that its objects may be charitable or non charitable or both and may be to benefit a person or a class of persons, or to carry out a specified purpose, or both. It is a widely held view that International users, especially those from Civil Law jurisdictions, may find it easier to understand and use the foundation than the trust.

Indeed Mr Speaker, Sir, it has been observed that International users prefer the foundation because of its similarity to corporate structures with which they are more familiar. Indeed in a number of jurisdictions there is a requirement for a foundation to be registered and this would be the case in Mauritius as well. Also the Charter of the foundation is quite similar to the constitution of a company and the foundation council members are akin to a board of directors. Furthermore there is scope for flexibility regarding provisions such as re-domiciliation and winding-up.

That said, Mr Speaker, Sir, there are also striking resemblances between foundations and trusts and, in their basic form, foundations serve a very similar purpose to private and charitable trusts. The founder may be considered to have a similar role as the ‘Settlor’ who makes an endowment for the benefit of beneficiaries.
Mr Speaker, Sir, I must also highlight that, the Foundations Bill fully satisfies the required international standards for tax transparency and exchange of information requirements provided for under the Exchange of Information Framework for the purposes of the Peer Review group of the OECD (Organisation for Economic Cooperation and Development), as foundations are required to keep adequate records.

To sum up, Mr Speaker, Sir, I would say that foundations are very flexible and adaptable vehicles which no doubt would appeal to a broad spectrum of clients. This new financial product would offer more options to our financial services industry.

I will end, Mr Speaker, Sir, by simply saying that this piece of legislation lays the foundation for the expansion and further development of our financial services industry.

Thank you.