Mr. Speaker, Sir, I move that the Certificate of Character Bill (No. XVII of 2012) be read a second time.

Mr Speaker, Sir, the main object of this Bill is to repeal the Certificate of Morality Act and to provide for the issue of certificates of character. The Bill provides, *inter alia*, that –

(a) a person who has been convicted of a specified minor offence, been given a non-custodial sentence in specified cases or been granted a free pardon in respect of an offence shall be deemed not to have committed the offence, for the purpose of being issued a certificate of character;

(b) a person may make an application for a certificate electronically;

(c) an applicant cannot generally make more than one application in his name within 3 months from the date of issue of the certificate;

(d) an employer cannot require a worker to apply for a certificate within one year following the submission of a certificate by that worker to him;

(e) an applicant shall pay an appropriate fee for the issue of a certificate;

(f) the Director of Public Prosecutions may delegate any of his powers under the Act to the Commissioner of Police or any other public officer.

This Bill, Mr Speaker, Sir, has been drawn up following extensive consultations with the Prime Minister’s Office, the Director of Public Prosecutions, the Commissioner of Police and other relevant stakeholders, who have all made valuable inputs. It has become clear recently that the Certificate of Morality Act had to be repealed to provide for a more workable regime. The sheer number of
applications for certificates of morality had made it difficult for the Office of the Director of Public Prosecutions to process such applications within a reasonable period of time. For instance, the number of applications being processed by the Office of the Director of Public Prosecutions has risen from 37,815 in 2007 to 51,622 in 2011.

Mr Speaker, Sir, I shall now deal with the specific provisions of the Bill.

The purpose of issuing a certificate is to attest as to the previous conviction(s), if any, of a person. Law and morality are different, in the sense that whatever may be legal may not necessarily be moral. In that regard, it is felt that the term “morality” is no longer appropriate. Since a person who has no previous convictions is said, in law, to be of “good character”, it is proposed to restyle the certificate of morality as “the certificate of character”. As such, the term “certificate”, in clause 2 of the Bill means a certificate of character.

Clause 3, Mr Speaker Sir, provides that the DPP may delegate his powers under this Act to the Commissioner of Police or any other public officer (both defined as ‘delegated person’ under clause 2 of the Bill). In fact, under the present Certificate of Morality Act, the DPP is responsible for processing applications and issuing certificates of morality. This has been retained in the present Bill, subject to the DPP being entitled to delegate his powers.

Mr Speaker, Sir, clause 4 deals with applications for certificates of character. Sub-clause (2) provides that any person wishing to obtain a certificate in his name shall apply to the Director of Public Prosecutions, or to the delegated person, in such form and manner as the Director of Public Prosecutions may approve. Where an application is made by a citizen of Mauritius, it shall be accompanied by the original and 2 photocopies of the applicant’s birth certificate, identity card and, where applicable, marriage certificate. In the case of a non-citizen, the application shall be accompanied by the original and 2 photocopies of the applicant’s birth certificate, passport and, where applicable, marriage certificate. An application fee of 100 rupees will be levied, the aim being to prohibit and lessen the burden (financial and non-financial) on the Director of Public Prosecutions or a delegated person.

Over the years, Mr Speaker, Sir, it has been noted that an employer would require his employee to provide a certificate every 3 months, presumably, to ensure
that the employee still has a clean record or does not have a criminal conviction which may jeopardise his position in the employer’s organisation. However, very often, the employee still has a clean record and it is felt that processing additional applications from the same applicant-employee for the same purpose entails a waste of resources for the police officers who have to verify the information submitted on the application form anew, and for the DPP who has to proceed applications and issue the certificates anew. There is also a financial implication to such additional applications, in that additional certificates have to be printed and issued.

Therefore Mr Speaker, Sir, the Bill provides, in clause 4(5), that an employer cannot require a worker to apply for a certificate within one year following the submission of a certificate by that worker to him. Nevertheless, as per clause 4(3), an employer may, with the written consent of his worker, apply for a certificate in the latter’s name within that period, on the condition that the employer pays a fee of 300 rupees and submits the relevant documents. That clause, Mr Speaker Sir, is aimed at prohibiting multiple applications for certificates within a short span of time and lessening the burden on the Director of Public Prosecutions, a delegated person and the worker, while allowing an employer in appropriate cases to ascertain if the worker is still of good character.

Mr Speaker, Sir, clause 4(6) of the Bill also provides that a person may make an application for a certificate of character electronically. Mr Speaker, Sir, I shall, at Committee Stage, move an amendment to clause 4(6) of the Bill to provide that an application for a certificate of character may be made electronically in such form and manner as may be approved by the DPP, and that the application fee for an electronic application will be prescribed by regulations to be made by the Attorney General. This provision Mr Speaker, Sir, is in line with Government’s promotion of the use of information and communication technologies for the delivery of government services. Security issues will have to be addressed however before this provision can be given effect.

Mr Speaker, Sir, the Bill provides that a person who has been convicted of a specified minor offence, been given a non-custodial sentence in specified cases or been granted a free pardon in respect of an offence shall be deemed not to have committed the offence, for the purpose of being issued a certificate of character.
In fact, Mr Speaker, Sir, I have been informed that a large majority of employers in the private sector have recently adopted the practice of requiring their employees and prospective employees to produce a Certificate of Morality. It has been reported that many people are facing difficulties where following a conviction, sometimes dating back several years, they were ordered to pay a small fine, were absolutely or conditionally discharged. These persons, Mr Speaker, Sir, must go through the lengthy process of petitioning the President for pardon. This process is lengthy because, on receipt of a petition, the President refers it to the Commission on the Prerogative of Mercy which in turns requests the Commissioner of Police (and sometimes, the Probation Office) to make a report on the petition. Some of these persons even have recourse to the services of law practitioners.

In order to ensure that persons who have been convicted of certain minor offences will not face difficulties in society, especially when seeking employment, clause 5(2) of the Bill, Mr Speaker, Sir, provides that a person –

(a) who has been granted a free pardon in respect of an offence;

(b) who has following a conviction for a crime or misdemeanour –

(i) been given an absolute discharge;

(ii) been given a conditional discharge and complied with the terms and conditions of the discharge; or

(c) who has, more than 5 years before making an application, been convicted of a crime or misdemeanour and fined up to 5000 rupees or made subject of a probation order in specific cases

will be considered as not having been convicted of that offence in Mauritius. Clause 5(2) of the Bill, Mr Speaker, Sir, is nevertheless subject to the person, in whose name a certificate will be issued, not having at any point in time, been convicted of certain serious offences listed in the Second Schedule to the Bill, for example, Murder, Manslaughter, Offences under the Dangerous Drugs Act, to name but a few.

Secondly, Mr Speaker, Sir, under the present Certificate of Morality Act, persons who have been convicted of serious offences listed in the Second
Schedule to the Act and including *inter alia*, Murder, Child Trafficking, Offences under the Prevention of Terrorism Act and Dangerous Drugs Act, are not eligible to a certificate. It is proposed to follow the UK system by issuing a certificate listing out any previous conviction(s).

It is apposite here, Mr Speaker, Sir, to refer to the system that obtains in the UK. A ‘Criminal Conviction Certificate’ or ‘Criminal Record Certificate’ may be issued under the Police Act 1997. A ‘Criminal Conviction Certificate’ is a certificate which gives the prescribed details of every conviction of the applicant, or states that there is no such conviction. A ‘Criminal Record Certificate’ is a certificate which gives the prescribed details of every conviction and caution relating to the applicant, or states that there is no such matter. Where the applicant has a clean record, the mention ‘NONE RECORDED’ is stated on the certificate.

Clause 5(4) of the Bill will thus ensure that any person who has been convicted of any crime or misdemeanour, shall be entitled to a certificate of character, which subject to clause 5(2), will list out his previous convictions.

Mr Speaker, Sir, there is a further provision in the Bill which is aimed at prohibiting multiple applications for certificates within a short span of time and lessening the burden (financial and non-financial) on the Director of Public Prosecutions or a delegated person. Clause 5(6) provides that no certificate of character shall be issued in the name of a person within 3 months from the date of issue of a certificate, unless there has been a material change in the circumstances of that person, or where the subsequent application is made by an employer.

Mr Speaker, Sir, Clause 6 of the Bill deals with offences whilst clause 7 provides for the immunity, civil and criminal, of all those involved in the process leading to the issue of certificates of character. Under clause 8, the Attorney General is empowered to make regulations for the purposes of the Act. Clauses 10 and 11 deal, respectively, with consequential amendments to other enactments where reference is made to a certificate of morality, and savings and transitional provisions with respect to certificates of morality already applied for or issued before the coming into operation of the Act, once passed.

Mr Speaker, Sir, the primary objectives of the Bill are –
(a) to ensure that citizens of this country are not hampered in their everyday life by not being able to obtain a certificate attesting as to their criminal record(s), or by being issued with certificates still refer to previous convictions for certain minor offences, or by being required, on numerous occasions, to submit certificates to the same employer within a short period of time; and

(b) to lessen the financial and non-financial constraints on the DPP or a delegated person.

I would particularly like to thank Dr the Hon. Prime Minister for his support and guidance throughout the preparation and finalisation of the Bill. A special note of sincere appreciation goes to my officers and Sir Victor Glover, our Legal Consultant, who have worked diligently in the preparation and finalisation of the Bill.

With these words, Mr. Speaker, Sir, I commend the Bill to the House.