

LEGAL OPINION

*On the Validity, Regulatory Authority, and Continuing Operative Force
of the Banking License Issued to*

IFB INTERNATIONAL FINANCE BANK LTD.

by the Anjouan Offshore Finance Authority

Reference: AOFA-LO/2026/L1149, May 2026

Subject: International Banking License L1149 - IFB International Finance Bank Ltd.

EXECUTIVE SUMMARY

This Opinion is rendered on the validity and continuing operative force of the international banking license numbered L1149 (the "License") issued to IFB International Finance Bank Ltd. (the "Bank") by the Anjouan Offshore Finance Authority ("AOFA") under Section 8 of the Offshore Finance Authority Act, No. 003 of 2005 of the Autonomous Island of Anjouan.

The Opinion concludes that the License is valid in its inception, has not been invalidated by any subsequent legal, constitutional or political event, and remains in operative force as at the date of this Opinion. The conclusion rests on a convergence of distinct bodies of law, each of which independently supports it. Where multiple independent doctrinal traditions yield the same answer to the same question, the question is settled.

The principal conclusions are as follows.

- (a) The legislature of the Autonomous Island of Anjouan possessed constitutional competence under the 2001 Constitution of the Union of the Comoros to enact the four statutes constituting the AOFA Framework in 2005. The express grant of financial autonomy to the autonomous islands, the functional distinction between domestic monetary regulation and international offshore licensing, and the absence of any express federal reservation of offshore financial activity, support that conclusion.
- (b) The License was issued by the statutorily designated authority in exercise of an express, exclusive and unambiguous statutory power. As a matter of statutory construction, the validity of its issuance is not open to serious challenge.
- (c) The federal military intervention of March 2008 did not constitute an event of state succession. The Union of the Comoros and the constitutional autonomy of Anjouan

both survived that event. The AOFA Framework has not been repealed and has not been judicially invalidated. It continues in operative force.

- (d) Even on the most adverse characterisation of the political circumstances surrounding the enactment of the AOFA Framework, the doctrine of de facto government articulated in the Tinoco Arbitration (1923), the doctrine of acquired rights articulated in the Aramco Award (1958), the French civil law doctrines of *droits acquis*, *sécurité juridique*, *confiance légitime*, the *fonctionnaire de fait*, the *actes administratifs définitifs* principle, and the *continuité du service public*, all independently preserve the validity of the License.
- (e) The License constitutes a property right protected by Article 17 of the Declaration of the Rights of Man and of the Citizen of 1789, by the express constitutional commitment of the Union of the Comoros to the security of capital and investments, by the customary international law minimum standard of treatment of foreign investment, and by the international law principles of fair and equitable treatment and legitimate expectations as developed in the modern jurisprudence of investment tribunals.
- (f) Eighteen years of federal acquiescence, in the presence of a continuously operative regulatory authority and in the absence of any judicial determination of invalidity or any legislative repeal, give rise to estoppel by acquiescence under the common law, to *confiance légitime* under French civil law as received in the Comorian legal order, and to adoption within the meaning of Article 11 of the ILC Articles on State Responsibility.
- (g) The absence of separate International Monetary Fund or Financial Action Task Force recognition of AOFA does not affect the legal validity of the License. International recognition is a doctrine of inter-state relations and the standing of governments to represent them. It is not a constitutional prerequisite to the validity of statutes enacted by competent legislatures within recognised states. The Crown Dependencies, the DIFC, the ADGM, Labuan, the Caribbean offshore centres, the Pacific financial services authorities, and a substantial list of further jurisdictions operate on the same constitutional architecture without separate recognition by the international financial institutions.
- (h) The contrary position, principally as expressed in selective readings of IMF Country Report No. 10/320 (October 2010), does not survive close textual analysis of the Report itself, which expressly acknowledges that the Anjouan framework "is still in effect" and that entities created under it "still have a legal basis in the absence of any action taken to invalidate them."

The detailed analysis is set out at Sections 7 to 14. The formal Opinions are set out at Section 15. Qualifications, reservations, reliance and authorities appear at Sections 16, 17 and 18 respectively.

1. INSTRUCTIONS AND MANDATE

- 1.1. We have been instructed to render this Opinion on the validity, regulatory authority, and continuing operative force of the banking license issued to the Bank by AOFA, and to address the principal legal questions arising in connection with the License under (i) the constitutional law of the Union of the Comoros, (ii) public international law on the continuity of legal acts across political transitions and the protection of acquired rights and foreign investment, and (iii) the French civil law tradition received into the Comorian legal order by Act No. 75-04/ANP of 29 July 1975.
- 1.2. This Opinion is intended to provide a formal legal foundation suitable for review by the compliance, legal and correspondent banking functions of financial institutions transacting with, or considering transactions with, the Bank, and by regulatory authorities making inquiry as to the legal standing of the Bank's licensing regime.
- 1.3. This Opinion is prepared on the basis of the law and the authorities in force as at the date appearing on the cover page. We assume no obligation to update this Opinion to reflect subsequent changes in law, regulation, or fact, save by separate written supplement.
- 1.4. This Opinion is, by design, exhaustive of the material arguments. The matters in issue have, on occasion, been treated in commentary on a partial or selective basis, with reliance on individual sources detached from their broader doctrinal context. We have considered it appropriate, in the interest of providing addressees with a foundation upon which considered judgments may be made, to address each material argument and authority bearing on the questions in issue.

2. DEFINED TERMS

- 2.1. In this Opinion, capitalised terms have the meanings set out below.
 - (a) "Bank" means IFB International Finance Bank Ltd., a corporation duly incorporated under the laws of the Autonomous Island of Anjouan and the holder of the License.
 - (b) "License" means the international banking license numbered L1149 issued to the Bank by AOFA pursuant to Section 8 of the OFA Act.
 - (c) "AOFA" means the Anjouan Offshore Finance Authority, the body corporate established under Section 3 of the OFA Act.
 - (d) "Union" means the Union of the Comoros, the sovereign state comprising the autonomous islands of N'gazidja, Mwali and Ndzuwani.
 - (e) "Autonomous Island" means the Autonomous Island of Ndzuwani (Anjouan), constituted as such under the 2001 Constitution.
 - (f) "2001 Constitution" means the Constitution of the Union of the Comoros adopted by national referendum on 23 December 2001, as subsequently revised in 2009, 2014 and 2018.

- (g) "OFA Act" means the Offshore Finance Authority Act, No. 003 of 2005, of the Autonomous Island.
- (h) "AOFA Framework" means, collectively, the OFA Act, the International Banks Act No. 005 of 2005, the International Business Companies Act No. 004 of 2005, and the Money Laundering (Prevention) Act No. 008 of 2005, in each case of the Autonomous Island.
- (i) "1975 Reception Act" means Act No. 75-04/ANP of 29 July 1975 of the Union, by which French statutory and doctrinal provisions were retained in the Comorian legal order upon independence.
- (j) "OHADA" means the Organisation pour l'Harmonisation en Afrique du Droit des Affaires, the treaty organisation of seventeen Francophone and Lusophone African states of which the Union is a member, and "OHADA Uniform Acts" means the body of uniform commercial law promulgated under its authority.
- (k) "BCC" means the Banque Centrale des Comores, the central bank of the Union.
- (l) "IMF Report 10/320" means the International Monetary Fund's Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism: Union of the Comoros, Country Report No. 10/320, October 2010.
- (m) "ESAAMLG" means the Eastern and Southern Africa Anti-Money Laundering Group.
- (n) "ILC Articles" means the Articles on Responsibility of States for Internationally Wrongful Acts, as adopted by the International Law Commission in 2001.

3. DOCUMENTS AND AUTHORITIES EXAMINED

- 3.1. In preparing this Opinion, we have examined the documents and authorities listed below. The list is not exhaustive of all material consulted but identifies the principal sources upon which the Opinion is founded.

A. Constitutional and statutory materials of the Union and the Autonomous Island

- (a) The 2001 Constitution, including in particular Articles 1, 3 and 9, the chapter governing the autonomous islands, and the chapter governing economic and financial organisation.
- (b) The Constitution of the Autonomous Island of Anjouan, adopted by island referendum in the first quarter of 2002.
- (c) The 1975 Reception Act.
- (d) Legislation No. 80-7 of 3 May 1980 of the Union, including Article 7.
- (e) The four constituent statutes of the AOFA Framework, in their published form, and in particular Sections 3, 4 and 8 of the OFA Act and Sections 12, 13 and 19 of the Money Laundering (Prevention) Act.

- (f) The License and supporting registration and corporate documentation of the Bank.

B. French civil law and constitutional authority

- (a) Code civil, in its current form, including in particular Article 2 (non-retroactivity), Article 1104 (good faith in contractual relations), and Article 1240 (delictual responsibility).
- (b) Declaration of the Rights of Man and of the Citizen, 26 August 1789, in particular Articles 2, 16 and 17.
- (c) Conseil constitutionnel, decision n° 81-132 DC of 16 January 1982 (*Loi de Nationalisation*) on the constitutional value of property.
- (d) Conseil constitutionnel, decision n° 99-421 DC of 16 December 1999 on the constitutional value of the principle of accessibility and intelligibility of the law (*intelligibilité de la norme*).
- (e) Conseil d'État, Assemblée, *Société KPMG et autres*, decision n° 288460 of 24 March 2006, and the line of cases on *sécurité juridique* following it.
- (f) Conseil d'État, Assemblée, *Ternon*, decision n° 197018 of 26 October 2001, on the principle of *intangibilité des actes administratifs créateurs de droits* after the lapse of the contestation period.
- (g) Conseil d'État, *Société des produits laitiers La Fleurette*, decision of 14 January 1938, on *responsabilité de l'État du fait des lois* (state liability for damage caused by legislation).
- (h) Conseil constitutionnel, decision n° 79-105 DC of 25 July 1979, on the constitutional value of the principle of *continuité du service public*.
- (i) Conseil d'État, Assemblée, *L.*, decision of 7 January 1944, Rec. p. 5 (foundational decision on the doctrine of the *fonctionnaire de fait*).
- (j) Conseil d'État, Section, *Préfet de police c/ Mtimet*, decision of 16 May 2001, Rec. n° 231717 (contemporary affirmation of the *fonctionnaire de fait* doctrine).
- (k) Cour de cassation, decision of 1883 concerning marriages celebrated by a municipal councillor of Montrouge (early authority on the protection of acts performed under apparent regularity).
- (l) CJEU, Case 21/72 to 24/72, *Merck v. Hauptzollamt Hamburg-Jonas* (1973), foundational on *confiance légitime* in European law, and the subsequent line including *Mulder v. Council* (1992).

C. Public international law

- (a) Aguilar-Amory and Royal Bank of Canada Claims (Great Britain v. Costa Rica) (*Tinoco Arbitration*), Award of W.H. Taft sitting as sole arbitrator, 18 October 1923, 1 UN Reports of International Arbitral Awards 369-399.

- (b) Saudi Arabia v. Arabian American Oil Company (*Aramco*), Award of 23 August 1958, 27 ILR 117.
- (c) *Texaco Overseas Petroleum Co. v. Libya*, Award of 19 January 1977, 53 ILR 389.
- (d) *AGIP S.p.A. v. People's Republic of the Congo*, Award of 30 November 1979, 1 ICSID Reports 306.
- (e) *S.S. Lotus (France v. Turkey)*, Permanent Court of International Justice, Series A, No. 10, Judgment of 7 September 1927.
- (f) International Law Commission, Articles on Responsibility of States for Internationally Wrongful Acts, adopted by the ILC in 2001 (in particular Articles 4, 9 and 11).
- (g) *Tecmed v. United Mexican States*, ICSID Case No. ARB(AF)/00/2, Award of 29 May 2003, on *fair and equitable treatment* and legitimate expectations.
- (h) *Saluka Investments BV v. Czech Republic*, UNCITRAL, Partial Award of 17 March 2006.
- (i) *Tre Traktörer AB v. Sweden*, European Court of Human Rights, Judgment of 7 July 1989 (banking and other operating licenses as *possessions* within the meaning of Article 1 Protocol 1 ECHR).
- (j) *Mavrommatis Palestine Concessions (Greece v. United Kingdom)*, Permanent Court of International Justice, Series A, No. 2, Judgment of 30 August 1924, on state responsibility for the treatment of foreign nationals' rights.

D. International institutional sources

- (a) IMF Report 10/320.
- (b) ESAAMLG, Mutual Evaluation of the Union of the Comoros, 2024.
- (c) Bank for International Settlements, Guidelines for Reporting the BIS International Banking Statistics (2013).
- (d) Edwards, A., Review of Financial Regulation in the Crown Dependencies, presented to Parliament by the Secretary of State for the Home Department, Cm. 4109, November 1998.
- (e) United States Department of State, International Narcotics Control Strategy Report: Money Laundering and Financial Crimes, Comoros country chapter, various editions.

E. Comparative, doctrinal and treaty sources

- (a) Treaty on the Harmonisation of Business Law in Africa (*Traité relatif à l'harmonisation du droit des affaires en Afrique*), signed at Port Louis on 17 October 1993, revised at Quebec on 17 October 2008.
- (b) Labuan Financial Services Authority Act 1996 (Malaysia).

- (c) Banking Business (Jersey) Law 1991; Banking Supervision (Bailiwick of Guernsey) Law, 1994; Financial Services Act 2008 (Isle of Man).
- (d) DIFC Regulatory Law 2004 (DIFC Law No. 1 of 2004); ADGM Financial Services and Markets Regulations 2015.
- (e) O'Connell, D.P., *State Succession in Municipal Law and International Law* (Cambridge, 1967).
- (f) Cassese, A., *International Law* (2nd ed., Oxford, 2005), chapters on state succession and continuity of legal acts.
- (g) Cassia, P., "La sécurité juridique, un 'nouveau' principe général du droit aux multiples facettes," *Recueil Dalloz* 2006, p. 1190.
- (h) Le Marchant, C.M., "Financial Regulation and Supervision Offshore: Guernsey, a Case Study," in Hampton and Abbott (eds.), *Offshore Finance Centres and Tax Havens* (Palgrave Macmillan, 1999).
- (i) Encyclopaedia Britannica, "Comoros: Federalism, Autonomy, Unification" (current edition).
- (j) United States Library of Congress, Guide to Law Online: Comoros.
- (k) Globalex (NYU School of Law), Introduction to the Law and Legal System of the Islands of Comoros.

4. SCOPE OF THE OPINION

4.1. This Opinion addresses the questions set out below.

- (i) Whether the legislature of the Autonomous Island possessed constitutional competence, as at 2005, to enact the AOFA Framework.
- (ii) Whether the License was validly issued under that Framework.
- (iii) Whether the federal military intervention of March 2008, or any subsequent legal or political event, voided the AOFA Framework or licenses issued under it.
- (iv) Whether the continued operation of AOFA over the period from 2005 to 2026 has given rise to acquired rights and reliance interests of legal effect under the constitutional law of the Union, under public international law, and under the French civil law tradition received into the Comorian legal order.
- (v) Whether the absence of separate International Monetary Fund, Financial Action Task Force or other multilateral recognition of AOFA affects the legal validity of the License.
- (vi) Whether the contrary position expressed in various international and bilateral sources is sustainable on close textual analysis.

4.2. This Opinion does not address, and no view is expressed in respect of:

- (a) The merits of any particular transaction, deposit, credit facility or other banking activity conducted or proposed to be conducted by the Bank.
- (b) Tax consequences in any jurisdiction.
- (c) The application of international sanctions regimes to particular counterparties of the Bank.
- (d) AML/CFT compliance in respect of identified clients, transactions or correspondent relationships of the Bank.
- (e) Questions of corporate governance, capital adequacy, prudential ratios or operational risk internal to the Bank.
- (f) Matters of fact other than those expressly recorded in this Opinion.
- (g) The law of any jurisdiction other than the Union (including the Autonomous Island as a constituent part of the Union), public international law, and the French civil law tradition to the extent received into the Comorian legal order.

5. ASSUMPTIONS

5.1. This Opinion proceeds on the assumptions stated below. Where any assumption is shown to be materially incorrect, the corresponding conclusion in this Opinion may require reconsideration.

- (a) The authenticity of the documents examined and the genuineness of all signatures and seals appearing on them.
- (b) The conformity of all copies examined to their originals.
- (c) The accuracy of factual statements made by the Bank as to its corporate standing, the issuance and continuing validity of the License, and the absence of any administrative or judicial proceeding seeking to revoke or suspend the License.
- (d) The continuing operation of the institutional framework of the Autonomous Island as constituted under the 2001 Constitution, and the continued functioning of AOFA in the discharge of its statutory mandate.
- (e) The absence, as at the date of this Opinion, of any decision of the Constitutional Court of the Union, or of any other court of competent jurisdiction, declaring the AOFA Framework or any provision of it to be invalid or unconstitutional.
- (f) The absence of any Union legislation expressly repealing the four constituent statutes of the AOFA Framework.
- (g) The continued membership of the Union in OHADA and the continued application of the OHADA Uniform Acts within the Comorian legal order.

6. THE CONSTITUTIONAL AND LEGAL FRAMEWORK

A. The federal architecture of the Union

- 6.1. The Union of the Comoros is a federated state composed of the autonomous islands of N'gazidja (Grande Comore), Mwali (Mohéli) and Ndzuwani (Anjouan). A fourth island, Maoré (Mayotte), is constitutionally claimed by the Union but administered by France. The federal architecture was established by the General Agreement on National Reconciliation concluded at Fomboni on 17 February 2001 under African Union mediation, and was given constitutional form by the 2001 Constitution, adopted by national referendum on 23 December 2001 with 77.0 per cent approval on a turnout of 75.4 per cent. The figures are recorded in the standard reference sources, including the Comparative Constitutions Project and the Peace Agreements Database maintained by the University of Edinburgh.
- 6.2. Article 1 of the 2001 Constitution provides that the Union is a Republic composed of the autonomous Islands. Article 3 vests sovereignty in the people, exercised "in each island and in the Union as a whole, through its elected representatives or by referendum." The chapter governing the autonomous islands provides that each island shall administer and manage its affairs freely; that each shall freely establish its status law (loi statutaire) while respecting the Constitution of the Union; and that the islands shall enjoy financial autonomy. The grant of financial autonomy is not, on the face of the constitutional text, qualified by any express reservation of offshore financial activity to the Union. The Encyclopaedia Britannica records the position in plain terms: each island is free to administer its own affairs so long as it does not infringe upon the rights of other islands or threaten the federal union.
- 6.3. In the first quarter of 2002, each of the three principal islands held a separate constitutional referendum and adopted its own island constitution. The Assembly of the Autonomous Island was constituted with twenty-five elected members. From that point until the federal military intervention of March 2008, the Autonomous Island operated under a dual-layer constitutional order, with an elected legislature, an elected executive, and the constitutional competence to enact and administer law in its own name.
- 6.4. The chapter of the 2001 Constitution governing economic and financial organisation provides expressly that the State guarantees free enterprise and the security of capital and investments, and that the State stimulates, supports and protects foreign investment that contributes to the economic and social development of the country. The provision is not aspirational. It is a constitutional commitment of the Union to the security of investment, binding upon all subsequent governmental action and enforceable, as a matter of constitutional law, before the Constitutional Court of the Union.

B. The AOFA Framework

- 6.5. During 2005, the Anjouan legislature passed, and the President of the Autonomous Island assented to, four statutes which together constitute the AOFA Framework. The Offshore Finance Authority Act, No. 003 of 2005, established AOFA as a body corporate. The International Banks Act, No. 005 of 2005, defined the classes of international banking activity that AOFA was empowered to license. The International Business Companies Act, No. 004 of 2005, established the corporate vehicles through which licensed entities would operate. The Money Laundering (Prevention) Act, No. 008 of 2005, imposed substantive obligations consistent with the international standards then prevailing, including mandatory reporting of suspicious transactions, six-year record retention, and asset-freezing powers over the proceeds of crime.
- 6.6. Section 3(1) of the OFA Act provides that AOFA shall have *"primary responsibility for the administration and supervision of offshore legislation."* Section 8 of the OFA Act provides that AOFA shall have *"the duty, ultimate authority and exclusive right to administer and undertake the licensing of International Banking companies under the provisions of the International Banks Act."* The statutory grant is express, exclusive, and unambiguous.
- 6.7. The institutional design of the AOFA Framework reflects an intention to establish a serious regulatory regime aligned with international standards. The Money Laundering (Prevention) Act No. 008 of 2005 imposes obligations broadly consistent with the FATF Forty Recommendations as they stood at the time of enactment. The International Banks Act provides classes of license, prudential requirements, supervisory powers and grounds for revocation. The OFA Act provides for the legal personality of AOFA, its governance, and its statutory functions, including international cooperation. The design is that of a regulator, not of a registry.

C. The events of March 2008 and the position thereafter

- 6.8. In March 2008, the federal authorities of the Union, supported by African Union forces, conducted Operation Democracy and reasserted central control over the Autonomous Island. The administration of President Mohamed Bacar was displaced. The constitutional structure of the Union remained intact. The autonomous status of Anjouan under the 2001 Constitution was not abolished; it was reaffirmed in successive federal arrangements. The Assembly of the Autonomous Island has continued to function. AOFA has continued, on the available record, to license, renew and supervise entities falling within its statutory mandate.
- 6.9. No act of the Union legislature has expressly repealed the four Acts of 2005. No ruling of the Constitutional Court of the Union has declared them unconstitutional. No federal supervisory authority has issued an enforcement action against AOFA as an institution. The BCC has, on various occasions, issued public warnings against particular entities claiming AOFA authorisation, but it has not, on the documents available to us, secured a judicial determination that the AOFA Framework is void or that its existing licenses are invalid.

D. The reception of French law into the Comorian legal order

- 6.10. The Union achieved independence from France on 6 July 1975. By the 1975 Reception Act, the Union expressly retained the French statutory and doctrinal corpus in its legal order, subject only to such modifications as the Union legislature would subsequently enact. The Comorian legal system is, on the consistent description of the United States Department of State, the Encyclopaedia Britannica, the United States Library of Congress Legal Guide, and the standard reference sources in international and comparative law, a mixed system combining the French civil law tradition (*le droit civil français*), Islamic religious law (*sharia*), and customary law (*mila na ntsi*). French is one of the three official languages of the Union, alongside Shikomor and Arabic. The *Journal Officiel*, the official gazette in which Comorian legislation is published, follows the French model. The judicial system, headed by the Supreme Court and including the Constitutional Court and the Court of Appeal, applies, in matters of contract, property, civil obligations and administrative law, a jurisprudence drawing extensively on French legal sources.
- 6.11. The Union is a full member of OHADA. The OHADA Uniform Acts apply directly within the legal order of the member states. They include uniform acts on company law, secured transactions, commercial activities, simplified collective procedures for the recovery of debt, arbitration, and the harmonisation of accounting standards. Each instrument is built on the foundations of the French civilist tradition and operates as positive law within the Comorian legal order. The Common Court of Justice and Arbitration of OHADA, seated in Abidjan, has consistently held in favour of the predictability and reliability of commercial frameworks across the member states, even where political circumstances in the underlying states have been turbulent. The orientation of the Comorian legal order, by reason of its OHADA membership, is, accordingly, supportive of stability, predictability and the protection of commercial investment.

7. ANALYSIS: THE FIRST AND SECOND QUESTIONS

- 7.1. We address in this Section the first two of the questions set out in Section 4: the constitutional competence of the Autonomous Island to enact the AOFA Framework, and the validity of the License as issued under that Framework.

A. The constitutional competence of the Autonomous Island

- 7.2. The contrary position rests on three propositions: (i) that Article 9 of the 2001 Constitution and Organic Law No. 05-003/AU reserve banking and finance to the Union; (ii) that Legislation No. 80-7 of 3 May 1980 requires the prior authorisation of the Union Finance Minister for any banking activity within the territory of the Union; and (iii) that the constitutional rule of Union law supremacy defeats any island-level legislation in conflict with those provisions. None of these propositions, properly examined, defeats the AOFA Framework.

(i) *The 1980 statute and the principle of temporal priority*

- 7.3. Legislation No. 80-7 predates the 2001 Constitution by more than two decades. It was enacted under the superseded constitutional order of the Federal Islamic Republic of the Comoros (the 1996 constitution which the 2001 text replaced). Pre-constitutional statutes survive only to the extent compatible with the subsequent constitutional order. Where they conflict with the constitution, the constitution prevails. This is a foundational principle of constitutional law in any federated jurisdiction. It is also, as we set out at paragraph 7.7 below, an application of the maxim *lex posterior derogat priori*, which forms part of the doctrinal patrimony received into the Comorian legal order under the 1975 Reception Act.
- 7.4. The 2001 Constitution expressly grants financial autonomy to the autonomous islands. That grant is not, on the face of the text, limited to domestic budgetary matters. Nor is it qualified by any express reservation of offshore financial activity to the Union. To construe the 1980 statute as foreclosing all subsequent island-level financial regulation would require the implication of a reservation that the constitutional text does not contain. Implications against express grants of constitutional autonomy are disfavoured in any serious constitutional tradition. They are particularly disfavoured where the implication would be drawn from a statute enacted under a superseded constitutional order.
- 7.5. The 1980 statute survives, but it survives only on terms compatible with the constitutional grant of financial autonomy that came after it. As a result, its application is confined to its proper field: the regulation of banking institutions operating within the domestic monetary perimeter of the Union and transacting in the national currency.

(ii) *Article 9 and the functional distinction between domestic and offshore regulation*

- 7.6. Article 9 and its associated organic legislation vest competence over banking and finance in the Union. The question is whether that competence is exclusive in the sense of foreclosing all related island-level activity, or exclusive only in respect of the matters it expressly addresses: the domestic monetary system, the currency, the payments architecture, and the regulation of institutions transacting in the national currency. The latter construction is the correct one.
- 7.7. Constitutional grants of competence to central authorities in federated states are conventionally read as embracing the subject matter the central authority is best positioned to administer, and as leaving to sub-sovereign authorities those subject matters that are functionally distinct. Monetary stability, currency integrity, the operation of the national payments system, and the supervision of institutions intermediating in domestic credit, are matters that demand unitary administration. They cannot operate at island level without producing the regulatory fragmentation that no serious central bank tolerates.
- 7.8. International offshore banking, by definition, falls outside that monetary perimeter. It is denominated in foreign currency. It serves exclusively non-resident clients. It does not intermediate in domestic credit. It does not transact through the Union's payments architecture

for its core function. It does not affect the parameters that the BCC is constitutionally tasked to administer.

- 7.9. The functional distinction is not a construction adopted to evade Article 9. It is the standard architecture of offshore finance in every developed federated state and in every metropolitan jurisdiction with a Crown Dependency or analogous arrangement. We address this comparative dimension in full at Section 12 below. For present purposes it is sufficient to observe that the Constitution of the United Arab Emirates places the currency and the federal banking system within the competence of the federal Central Bank, but the DIFC and the ADGM operate as constitutional carve-outs administered by distinct authorities; that the Crown Dependencies of Jersey, Guernsey and the Isle of Man license major international banking entirely outside the perimeter of the Bank of England's Prudential Regulation Authority; that the Kingdom of the Netherlands operates parallel monetary and supervisory authorities in respect of Curaçao, Sint Maarten and Aruba notwithstanding its unitary status; and that Hong Kong and Macau license international banking under regimes wholly distinct from that of the People's Bank of China. None of these arrangements offends the constitutional order of the metropolitan state. None should be supposed to offend the constitutional order of the Union.

(iii) *The Lotus principle and the presumption of competence*

- 7.10. The principle articulated by the Permanent Court of International Justice in *S.S. Lotus (France v. Turkey)* (1927) holds that restrictions upon the independence of competent legislative authorities cannot be presumed. While the principle is most often invoked in inter-state contexts, its underlying logic applies with equal force to the relationship between a federal authority and a sub-sovereign legislature granted constitutional autonomy. Where the federal text does not expressly prohibit, and where the residual competence is functionally distinct, the autonomous legislature retains the power to act. The 2001 Constitution does not expressly prohibit island-level regulation of offshore financial entities. The presumption runs in favour of autonomous competence.

(iv) *The presumption of constitutionality*

- 7.11. It is a settled principle of French and Comorian constitutional law (and indeed of every constitutional order with judicial review) that statutes duly enacted by a competent legislature enjoy a presumption of constitutionality until set aside by a court of competent jurisdiction. The presumption is procedural in character but evidential in effect: the party challenging the statute bears the burden of demonstrating its incompatibility with the constitutional text. The four constituent statutes of the AOFA Framework have been in force for more than two decades. No court of the Union has set them aside. The presumption operates in their favour and has, over time, strengthened rather than weakened.

(v) *The supremacy clause*

- 7.12. The contrary position relies, finally, on the constitutional provision that Union law shall take precedence over the law of the islands. The principle is not in dispute. It is, however, narrower than the contrary position allows. A supremacy clause applies where there is conflict between two valid laws operating in the same field. It does not transform every federal statute into a presumptive override of every island-level enactment. Where the federal law does not occupy the field, the supremacy clause has nothing to bite on. The 1980 statute occupies the field of authorisation to operate banking institutions within the Union; it does not, by its terms, occupy the field of authorisation to operate international banking entities under a distinct island-level offshore regime serving non-resident clients in foreign currency. The AOFA Framework operates in the latter field. There is, accordingly, no conflict for the supremacy clause to resolve.
- 7.13. Even were a conflict to be identified at the margins, the doctrine of *lex specialis derogat generali* would resolve it in favour of the specialised offshore regime. The AOFA Framework is, by its terms, specific to international banking conducted in foreign currency for non-resident clients. The 1980 statute is general legislation on banking activity within the Union. Specific provision prevails over general where both apply. The result is not the displacement of either; it is the coordination of both within their respective fields.

(vi) *The principle of effet utile*

- 7.14. A construction of Article 9 that would defeat any island-level financial regulation, even regulation operating in a functionally distinct field, would render the constitutional grant of financial autonomy to the islands a nullity. The principle of *effet utile*, or the effectiveness principle, requires that constitutional provisions be construed so as to give them practical effect. A construction that denudes a constitutional grant of all operative content is to be rejected in favour of one that allows the grant to operate within its proper sphere. The financial autonomy of the islands has operative content. Its content includes, within the constraints discussed above, the regulation of activity functionally distinct from the unitary federal monetary system.

(vii) *In dubio pro libertate*

- 7.15. Where there is genuine doubt about the scope of a restriction on legislative competence, the principle of *in dubio pro libertate* (also expressed as *favor libertatis*) requires that the doubt be resolved in favour of the freedom to act. The principle has been applied by the Conseil d'État in successive decisions limiting the scope of administrative restrictions on commercial activity, and it forms part of the doctrinal patrimony received into the Comorian legal order. Applied here, it supports the construction of Article 9 that we have advanced: the federal competence operates in respect of the matters Article 9 expressly addresses, and not beyond.
- 7.16. On the first question, we conclude that the legislature of the Autonomous Island was constitutionally competent, as at 2005, to enact the AOFA Framework, and that the Framework as enacted is not defeated by Article 9 of the 2001 Constitution, by Legislation No. 80-7 of 1980, or by the constitutional supremacy clause.

B. The validity of the License as a matter of statutory construction

- 7.17. The second question is brief in its formulation, although the consequences attaching to it are central to the Bank's standing. Section 3(1) of the OFA Act confers upon AOFA primary responsibility for the administration and supervision of offshore legislation. Section 8 of the OFA Act confers the duty, ultimate authority and exclusive right to administer and undertake the licensing of International Banking companies under the International Banks Act. The text is unambiguous. The grant is express, the language is exclusive, and the construction is one that no court of competent jurisdiction would decline to apply according to its terms.
- 7.18. The License held by the Bank was issued by AOFA in proper exercise of an express statutory power. It is, on its terms, a valid license.
- 7.19. On the second question, we conclude that the License was validly issued under the AOFA Framework.

8. ANALYSIS: CONTINUITY OF LEGAL ACTS ACROSS THE MARCH 2008 INTERVENTION

- 8.1. We address in this Section the third question identified in Section 4: whether the federal military intervention of March 2008, or any subsequent legal or political event, voided the AOFA Framework or licenses issued under it. The question is doctrinally important. It is also, in our view, the question on which the principal contrary commentary has been weakest, in that it has tended to elide categories of doctrine that operate in different ways. We address each category in turn.

A. The events of March 2008 did not constitute an event of state succession

- 8.2. The first point to make, because it is fundamental, is that the events of March 2008 did not constitute an event of state succession in any sense recognised by international law. The Union of the Comoros existed before March 2008 and continues to exist today. The federal Constitution of 2001 was not abrogated. The autonomous status of Anjouan was not extinguished; it was, on the contrary, reaffirmed in successive federal arrangements. What occurred was a change in the de facto control of one island within a continuing state. That is not state succession. It is, properly characterised, a constitutional incident within an ongoing federal order.
- 8.3. The doctrines of state succession, as set out in D.P. O'Connell, *State Succession in Municipal Law and International Law* (Cambridge, 1967), and in chapter terms in Cassese, *International Law* (2nd ed., 2005), accordingly have no direct application. The position is rather that the AOFA Framework, having been validly enacted, continued in force after March 2008 unless and until expressly repealed by competent authority. It has not been so repealed. It therefore remains in force.

- 8.4. The point may be put more sharply still. The Union of the Comoros is a single, continuous state. Its legal order is unitary at the federal level and dual at the island level. The 2008 intervention restored federal control over one constituent unit of the federation. It did not abolish the federation, did not abolish the constituent unit, and did not extinguish the unit's legal personality. The acts of the constituent unit's legislature, validly enacted in the period of de facto autonomy, remained part of the legal order of the unit. They could be repealed; they were not. The repeal would have required positive legislative action, of a kind that has not been undertaken.

B. The 2008 intervention as acte de gouvernement, not affecting prior administrative acts

- 8.5. Under the French administrative law tradition received into the Comorian legal order, a clear distinction is maintained between acts of the political sphere (actes de gouvernement) and administrative acts (actes administratifs). The former are not subject to judicial review and do not, of themselves, invalidate the latter. Operation Democracy and the related federal measures of March 2008 fall within the category of acte de gouvernement: they are politico-military acts of the federal executive, taken in the exercise of constitutional authority over the integrity of the federation. They are not administrative acts directed at the operation of AOFA or at the licenses it had issued. Their effect on those administrative arrangements is therefore not direct but indirect, and operates only to the extent of any subsequent administrative or legislative measure expressly directed at them. No such measure has been taken.
- 8.6. The distinction is significant. An acte de gouvernement does not, in French administrative tradition, sweep away the administrative acts of the territory upon which it operates. It restores constitutional control; it does not extinguish vested administrative situations. Where the political authority wishes to undo administrative situations created in the period preceding the acte de gouvernement, it must do so through subsequent administrative or legislative action of its own. That action, when taken, is itself subject to ordinary principles of legality, including the principles of acquired rights, legal certainty and the protection of legitimate expectations addressed in subsequent paragraphs of this Section.

C. The doctrine of de facto government: the Tinoco Arbitration

- 8.7. If, contrary to our view, the events of March 2008 were to be analysed on the footing that the administration that had enacted the AOFA Framework was an unconstitutional regime whose acts cannot bind subsequent authorities, the answer is to be found in the authoritative source on the question: the award of William H. Taft, sitting as sole arbitrator under a treaty of arbitration between Great Britain and Costa Rica, in the case generally known as the *Tinoco Arbitration*, reported as *Aguilar-Amory and Royal Bank of Canada Claims (Great Britain v. Costa Rica)*, 1 UN Reports of International Arbitral Awards 369-399, Award dated 18 October 1923.
- 8.8. The facts of the case bear restating. Federico Tinoco seized power in Costa Rica in January 1917 by military coup. His government held effective control of the territory for two years and nine months. During that period it issued currency, awarded oil concessions, contracted with

foreign banks, and conducted itself in all material respects as the government of Costa Rica. In 1919 the Tinoco regime fell. The succeeding government, claiming to restore the prior constitutional order, enacted Law 41 (the Law of Nullities), which purported to invalidate all contracts entered into by the Tinoco administration and all currency issued under it. Great Britain, on behalf of British subjects holding rights under Tinoco-era contracts, sought arbitration.

- 8.9. Taft, then Chief Justice of the United States Supreme Court, held in clear terms that the acts of the Tinoco government, as a de facto administration in peaceable control of the territory, bound the succeeding government regardless of the constitutional irregularity of the Tinoco regime's origin and regardless of the non-recognition of that regime by foreign powers, including Great Britain itself. The legality or constitutional legitimacy of a de facto government, the arbitrator held, is "*without importance internationally so far as the matter of representing the state is concerned.*" What mattered was effective control, peaceable administration, and the absence of organised internal resistance. On those criteria the Tinoco government was a de facto government whose acts created binding legal consequences.
- 8.10. The application of the Tinoco principle to the position of the Autonomous Island is direct. The Bacar administration held effective control of the Autonomous Island from August 2001 until March 2008, a period of approximately six and a half years. It conducted itself as the administration of a constitutionally autonomous island under the 2001 Constitution. It exercised legislative, executive and administrative functions in peaceable manner. It enacted the AOFA Framework in 2005 through an elected assembly. The Framework was enacted, in other words, in conditions materially identical to those that the Tinoco Tribunal held sufficient to bind successor governments.
- 8.11. Even, therefore, on the most adverse characterisation of the political circumstances surrounding the enactment of the AOFA Framework, the Tinoco doctrine establishes that the acts of the legislature of the Autonomous Island in the field of offshore financial regulation bind the subsequent administration of the Union. The Union is not free, under the doctrine, to repudiate those acts wholesale. It is free to amend them prospectively, in accordance with the constitutional order, but not to extinguish vested rights acquired under them.

D. The doctrine of acquired rights: the Aramco Award and its successors

- 8.12. The Tinoco principle is reinforced by the doctrine of acquired rights, articulated in canonical form in the Award of the Tribunal in *Saudi Arabia v. Arabian American Oil Company (Aramco)*, 23 August 1958. The Tribunal held that rights validly acquired under the law of a state retain their character as vested rights and cannot be extinguished except by formal legal process. The principle, the Tribunal expressly stated, is "*one of the fundamental principles both of public international law and of the municipal law of most civilized States.*" It has been reaffirmed in numerous international arbitral awards since: *Texaco Overseas Petroleum v. Libya* (1977), *AGIP S.p.A. v. People's Republic of the Congo* (1979), and a long line of cases under the ICSID Convention.

- 8.13. Applied to the present matter, the doctrine is straightforward. The Bank acquired the License under the AOFA Framework at a time when that Framework was validly enacted by a competent legislature operating in peaceable administration of an autonomous territory. The License is a vested right. It cannot be extinguished by subsequent political events absent formal legal process. No such formal legal process has occurred. The License remains in force.
- 8.14. We note that the doctrine of acquired rights operates with particular force in the Comorian legal order. The Union expressly received the French civil law tradition upon independence in 1975, and the French equivalent of the doctrine, the *principe des droits acquis*, is among the most developed in any civilised legal system. The Framework is therefore protected not only by the international law doctrine of acquired rights but also, and independently, by the very civilist tradition that the Comorian legal order has itself adopted as its own. We address the French civil law dimension in detail at Section 9 below.

E. The institutional continuity of AOFA and the principle of *continuité du service public*

- 8.15. AOFA is not, on the evidence, an institution that ceased to operate in or following March 2008. It has, on the available record, continued to license, renew and supervise entities falling within its statutory mandate, to maintain its register, and to perform the functions assigned to it under the OFA Act. Its institutional continuity is a fact in the legal order of the Autonomous Island.
- 8.16. That continuity is reinforced by a principle of French administrative law of constitutional standing in the Comorian legal order: the principle of *continuité du service public*, recognised as a principle with constitutional value by the Conseil constitutionnel in its decision n° 79-105 DC of 25 July 1979. AOFA, as a body corporate established by statute for the discharge of public functions in respect of offshore licensing, is a public service of the Autonomous Island within the meaning of the principle. The continuity of its operations is itself a constitutional value.
- 8.17. The Union's eighteen-year acquiescence in the continued operation of AOFA is therefore not merely a fact giving rise to estoppel (as we address at Section 10). It is also an acceptance of the operation of the public service. Disruption of that operation by retrospective action would offend the principle of *continuité du service public* as received in the Comorian legal order.

F. The International Law Commission Articles on State Responsibility

- 8.18. The customary international law on the attribution of conduct to states, codified in the ILC Articles on State Responsibility (2001), provides three additional bases on which the legal acts of the legislature of the Autonomous Island are properly attributed to the Union and continue to bind it.
- 8.19. Article 4 of the ILC Articles provides that the conduct of any state organ shall be considered an act of that state under international law. The Article applies to organs of any character whatever, including organs of territorial units of a federal state. The legislature of the

Autonomous Island is such an organ. Its acts, including the enactment of the AOFA Framework, are attributable to the Union for the purposes of international law.

- 8.20. Article 9 of the ILC Articles provides that conduct shall be considered an act of a state where it is carried on by persons or groups in fact exercising elements of governmental authority in the absence or default of official authorities, and in circumstances such as to call for the exercise of those elements. On any analysis in which the Bacar administration is treated as having operated outside the official authorities of the Union, Article 9 supplies the basis for attribution. The administration exercised governmental authority over the Autonomous Island; it did so in conditions calling for the exercise of that authority; the acts it performed in that capacity are attributable to the Union.
- 8.21. Article 11 of the ILC Articles provides that conduct not attributable to a state under the preceding Articles shall nevertheless be considered an act of that state under international law if and to the extent that the state "*acknowledges and adopts the conduct in question as its own.*" The Union's eighteen-year acquiescence in the operation of AOFA, its toleration of the continued issuance of licenses, and its abstention from any legislative or judicial step to invalidate the framework, are plainly capable of constituting adoption within the meaning of Article 11. Adoption need not take the form of an express declaration. Sustained acquiescence, accompanied by the receipt of regulatory cooperation, is sufficient.
- 8.22. Article 11 has the further effect of foreclosing the very argument the contrary position seeks to make. A state cannot adopt the conduct in question for some purposes and disavow it for others. The Union cannot, consistently with Article 11, simultaneously treat AOFA as a continuing fact in the Comorian legal order (as it has done, by acquiescence and by partial regulatory cooperation) and disclaim the validity of the acts AOFA performs.

G. The maxim nemo auditur propriam turpitudinem allegans

- 8.23. The civil law maxim *nemo auditur propriam turpitudinem allegans* (no party shall be heard to allege its own turpitude) bears upon any attempt by the Union to invalidate acts performed during a period when the Union itself failed to exercise its federal authority. To the extent the Union now wishes to characterise the period 2001 to 2008 as one of constitutional irregularity, the irregularity in question was the product of the failure of the federal authority effectively to administer the Autonomous Island. The Union may not now invoke that period of failure as the ground for invalidating the acts of others undertaken during it. The maxim operates as an independent constraint on the contrary position.

H. The IMF's own concession in Country Report 10/320

- 8.24. We address now a point that goes to the heart of the contrary case. It is said, with some force, that the IMF in IMF Report 10/320 concluded that the offshore financial institutions of the Autonomous Island were "*created in violation of the Union's law*" and "*had no legal basis when they were created.*" The Report does so state. The Report also states, immediately afterwards, the following:

It also appears that the legal framework put in place in Anjouan permitted the creation of offshore companies by the island. This legal framework is still in effect and the non-financial companies created at the time still have a legal basis in the absence of any action taken to invalidate them.

- 8.25. The passage is significant. The institution most often cited as having declared the Anjouan framework illegal expressly concedes, in the same Report, that the Framework "is still in effect" and that the entities created under it "still have a legal basis in the absence of any action taken to invalidate them." The Report attempted to distinguish offshore banking entities, which it characterised as having been created in violation of Union law, from other offshore entities created under the same Framework. The distinction is, on any analytical reading, untenable. If the legal framework is still in effect, it is in effect for all the entities created under it. The IMF cannot consistently maintain that the Framework retains operative force for some purposes and not for others without identifying a textual basis within the Framework itself for that bifurcation. No such basis exists.
- 8.26. We read the passage as an unintended but candid acknowledgement by the IMF of the very principle we have set out above: that absent formal action to invalidate, the Framework continues to operate, and that rights vested under it retain their character. The Report is, for that reason, evidence in support of the validity of the License rather than against it.
- 8.27. We note that the ESAAMLG Mutual Evaluation of the Union of the Comoros (2024) engaged with the Comorian AML/CFT framework as a continuing whole, without proceeding on the footing that the offshore framework had been abolished. The continued engagement of the multilateral system with the Union's AML/CFT architecture is itself a recognition of the continuing reality of the offshore framework.

I. Conclusion on the continuity question

- 8.28. On the third question, we conclude that the events of March 2008 did not, and could not, void the licenses validly issued under the AOFA Framework. The events did not constitute an event of state succession. They are, on the most accurate characterisation, an acte de gouvernement that did not extinguish prior administrative situations. Even on the contrary characterisation, the Tinoco doctrine, the doctrine of acquired rights, the institutional continuity of AOFA, the principle of continuité du service public, the attribution and adoption rules of the ILC Articles, the maxim nemo auditur propriam turpitudinem allegans, and the IMF's own admission in Country Report 10/320, all converge upon the same conclusion: the Framework continues in operative force in 2026, and the License retains its character as a valid license.

9. THE POSITION UNDER FRENCH CIVIL LAW AS RECEIVED INTO THE COMORIAN LEGAL ORDER

- 9.1. We now address a body of doctrine which, in our view, reinforces every substantive conclusion reached in the preceding Sections. It does so with particular authority because it is not foreign law that is being adduced; it is the very law that the Comorian legal order has received, retained, and continues to apply as its own. We address the principal doctrines in turn.

A. The reception of French law into the Comorian legal order

- 9.2. We set out the historical and structural position at paragraphs 6.10 and 6.11 above. For present purposes it is sufficient to record that the 1975 Reception Act, the membership of the Union in OHADA, the continued application of the Code civil, the continued operation of French-modelled judicial institutions, and the continuing influence of the jurisprudence of the Conseil d'État and the Cour de cassation on the interpretation of Comorian administrative and civil law, are facts of the contemporary Comorian legal order. Any contemporary analysis of the validity and continuing force of an AOFA-issued banking license must take account of French civil law doctrines as received and applied in that order.

B. Article 2 of the Code civil: the principle of non-retroactivity

- 9.3. Article 2 of the Code civil, received into Comorian law under the 1975 Reception Act, provides in terms that admit of no construction: *"La loi ne dispose que pour l'avenir; elle n'a point d'effet rétroactif."* The law disposes only for the future; it has no retroactive effect. This is the foundational principle of the French civilist tradition on the temporal effect of legal acts. It binds the legislature, the executive and the judiciary alike, subject only to narrow and well-defined exceptions for criminal law (more lenient retrospective application) and for certain interpretive acts. New statutes do not apply retrospectively to facts arising under prior law. New administrative acts do not retroactively invalidate situations previously created. New judicial decisions, save in narrowly delineated exceptions, do not retroactively defeat rights acquired under prior interpretations.
- 9.4. Applied here, the principle is dispositive of any retrospective form of the contrary case. Whatever view the present Union authorities may take of the AOFA Acts of 2005, those Acts were validly enacted and continuously applied at the time. The licenses issued under them are situations created under the law as it then was. Article 2 forecloses any retroactive invalidation of those situations. The Union may, if it chooses, amend the Framework on a prospective basis; it may not, consistent with the foundational principle of its own civilist tradition, sweep away vested licenses by retroactive force.

C. The doctrine of droits acquis under French public law

- 9.5. The French public law doctrine of droits acquis is among the most developed in any civilised legal tradition. It has been articulated by the Conseil d'État over the course of more than a century in a body of decisions too extensive to be exhaustively reviewed here. The principle,

stated simply, is that rights validly acquired under the law cannot be defeated by subsequent administrative or legislative action without violating the most fundamental guarantees of the French legal order. The doctrine operates as a constraint on the unilateral exercise of public power and as a substantive protection for the predictability and stability of private legal positions.

- 9.6. The doctrine is, in substance, identical to the common law and international law doctrines of acquired rights and vested rights to which we have already referred. Its presence in French civil law, however, gives it special operative force within the Comorian legal order. It is not foreign authority that the Union authorities must respect; it is the doctrinal tradition the Comorian state has expressly adopted as its own. The *droits acquis* of holders of AOFA licenses are protected by French civilist doctrine as received in the Comorian legal system, and not merely by the international law principles to which we have already drawn attention.

D. The principle of *sécurité juridique*: Conseil d'État, Assemblée, Société KPMG (2006)

- 9.7. On 24 March 2006 the Assembly of the Conseil d'État, the highest formation of the French supreme administrative court, handed down its decision in *Société KPMG et autres*, registered as decision n° 288460 and following. The decision is among the most significant in modern French administrative jurisprudence. The Conseil d'État expressly recognised, for the first time as an autonomous general principle of French law (*principe général du droit*), the *principe de sécurité juridique* - the principle of legal certainty.
- 9.8. The decision held that the principle imposes substantive obligations on the regulatory authority, including the obligation to provide transitional measures when regulatory changes are introduced that affect existing contractual or legal situations. The principle protects the predictability and stability of the legal order. Where regulatory change is to be made, the change must be made in a manner that respects positions taken in good faith on the basis of the prior legal framework. The principle has, since 2006, been applied in a long line of decisions of the Conseil d'État and is now a settled component of the French public law tradition.
- 9.9. Applied here, the implications are substantial. Retroactive invalidation of AOFA licenses issued in good faith over an eighteen-year period would constitute a fundamental violation of the principle of *sécurité juridique*. The principle, on the authority of the Conseil d'État, is not a mere policy preference; it is an autonomous general principle of law, capable of grounding the annulment of administrative acts that violate it. Any Union act purporting to extinguish vested AOFA licenses would be voidable on that ground alone, independently of all the other arguments set out in this Opinion.

E. The doctrine of *confiance légitime*: legitimate expectations

- 9.10. The closely related doctrine of *confiance légitime* - legitimate expectations - operates in French law (as it does in European Union law, where it was developed by the Court of Justice in the line of cases stemming from *Merck* of 1973 and elaborated in *Mulder v. Council* (1992) and subsequent decisions) to protect the reasonable reliance of parties who have ordered their affairs

on the basis of an apparently valid legal foundation. The doctrine is functionally identical to the equitable doctrine of estoppel by acquiescence addressed at Section 10 below, but it operates within French law with the distinct dignity of a civilist principle.

- 9.11. Under the doctrine, a party that has, in good faith, organised its activities on the basis of conduct or assurances by a public authority is entitled to protection against subsequent reversals that would defeat its reasonable expectations. The protection is not absolute; it must be balanced against the public interest in regulatory reform. But where the reliance is well-founded, where the assurances were clear, and where the proposed reversal is fundamental, the doctrine operates to constrain the public authority's freedom of action.
- 9.12. The application to the present matter is straightforward. The Bank was issued the License by AOFA, a body established by Parliamentary Act of an autonomous legislature, operating openly and continuously for eighteen years, in conditions undisturbed by any judicial determination or legislative repeal. The reliance is well-founded. The conduct of AOFA, of the administration of the Autonomous Island, and of the Union in its acquiescence is sufficient to give rise to legitimate expectations within the meaning of the French civilist tradition. To defeat those expectations now would not merely violate the principle of acquired rights; it would offend the doctrine of *confiance légitime* in its most concrete application.

F. The Ternon doctrine: the intangibilité of administrative acts creating individual rights

- 9.13. We address a doctrine of singular importance for the position of holders of AOFA licenses: the doctrine of *intangibilité des actes administratifs individuels créateurs de droits*, definitively established by the Conseil d'État, sitting in Assemblée, in *Ternon*, decision n° 197018 of 26 October 2001. The decision overruled the prior jurisprudence (notably the *Cachet* line) and established a unified principle: an individual administrative act creating rights cannot be withdrawn by the administration after the expiry of a fixed period (four months from its issuance), even on the ground that the act is illegal. The principle constitutes one of the most powerful protections of legal certainty in French administrative law.
- 9.14. The doctrine operates with particular force in the case of regulatory authorisations. A banking license is, paradigmatically, an *acte administratif individuel créateur de droits*. Once issued and beyond the contestation period (and, under *Ternon*, beyond the four-month period in any event), the license becomes *définitif*. The administration may revoke it only on the grounds and through the procedures provided by the law that authorises revocation. It may not unilaterally treat the license as if it had not been issued, regardless of its view as to the legality of the act of issuance.
- 9.15. The License was issued nearly two decades before the date of this Opinion. The *Ternon* period has long elapsed. The License has become *définitif* in the strongest sense available under French administrative law as received in the Comorian legal order. Any attempt to disregard or retroactively invalidate it would offend the *Ternon* doctrine directly. The Union retains the prospective power to amend the underlying regulatory regime; it does not retain the unilateral power to undo individual acts performed under that regime years previously.

G. The doctrine of the *fonctionnaire de fait*

- 9.16. We have addressed at Section 8 the international law doctrine of de facto government articulated by Taft in the *Tinoco Arbitration*. The doctrine has a civilian counterpart of independent dignity in French administrative law: the doctrine of the *fonctionnaire de fait* - the de facto official - which applies through the Comorian legal order by virtue of the 1975 reception.
- 9.17. The doctrine has been articulated by the Conseil d'État in a line of cases extending from the foundational decision of 7 January 1944 in *L.* (Rec., p. 5) through to the contemporary affirmation in *Préfet de police c/ Mtimet* of 16 May 2001 (Rec., n° 231717). It holds that an agent improperly nominated to public functions is, until that nomination is judicially annulled, to be regarded as legally invested with those functions. The acts performed by the agent during the period of improper investiture are not, on that ground alone, void. The doctrine is protected by the Conseil d'État in two distinct branches: a branch based on *apparence*, which protects the rights of users who could not reasonably have known of the irregularity; and a branch based on *nécessité*, which preserves the continuity of public functions in periods of exceptional difficulty.
- 9.18. The French doctrine is, accordingly, broader than its common law counterparts. It operates not only in cases of revolutionary disturbance but in any case in which an authority operates under colour of office. The Cour de cassation applied an early form of the principle as far back as 1883, in respect of marriages celebrated by a municipal councillor of Montrouge whose delegation from the mayor was technically defective; the marriages were upheld as valid in protection of the parties' reliance on the apparent regularity of the officiating authority.
- 9.19. Applied to AOFA, the implications are clear and they are independent of the Tinoco analysis. Even if it were said (and we do not accept) that the political circumstances of the Bacar administration cast doubt on the formal regularity of the institutions that enacted the AOFA Framework, the doctrine of the *fonctionnaire de fait* operates to validate the acts of those institutions in respect of users who could not reasonably have detected any irregularity. International banking counterparties dealing with the Bank, on the strength of an AOFA license openly issued, openly registered, and openly continuing to operate, are precisely such users. Their rights are protected by the doctrine of the *fonctionnaire de fait* as a matter of received French administrative law applicable in the Comorian legal order.

H. The doctrine of *circonstances exceptionnelles*

- 9.20. The Conseil d'État has, since the decisions of 28 February 1919 in *Dames Dol et Laurent* and 28 June 1918 in *Heyriès*, developed the doctrine of *circonstances exceptionnelles*. The doctrine recognises that public authorities operating in conditions of exceptional difficulty may take measures that would, in normal conditions, be ultra vires, and that those measures retain validity to the extent justified by the exceptional circumstances. The doctrine has been applied to wartime conditions, to public emergencies, and to circumstances of acute political disturbance.

- 9.21. We do not contend that the legislature of the Autonomous Island operated under circumstances such as to require recourse to the doctrine. The legislature was, on the analysis above, constitutionally competent under the 2001 Constitution to enact the AOFA Framework. But if it were said that the federal-island relationship in the period 2001 to 2008 was a circumstance of exceptional difficulty, the doctrine of circonstances exceptionnelles provides a further and independent ground on which the acts of the island authorities are sustained. The doctrine is, again, part of the doctrinal patrimony of the Comorian legal order under the 1975 reception.

I. The constitutional protection of property and investment

- 9.22. The Comorian constitutional order incorporates, by reception and by its own express provision, several protections relevant to the AOFA Framework.
- 9.23. First, the Declaration of the Rights of Man and of the Citizen of 1789, which forms part of the French constitutional bloc and exercises persuasive authority across the constitutional traditions of Francophone Africa, provides at Article 17 that *"la propriété étant un droit inviolable et sacré, nul ne peut en être privé, si ce n'est lorsque la nécessité publique, légalement constatée, l'exige évidemment, et sous la condition d'une juste et préalable indemnité."* Property is an inviolable and sacred right of which no person may be deprived save where public necessity, legally established, evidently requires, and on condition of a just and prior indemnity. A banking license, validly issued under the law of the state, is property in the constitutional sense and attracts these protections.
- 9.24. The constitutional value of property has been definitively affirmed by the Conseil constitutionnel in its decision n° 81-132 DC of 16 January 1982 (*Loi de Nationalisation*), in which the Conseil ruled that the protection of property under Article 17 of the 1789 Declaration retains its full constitutional value. The decision established that any deprivation of property must satisfy the cumulative requirements of necessity, legal foundation, and prior just compensation. The principle has been reaffirmed in subsequent decisions of the Conseil constitutionnel and applied in successive lines of jurisprudence.
- 9.25. Article 16 of the 1789 Declaration provides that *"toute société dans laquelle la garantie des droits n'est pas assurée, ni la séparation des pouvoirs déterminée, n'a point de Constitution."* Any society in which the guarantee of rights is not assured has no constitution. The provision links the protection of vested rights to the constitutional character of the state itself, and operates as a substantive foundation for the principle of legal certainty.
- 9.26. Second, the Constitution of the Union of the Comoros itself, in its chapter on economic and financial organisation, provides expressly that the State guarantees free enterprise as well as the security of capital and investments, and that the State stimulates, supports and protects foreign investment that contributes to the economic and social development of the country, within the conditions provided for by the law. This is not an aspirational provision. It is a constitutional commitment of the Union to the security of investment, binding upon all subsequent

governmental action and enforceable, as a matter of constitutional law, before the Constitutional Court of the Union.

- 9.27. The constitutional commitment to the security of capital and investments operates as a further and independent constraint upon any Union action that would retrospectively void licenses validly issued and continuously operative. To do so would, on any analytical reading, contradict the Union's own constitutional guarantee on which foreign investors and counterparties have relied. The Union cannot, consistently with its own Constitution, advance the proposition that vested foreign investments protected by its own express constitutional commitment may be defeated by mere administrative reversal.

J. State liability for damage caused by legislation: La Fleurette

- 9.28. We turn to a further doctrine of French administrative law, the doctrine of *responsabilité de l'État du fait des lois*, established by the Conseil d'État in its decision of 14 January 1938 in *Société des produits laitiers La Fleurette*. The decision established that the state may incur liability to compensate persons specifically and unduly burdened by the application of a statute, even where the statute itself is lawful, if the legislator did not intend to exclude such liability and the burden is special and grave.
- 9.29. Applied here, the doctrine operates as a deterrent to any prospective legislative repeal that would extinguish vested AOFA licenses without compensation. Even were such repeal to be enacted in proper form, the holders of the affected licenses would have a claim in *responsabilité de l'État du fait des lois*, the doctrine being part of the doctrinal patrimony received into the Comorian legal order under the 1975 Reception Act and applied through the administrative jurisdiction. The combination of constitutional property protection, the doctrine of acquired rights, and La Fleurette responsibility, makes the wholesale legislative extinction of AOFA licenses a course that no rational legislator would adopt.

K. The principle of bonne foi under Article 1104 of the Code civil

- 9.30. Article 1104 of the Code civil, in its post-2016 form, provides that "*les contrats doivent être négociés, formés et exécutés de bonne foi*" - contracts must be negotiated, formed and performed in good faith. The provision is of public order (*ordre public*) and cannot be derogated from. While the principal application of Article 1104 is in private contractual relations, the underlying principle of good faith pervades French law and is treated by the Conseil d'État as a structural principle of the legal order. Public authorities, in their relations with persons who have ordered their affairs on the basis of the public authority's prior conduct, are subject to a duty of good faith that operates as an autonomous constraint on their freedom of action.
- 9.31. The Union's relations with persons who have transacted with AOFA-licensed entities are subject to that duty. To turn against those persons, after eighteen years of acquiescence in the framework under which they transacted, would offend the principle of *bonne foi* in its application to the conduct of public authority.

L. The principle of accessibility and intelligibility of the law

- 9.32. The Conseil constitutionnel, in its decision n° 99-421 DC of 16 December 1999, recognised the constitutional value of the principle of *accessibilité et intelligibilité de la loi* (accessibility and intelligibility of the law). The principle requires that the law be sufficiently clear and accessible to permit the persons subject to it to know their rights and obligations. The principle is the corollary of the principle of legal certainty. It binds the legislator.
- 9.33. Applied here, the principle imposes a structural constraint on any attempt to invalidate AOFA licenses by reference to constructions of the law that depart materially from the text. The AOFA Framework is clear on its face. Its text confers express, exclusive licensing authority on AOFA. The licenses issued under it are clear administrative acts. To suggest that the text says otherwise, or that its operative effect is materially different from what its words convey, would offend the principle of accessibility and intelligibility of the law. The licenses' holders, and counterparties dealing with them, are entitled to take the Framework at its word.

M. The OHADA tradition and harmonised commercial law

- 9.34. We have addressed the membership of the Union in OHADA at paragraph 6.11. The OHADA Uniform Acts apply directly in the legal orders of the member states. They include uniform acts on company law, secured transactions, commercial activities, simplified collective procedures for the recovery of debt, arbitration, and the harmonisation of accounting standards. Each of these instruments draws on the French civilist tradition and operates as positive law within the Comorian legal order.
- 9.35. The OHADA Common Court of Justice and Arbitration (the CCJA), seated in Abidjan, has consistently held in favour of the predictability and reliability of commercial frameworks across the member states, even where political circumstances in the underlying states have been turbulent. The orientation of the Comorian legal order, by reason of its OHADA membership, is, accordingly, overtly supportive of the proposition we have advanced throughout this Opinion: that vested commercial rights, once validly acquired, are not to be lightly defeated. The harmonisation tradition operates as a structural force in favour of stability, predictability and the protection of investment, and does so within the very legal framework that the Comorian authorities have themselves chosen to adopt.

N. Conclusion on the French civil law dimension

- 9.36. The doctrines addressed in this Section converge upon a single conclusion. The principle of non-retroactivity under Article 2 of the Code civil; the doctrine of droits acquis as developed by the Conseil d'État; the principle of sécurité juridique recognised as a general principle of law in the Société KPMG decision of 24 March 2006; the doctrine of confiance légitime; the TERNON doctrine on the intangibilité of acts creating individual rights; the doctrine of the fonctionnaire de fait running from the 1944 L. decision through to the 2001 Préfet de police decision; the doctrine of circonstances exceptionnelles; the constitutional protection of property under Article 17 of the 1789 Declaration as affirmed by the Conseil constitutionnel in the 1982

Nationalisations decision; the Union's own constitutional guarantee of the security of capital and investments; the La Fleurette doctrine of state liability for damage caused by legislation; the principle of *bonne foi* under Article 1104 of the Code civil; the principle of accessibility and intelligibility of the law as recognised by the Conseil constitutionnel; the principle of *continuité du service public*; and the OHADA harmonisation tradition: all converge upon the conclusion that the License is, and remains, a valid *acte administratif individuel créateur de droits*, protected against retrospective invalidation by every relevant doctrine of the legal order under which it was issued.

- 9.37. The convergence is not coincidental. It is the natural result of the application of a mature legal system to a recurring problem in the law of vested rights and political transition. Where multiple independent doctrines converge upon the same conclusion, the conclusion is in our view settled.

10. ESTOPPEL BY ACQUIESCENCE, ADOPTION, AND THIRD-PARTY RELIANCE INTERESTS

- 10.1. We address in this Section the fourth of the questions identified in Section 4: whether the continued operation of AOFA over the period 2005 to 2026 has given rise to acquired rights and reliance interests of legal effect. The analysis proceeds under three heads: (A) the doctrine of estoppel by acquiescence and its civilian equivalents; (B) the doctrine of adoption under the ILC Articles; and (C) the protection of third-party reliance interests.

A. Estoppel by acquiescence

- 10.2. The doctrine of estoppel by acquiescence, captured by the Latin maxim *qui tacet consentire videtur* (he who is silent appears to consent), is a familiar principle of both common law and civil law systems. Where a party, with full knowledge of a state of affairs and the ability to act, fails over a sustained period to take available action against it, that party will in equity be estopped from later challenging the very state of affairs it has tolerated. The doctrine protects reliance, promotes legal certainty, and prevents the late assertion of rights long forgone.
- 10.3. Applied to the present matter, the position is striking. The events of March 2008 are now eighteen years in the past. Throughout that period: (i) the federal authorities of the Union have known of the existence and operation of AOFA; (ii) AOFA has continued to license, renew and supervise international banking entities; (iii) those entities have transacted with international counterparties on the strength of their AOFA licenses; (iv) the BCC has issued occasional public warnings but has not, on the documents available, secured a judicial determination that any AOFA license is void; (v) the Union legislature has not enacted any statute expressly repealing the four Acts of 2005; and (vi) the IMF, as discussed at Section 8, has acknowledged in writing that the Anjouan Framework remains in effect.
- 10.4. Eighteen years of inaction in the face of a continuously operative regulatory framework is not consistent with a present intention to challenge that framework as void *ab initio*. The Union has had the opportunity to act. It has not acted. To permit it now to challenge AOFA licenses long

held and long relied upon would be to allow the institution to take advantage of its own protracted silence at the expense of parties who have ordered their affairs on the strength of that silence. Equity does not countenance such an outcome.

- 10.5. The principle of legal certainty (*Rechtssicherheit* in the German tradition, *sécurité juridique* in the French) is recognised in the constitutional law of most civilised states and in the jurisprudence of the Court of Justice of the European Union. It protects vested rights against retrospective invalidation, particularly where the holder of the right has acted in good faith on the basis of an apparently valid legal foundation. The principle has operative force in any consideration of the AOFA Framework. To strip eighteen years of vested licenses on the strength of a contested constitutional argument never tested before the Constitutional Court of the Union would offend the principle in a particularly acute form.

B. Adoption under Article 11 of the ILC Articles on State Responsibility

- 10.6. We have referred at paragraph 8.21 above to Article 11 of the ILC Articles, which provides that conduct not otherwise attributable to a state shall be considered an act of that state under international law if and to the extent that the state acknowledges and adopts the conduct in question as its own. The Article codifies a principle of customary international law.
- 10.7. The Union's eighteen-year acquiescence in the operation of AOFA is, in our view, sufficient to constitute adoption within the meaning of Article 11. Adoption may take any form by which a state evinces its acceptance of the conduct as its own. Sustained acquiescence over a period of years, in conditions where the state had the power to act and chose not to, is among the strongest forms of adoption recognised by the doctrine.
- 10.8. The consequence of adoption is that the conduct in question becomes the conduct of the state for the purposes of international law. The Union cannot disclaim, *vis-à-vis* foreign nationals who have dealt with AOFA-licensed entities, the consequences of conduct it has, by adoption, made its own. The principle reinforces the conclusions on acquired rights and on the protection of foreign investment that we set out at Section 11 below.

C. The reliance interests of third parties

- 10.9. Closely connected to the doctrine of acquiescence is a further consideration which the contrary case has not seriously addressed: the reliance interests of third parties who have transacted with AOFA-licensed entities on the strength of those licenses. These parties include depositors, correspondent banks, counterparties in international transactions, employees, suppliers, and the wider community of users of international financial services.
- 10.10. The law protects such reliance. In the common law, the doctrine of innocent reliance gives rise to remedies in equity where parties have ordered their affairs on the basis of an apparently valid legal position. In the civil law tradition, the equivalent protections operate through the principles of good faith and *Rechtssicherheit*. In public international law, the reliance interests of foreign nationals dealing with the licensed entities of one state may be vindicated through

the doctrine of diplomatic protection, which is itself underpinned by the principle that the state must not act in a manner that defeats the reasonable expectations of foreign persons who have dealt in good faith with its lawful institutions.

- 10.11. To void AOFA licenses with retroactive effect would not merely defeat the rights of the licensed entities themselves; it would defeat the rights of every third party who has dealt with them. The magnitude of that disruption is not proportionate to whatever benefit the Union might secure by such an act. It would, properly characterised, be an act of expropriation against the property and contractual interests of third parties, attracting all the consequences that follow under international investment law (as we set out at Section 11).
- 10.12. We note that the protection of reliance is not merely an independent ground of decision. It is also a confirming consideration in respect of all the other arguments set out in this Opinion. Where a contrary construction would produce consequences of the scale and injustice that retroactive invalidation would produce, the constructive presumption against such consequences operates as a further reason to prefer the construction that preserves the regulatory order.

11. THE PROTECTION OF INVESTMENT UNDER PUBLIC AND CUSTOMARY INTERNATIONAL LAW

- 11.1. We address in this Section a further body of doctrine reinforcing the conclusions reached above: the protection of foreign investment under public and customary international law. This protection operates as an independent constraint upon any state act that would extinguish or materially impair vested commercial rights of foreign nationals or foreign-held entities.

A. The customary international law minimum standard of treatment

- 11.2. It is a settled principle of customary international law, surveyed across the standard works and arbitral awards, that states owe foreign nationals a minimum standard of treatment that includes protection against arbitrary deprivation of property, denial of justice, and treatment falling below the standards of civilised legal systems. The minimum standard is sometimes referred to as the international minimum standard, sometimes as the customary fair and equitable treatment standard, and sometimes (in the older awards) as the standard of civilised states. The terminology has shifted; the substance has not.
- 11.3. The retrospective extinction of a banking license validly issued by a competent regulatory authority, held openly for eighteen years, in the absence of any allegation of misconduct against the licensed entity, would fall below the customary minimum standard. The conclusion is reinforced where, as here, the license is property within the meaning of the international law of expropriation, and where the licensed entity has ordered its affairs and incurred substantial commercial commitments on the strength of the license.

B. Fair and equitable treatment and legitimate expectations

- 11.4. The modern jurisprudence of investment tribunals has developed the standard of fair and equitable treatment to include the protection of the legitimate expectations of investors. The principle was elaborated in *Tecmed v. Mexico* (ICSID Case No. ARB(AF)/00/2, Award of 29 May 2003), in which the Tribunal held that the standard requires the state to act in a manner consistent with the basic expectations that were taken into account by the foreign investor to make the investment. The principle has been applied in *Saluka v. Czech Republic* (UNCITRAL, Partial Award of 17 March 2006), in successive awards under the ICSID Convention, and in the corresponding jurisprudence of NAFTA, USMCA, and Energy Charter Treaty tribunals.
- 11.5. Three propositions emerge from this jurisprudence. First, regulatory frameworks under which foreign investments are made generate expectations of stability that operate as a constraint upon subsequent state action. Second, the state's freedom to alter its regulatory regime is not unlimited; it must be exercised in a manner that respects the basic expectations the prior regime generated. Third, retroactive measures that materially impair the value of investments made under the prior regime are presumptively incompatible with the standard.
- 11.6. Applied to the present matter, the License generated, and the AOFA Framework continues to generate, legitimate expectations of stability sufficient to engage the standard of fair and equitable treatment under any applicable bilateral investment treaty, and to inform the customary international law minimum standard of treatment in the absence of any such treaty.

C. The international law of expropriation

- 11.7. Direct expropriation of property by a state requires public purpose, non-discriminatory application, due process of law, and prompt, adequate and effective compensation. Indirect expropriation, including measures of regulatory character that have the effect of substantially depriving an investor of the use or value of the investment, attracts the same requirements. The standard is well established in the modern jurisprudence and is reflected in the substantive provisions of the great majority of bilateral investment treaties and free trade agreements containing investment chapters.
- 11.8. Retrospective invalidation of an AOFA license would, in our view, constitute expropriation (whether direct or indirect) of the licensed entity's property. The license is, paradigmatically, the kind of regulatory authorisation that constitutes property for the purposes of the international law of expropriation. Its extinguishment would deprive the holder of the entire economic value of the regulated activity. The four conditions for lawful expropriation could be satisfied only by a public purpose unrelated to the invalidation of the underlying framework, by non-discriminatory application, by due process of law (which would itself require legislative or judicial action of a kind not yet undertaken), and by prompt, adequate and effective compensation. None of these conditions could be expected to be satisfied in the case of an attempt at wholesale retroactive invalidation.

D. Licenses as possessions in property protection jurisprudence

- 11.9. The European Court of Human Rights, in *Tre Traktörer AB v. Sweden* (Judgment of 7 July 1989, Series A No. 159), held that an operating license (in that case, a restaurant alcohol license) is a "*possession*" within the meaning of Article 1 Protocol 1 of the European Convention on Human Rights, the protection of property. The reasoning of the Court, that the license has economic value, generates expectations of continued enjoyment, and forms part of the goodwill of the licensed undertaking, has been accepted in subsequent decisions of the Court and adopted by tribunals in other jurisdictions.
- 11.10. While the Union is not party to the European Convention, the reasoning of *Tre Traktörer* reflects a general principle accepted across the legal traditions: regulatory authorisations of economic activity are property within the meaning of property protection. The principle reinforces the analysis under the customary international law of expropriation, under the constitutional protection of property in Article 17 of the 1789 Declaration, and under the express constitutional commitment of the Union to the security of capital and investments.

E. Diplomatic protection and the Mavrommatis principle

- 11.11. The principle articulated by the Permanent Court of International Justice in *Mavrommatis Palestine Concessions (Greece v. United Kingdom)* (Series A, No. 2, Judgment of 30 August 1924) is that, by taking up the case of one of its nationals and by resorting to diplomatic action or international judicial proceedings on his behalf, a state is asserting its own rights, namely its right to ensure, in the person of its subjects, respect for the rules of international law. The principle remains foundational.
- 11.12. Foreign shareholders of the Bank, and foreign correspondent banks and counterparties dealing with the Bank, who suffered loss by reason of any retrospective invalidation of the License, would be entitled to the diplomatic protection of their national states under this principle. The Union would thereby expose itself not only to claims arising under specific investment treaties (where applicable) but to the broader range of inter-state consequences that flow from breach of customary international obligations to foreign nationals.

F. The parallel of major investment cases

- 11.13. We note, without exhaustive treatment, that the jurisprudence on retrospective regulatory measures has consistently held in favour of investor protection where the prior regime was relied upon in good faith. The line of Argentine cases (CMS, Enron, Sempra, LG&E, and others) following the Argentine emergency measures of 2001-2002; the Czech cases (Saluka, CME) following Czech regulatory reversals in the late 1990s; the Spanish renewables cases following Spanish regulatory changes from 2010 onwards; and the various awards arising from sovereign defaults and restructurings of the past quarter-century, all reflect the same underlying principle: retrospective measures that materially impair investments made under prior regulatory regimes are presumptively incompatible with the international law of investment protection.

G. Conclusion on the international law of investment protection

- 11.14. On the international law of investment protection, we conclude that the License is protected as a property right of the Bank and of its foreign shareholders; that any retrospective invalidation of the License would constitute expropriation requiring satisfaction of the four cumulative conditions of lawfulness; that the standard of fair and equitable treatment, including the protection of legitimate expectations, applies in respect of regulatory measures affecting the License; and that the customary international law minimum standard of treatment operates as a baseline protection regardless of the applicability of any specific investment treaty. Each of these protections operates independently. They reinforce, and are reinforced by, the constitutional and civilist protections addressed at Section 9.

12. COMPARATIVE PRACTICE: SUB-SOVEREIGN AND SPECIALISED FINANCIAL REGULATION

- 12.1. Throughout this Opinion we have referred to the practice of other jurisdictions in which sub-sovereign or specialised authorities license international banking outside the perimeter of a unitary central bank. We address this comparative dimension in full here, because it disposes of an argument that the contrary case implicitly relies upon: the suggestion that AOFA is anomalous or eccentric in international practice. It is not. The architecture of the AOFA Framework is the standard architecture of offshore finance in the contemporary world. The contrary case, if taken seriously, would impugn the licensing authority of a substantial proportion of the world's offshore financial centres.

A. The Crown Dependencies: Jersey, Guernsey, Isle of Man

- 12.2. The Crown Dependencies of Jersey, Guernsey and the Isle of Man are not sovereign states. They are not members of the IMF in their own right. They are not parties to FATF in their own right. Their banking statutes are enacted by their own legislatures (the States of Jersey, the States of Guernsey, and Tynwald respectively), not by the Parliament of the United Kingdom. Their financial regulators (the Jersey Financial Services Commission, the Guernsey Financial Services Commission, and the Isle of Man Financial Services Authority) operate independently of the Bank of England. They license, between them, approximately seventy-five banks holding deposits in excess of £250 billion.
- 12.3. The Edwards Review of Financial Regulation in the Crown Dependencies (Cm. 4109, November 1998), commissioned by Her Majesty's Government, endorsed the legitimacy and the quality of these arrangements in terms that have not been resiled from. The continuing acceptance of the model is evidenced by ongoing innovation: in November 2025, the Guernsey Financial Services Commission authorised Bank Aston as Guernsey's first new locally licensed bank in nearly three decades. The model is alive, current, and accepted across the international banking system.

B. The financial centres of the United Arab Emirates: DIFC and ADGM

- 12.4. The Dubai International Financial Centre and the Abu Dhabi Global Market are constitutional carve-outs within the United Arab Emirates. They operate under their own legal systems, their own courts (the DIFC Courts and the ADGM Courts), and their own regulators (the Dubai Financial Services Authority and the ADGM Financial Services Regulatory Authority). The Central Bank of the UAE does not license entities within either zone. The licenses issued by the DFSA and the ADGM FSRA are accepted by correspondent banks and counterparties around the world. The model is identical in structure to that of AOFA: federal monetary authority retaining exclusive currency competence; sub-federal authority licensing offshore financial entities under a distinct statutory regime.

C. Labuan: a federal special economic regime within Malaysia

- 12.5. Labuan IBFC operates under the Labuan Financial Services Authority Act 1996 within Malaysia. The Labuan Financial Services Authority licenses banking, insurance, leasing, trust and other entities under a regime wholly distinct from the regime applied by Bank Negara Malaysia, the central bank. The arrangement is a recognised feature of Malaysian financial regulation and has been accepted by international counterparties for nearly three decades.

D. The Caribbean offshore centres

- 12.6. The Caribbean offshore financial sector provides a particularly direct comparison. The Cayman Islands, a British Overseas Territory rather than a sovereign state, hosts the Cayman Islands Monetary Authority, which licenses banks holding aggregate deposits in the hundreds of billions of US dollars. Bermuda, also a British Overseas Territory, hosts the Bermuda Monetary Authority. The British Virgin Islands hosts the BVI Financial Services Commission. The Bahamas operates the Central Bank of the Bahamas as a separate monetary authority distinct from any United Kingdom institution (the Bahamas being sovereign). Turks & Caicos, Anguilla and Montserrat each maintain financial services commissions licensing offshore activity. None of these jurisdictions is sovereign in the sense in which the question of recognition is usually framed; all of them license international banking; all of those licenses are accepted internationally.

E. The Kingdom of the Netherlands: parallel monetary and supervisory authorities

- 12.7. The Kingdom of the Netherlands, a Kingdom comprising four constituent countries (the Netherlands, Aruba, Curaçao, and Sint Maarten), operates parallel monetary authorities. De Nederlandsche Bank supervises banks in the European Netherlands and in the Caribbean Netherlands special municipalities. The Central Bank of Curaçao and Sint Maarten supervises banks in those two constituent countries. The Central Bank of Aruba supervises banks in Aruba. Each operates as a distinct monetary and supervisory authority within a single Kingdom, under distinct currencies (the euro in the European Netherlands, the Netherlands Antillean guilder in Curaçao and Sint Maarten, and the Aruban florin in Aruba). The arrangement is constitutional

and uncontroversial. It demonstrates that the existence of parallel monetary and supervisory authorities within a single state is not constitutionally anomalous.

F. The Special Administrative Regions of the People's Republic of China

- 12.8. Hong Kong and Macau are Special Administrative Regions of the People's Republic of China. They are not sovereign. They license international banking under regulatory regimes (the Hong Kong Monetary Authority and the Monetary Authority of Macau) wholly distinct from that of the People's Bank of China. The arrangement, under the principle of "one country, two systems", has been recognised internationally for decades. Hong Kong is, by certain measures, the third-largest international banking centre in the world. The licensing authority of the HKMA is universally accepted. The constitutional foundation, that of sub-sovereign autonomy under the Basic Law, is structurally analogous to the autonomy of the Autonomous Island under the 2001 Constitution.

G. The Pacific: Cook Islands, Vanuatu, Marshall Islands, Samoa

- 12.9. The Cook Islands operate in free association with New Zealand. The Cook Islands Financial Services Commission licenses international banking, insurance and trust activity under a regime independent of the Reserve Bank of New Zealand. Vanuatu, a sovereign state, hosts the Vanuatu Financial Services Commission. The Marshall Islands, sovereign under a Compact of Free Association with the United States, hosts the Marshall Islands Banking Commission. Samoa hosts the Samoa International Finance Authority. Each of these jurisdictions licenses international banking and financial services. Each operates within the international financial system. The Pacific examples are particularly instructive because they include jurisdictions whose constitutional status (free association, sovereignty with Compact, full sovereignty) varies, while the licensing model remains consistent.

H. Gibraltar, Madeira, and Mediterranean micro-states

- 12.10. Gibraltar, a British Overseas Territory, operates the Gibraltar Financial Services Commission, which licenses banking and insurance activity. The Madeira International Business Centre, established within the Autonomous Region of Madeira in Portugal, operates under a special regulatory regime recognised by the European Commission. Liechtenstein, in customs union with Switzerland and using the Swiss franc, operates the Financial Market Authority Liechtenstein as a separate financial regulator. Monaco operates the Commission de Contrôle des Activités Financières. San Marino operates the Central Bank of the Republic of San Marino, the supervisor of San Marinese financial institutions, despite the absence of a separate currency (the euro being used). Andorra operates the Autoritat Financera Andorrana. Each of these jurisdictions operates an independent financial supervisory regime within a broader constitutional or treaty arrangement with a larger state. None of these arrangements is regarded as constitutionally anomalous.

I. Nordic and other autonomous territories: Faroe Islands, Greenland, Åland

- 12.11. The Faroe Islands, an autonomous territory within the Kingdom of Denmark, exercises substantial autonomy in financial supervision. Greenland, also within the Kingdom of Denmark, has its own arrangements. The Åland Islands, an autonomous Swedish-speaking territory within Finland, exercise their constitutional autonomy in respect of various commercial regulations. Each of these arrangements illustrates the general proposition that autonomous territories within larger sovereign states routinely exercise regulatory functions independently of the metropolitan authority, without compromising the constitutional integrity of the metropolitan state.

J. The Organisation of Eastern Caribbean States and parallel competences

- 12.12. The Organisation of Eastern Caribbean States provides a further structural model. The Eastern Caribbean Central Bank issues the Eastern Caribbean dollar and supervises monetary policy across eight member states. Each member state retains its own financial services commission for licensing offshore and certain non-bank financial activity. The arrangement demonstrates that parallel competences (federal monetary authority and state-level offshore licensing) are not only constitutionally tenable but operationally efficient.

K. The general pattern and its implications

- 12.13. The pattern, taken across the comparative material, is consistent and unmistakable. Sub-sovereign or specialised authorities license international financial entities; metropolitan monetary authorities retain control over currency, payments and the domestic banking system. The functional distinction we identified at paragraphs 7.6 to 7.8 is reflected, in greater or lesser detail, in every developed and developing jurisdiction with an offshore financial tradition.
- 12.14. The objection that AOFA is illegitimate because Anjouan is not internationally recognised as sovereign therefore proves a great deal too much. None of the Crown Dependencies are sovereign. None of the financial free zones within the UAE are sovereign. The British Overseas Territories are not sovereign. The SARs of the People's Republic of China are not sovereign. The Autonomous Region of Madeira is not sovereign. Their licensing authority does not depend on sovereignty. It depends on the legal authority delegated to them by, or constitutionally guaranteed to them within, their respective metropolitan states. Anjouan stands, on the analysis at Section 7 above, in precisely that position under the 2001 Constitution of the Union of the Comoros.
- 12.15. The contrary case, if accepted, would defeat the licensing authority of every Crown Dependency, every UAE free zone, every Caribbean offshore centre, every SAR of the People's Republic of China, every Pacific financial services authority, and every autonomous territory within a larger sovereign state that exercises financial regulatory functions. No court, no regulator, and no serious commentator advances such a proposition in respect of those jurisdictions. The proposition cannot rationally be advanced in respect of AOFA alone.

13. THE QUESTION OF INTERNATIONAL RECOGNITION

- 13.1. The contrary position advances, as something approaching a free-standing argument, the proposition that AOFA is not internationally recognised, and that this absence of recognition is dispositive of the question of validity. We have considered the argument and we do not accept it.
- 13.2. International recognition, properly understood, is a concept relevant to the legal personality of states and the standing of governments to represent them in international affairs. It is not the same thing as the legal validity of acts performed by sub-sovereign authorities within their domestic jurisdictions. The point is captured directly by the Tinoco Arbitration, addressed at Section 8 above. Taft held expressly that non-recognition of the Tinoco regime by Great Britain did not destroy the de facto status of the regime or invalidate its acts. The principle applies, a fortiori, to sub-sovereign authorities within recognised states. The Union is recognised. AOFA operates within the Union. The validity of AOFA's licenses is a matter of the law of the Union, not of the recognition of AOFA by international financial institutions.
- 13.3. In any event, the absence of multilateral endorsement of AOFA is a function of its commercial scale and political context, not of its legal validity. The DIFC and the ADGM are not separately recognised by the IMF; their licenses are nonetheless treated as fully operative by correspondent banks and international counterparties. The Crown Dependencies are not separately recognised by FATF; their banking sector is among the largest in the world by deposit volume. The Cayman Islands Monetary Authority is not separately recognised in the manner of a central bank; its licenses are nonetheless universally accepted. The Hong Kong Monetary Authority is not separately recognised in IMF Article IV consultations; it nonetheless supervises one of the largest international banking centres on earth.
- 13.4. Recognition by international financial institutions is a desirable status to acquire, and the path to it is well understood: formal supervisory cooperation arrangements with foreign regulators, mutual evaluation participation, technical assistance programmes, voluntary alignment with FATF and Basel standards, and so forth. It is not, however, a constitutional prerequisite to the validity of a domestic statute. To suggest otherwise would be to subordinate the legal authority of every sub-sovereign regulator to the political preferences of supranational bodies, a proposition that no serious court would accept.
- 13.5. The argument has the further weakness that it confuses recognition with reputation. Recognition is a discrete legal concept. Reputation is a commercial and political matter, subject to evolution over time. The history of offshore finance is replete with jurisdictions whose reputation has shifted as their regulatory frameworks have matured: Mauritius, Seychelles, the Cayman Islands at various points in their history, the Channel Islands in the 1990s, and others. The legal validity of their statutes did not turn on contemporaneous reputation. It turned on whether the statutes were enacted by competent legislatures. AOFA's case, on the analysis at Section 7 above, stands on that footing.

14. THE CONTRARY POSITION AND WHY IT FAILS

- 14.1. We have, throughout this Opinion, addressed the contrary case as it arises in connection with each of the questions before us. We address it now in consolidated form, in the strongest version in which it has been put.
- 14.2. The contrary position may be stated as follows. The Union of the Comoros has, through its central bank, through international assessments commissioned of it by the IMF, and through various diplomatic representations, consistently treated the AOFA Framework as illegitimate. The Bacar administration which enacted the Framework was, at material times, in defiance of the federal authorities. The 2008 intervention was specifically intended to restore federal control. The continued operation of AOFA in the years since is the operation of an institution the federal authorities regard as unauthorised. Banking licenses issued under such an institution cannot, on this view, attract the recognition or protection of the law.
- 14.3. We have stated the argument at its highest. We now address why, in our view, it fails.
- 14.4. First, the constitutional argument fails for the reasons set out in Section 7. The 2001 Constitution grants financial autonomy to the islands. The functional distinction between domestic monetary regulation and international offshore licensing is structural. The supremacy clause has no application where there is no occupation of the same field. The 1980 statute predates the constitutional reordering and survives only on terms compatible with it. The presumption of constitutionality, the principle of effet utile, and the principle in dubio pro libertate, all support the construction we have advanced.
- 14.5. Second, the temporal argument fails for the reasons set out in Section 8. Whatever the federal authorities' present view of the Bacar administration, the Tinoco principle establishes that de facto governments in peaceable administration produce acts that bind their successors. The acquired rights doctrine reinforces the point. The acte de gouvernement characterisation of the 2008 intervention confirms it. The institutional continuity of AOFA, the principle of continuité du service public, the attribution and adoption rules of the ILC Articles, and the IMF's own report when read in full, all converge on the conclusion that the Framework remains in force.
- 14.6. Third, the civilist argument we have set out at Section 9 operates as a complete and independent answer to the contrary case. The Union expressly received French law by the 1975 Reception Act. The principle of non-retroactivity under Article 2 of the Code civil, the doctrine of droits acquis, the principle of sécurité juridique recognised in Société KPMG, the doctrine of confiance légitime, the Ternon doctrine on the intangibilité of acts creating individual rights, the doctrine of the fonctionnaire de fait, the doctrine of circonstances exceptionnelles, the constitutional protection of property under Article 17 of the 1789 Declaration as affirmed by the Conseil constitutionnel in the 1982 Nationalisations decision, the Union's own constitutional guarantee of the security of capital and investments, the La Fleurette doctrine of state liability for damage caused by legislation, the principle of bonne foi under Article 1104 of the Code civil, the principle of accessibility and intelligibility of the law, the principle of

continuité du service public, and the OHADA harmonisation tradition, all converge upon the same conclusion. The contrary case asks the present Union government to repudiate the foundational principles of its own legal order. No court applying that order would accept the invitation.

- 14.7. Fourth, the institutional argument fails for the reasons set out in Section 10. Eighteen years of federal inaction in the face of a continuously operative regulatory framework is not consistent with the present assertion that the framework is void. The Union is estopped, on equitable principles known to every civilised legal system, from making that assertion now. The doctrine of adoption under Article 11 of the ILC Articles operates as a further constraint.
- 14.8. Fifth, the reliance argument set out in Section 10 and the investment protection argument set out in Section 11 operate as independent constraints on any attempt to invalidate AOFA licenses with retrospective effect. The rights of third parties who have dealt in good faith with AOFA-licensed entities cannot be extinguished without giving rise to claims in expropriation and the consequences that follow under international investment law. The customary international law minimum standard, the doctrine of fair and equitable treatment, the protection of legitimate expectations, and the principle that operating licenses constitute property within the meaning of property protection, all reinforce the analysis.
- 14.9. Sixth, the comparative argument set out in Section 12 establishes that AOFA's position is not anomalous but conventional. The contrary argument would, if accepted, defeat the licensing authority of every Crown Dependency, every UAE free zone, every Caribbean offshore centre, every SAR, every Pacific financial services authority, and every autonomous territory within a larger sovereign state. The contrary case is not advanced in respect of those jurisdictions. It cannot rationally be advanced in respect of AOFA alone.
- 14.10. Seventh, the recognition argument set out in Section 13 is conceptually misplaced. Recognition is a doctrine of inter-state relations and the standing of governments. It is not a precondition to the validity of statutes enacted within recognised states by constitutionally competent legislatures.
- 14.11. Taken together, the contrary case rests on a series of arguments each of which, when examined, is either textually unsupported, doctrinally unsound, or empirically refuted by the practice of other states. The case has been advanced by certain authors and institutions with rhetorical force. Rhetorical force is not a substitute for legal merit. On the analytical merits, the case fails.

15. OPINIONS

- 15.1. On the basis of the foregoing analysis, and subject to the assumptions set out at Section 5 and the qualifications and reservations set out at Section 16, we are of the following formal opinion.
- 15.2. **Opinion 1 - Constitutional Competence.** The legislature of the Autonomous Island of Anjouan was, at the time of the enactment of the AOFA Framework in 2005, constitutionally

competent under the 2001 Constitution of the Union of the Comoros to enact a regime for the regulation, licensing and supervision of international banking, offshore corporate, and offshore financial activities falling outside the unitary monetary perimeter of the Union. The four constituent statutes of the AOFA Framework were enacted within the scope of that competence.

- 15.3. **Opinion 2 - Validity of the License.** The License (No. L1149) held by IFB International Finance Bank Ltd. was issued by AOFA in proper exercise of the express, exclusive and unambiguous statutory authority conferred upon it by Section 8 of the OFA Act, read with the International Banks Act No. 005 of 2005, and was valid in its inception.
- 15.4. **Opinion 3 - Continuity Across March 2008.** Neither the federal military intervention of March 2008 nor any subsequent legal, constitutional, or political event has voided the AOFA Framework or the licenses issued under it. The AOFA Framework remains in operative force in 2026. The License remains in operative force in 2026.
- 15.5. **Opinion 4 - Protection as a Vested Right.** The License is protected as an acquired right under the doctrine of the Tinoco Arbitration and the Aramco Award and the customary international law of acquired rights; as a *droit acquis* under the French civil law tradition received into the Comorian legal order by the 1975 Reception Act; as an *acte administratif individuel créateur de droits* under the Ternon doctrine of the Conseil d'État; and as property under Article 17 of the Declaration of the Rights of Man and of the Citizen of 1789 as affirmed by the Conseil constitutionnel in its decision n° 81-132 DC of 16 January 1982.
- 15.6. **Opinion 5 - Protection of Legitimate Expectations.** The License attracts the protections of the principle of *sécurité juridique* recognised as a general principle of law by the Conseil d'État in *Société KPMG et autres* (24 March 2006); of the doctrine of *confiance légitime* in the French civil law tradition and in European law; and of the international law principle of legitimate expectations as developed in the modern jurisprudence of investment tribunals beginning with *Tecmed v. Mexico* (2003) and *Saluka v. Czech Republic* (2006).
- 15.7. **Opinion 6 - Estoppel and Adoption.** The eighteen-year acquiescence of the Union in the operation of AOFA, in the continuous issuance of licenses by AOFA, and in the operation of internationally recognised legal commercial relationships founded upon those licenses, gives rise to estoppel by acquiescence under principles known to every civilised legal system, to *confiance légitime* under French civil law as received in the Comorian legal order, and to adoption within the meaning of Article 11 of the International Law Commission Articles on State Responsibility (2001).
- 15.8. **Opinion 7 - Investment Protection.** The License is protected by the express constitutional commitment of the Union of the Comoros to free enterprise and to the security of capital and investments; by the customary international law minimum standard of treatment of foreign investment; by the principle of fair and equitable treatment; by the protection of property recognised in the jurisprudence of property protection (including *Tre Traktörer AB v. Sweden*, ECtHR, 7 July 1989, treating operating licenses as property within the meaning of Article 1 of

Protocol 1 ECHR); and by the international law of expropriation as it applies to direct and indirect expropriation alike. Any state act that materially impaired the License would attract the requirements of public purpose, non-discriminatory application, due process of law, and prompt, adequate and effective compensation.

- 15.9. **Opinion 8 - No Requirement of Separate Recognition.** The absence of separate International Monetary Fund, Financial Action Task Force or other multilateral recognition of AOFA does not affect the legal validity of the License under the law of the Union of the Comoros. International recognition is a doctrine concerning the legal personality of states and the standing of governments to represent them; it is not a precondition to the validity of statutes enacted by constitutionally competent legislatures within recognised states. The Crown Dependencies, the financial centres of the United Arab Emirates, Labuan, the Caribbean offshore centres, the Special Administrative Regions of the People's Republic of China, and the Pacific financial services authorities all operate on the same constitutional architecture as AOFA without separate recognition by the international financial institutions, and their licenses are universally accepted by international counterparties.
- 15.10. **Opinion 9 - The IMF Report.** The IMF Country Report No. 10/320 of October 2010, on its proper reading and in particular at the paragraph in which the IMF expressly acknowledges that *"This legal framework is still in effect and the non-financial companies created at the time still have a legal basis in the absence of any action taken to invalidate them,"* supports rather than displaces the conclusions stated above. The attempted bifurcation of effect between offshore banking entities and other offshore entities created under the same Framework is untenable on the text of the Framework and is not authority for the proposition that AOFA licenses are void.
- 15.11. **Opinion 10 - Overall Conclusion.** IFB International Finance Bank Ltd. holds a valid and operative international banking license issued by the regulatory authority statutorily designated as competent for that purpose under the law of the Autonomous Island of Anjouan as a constituent part of the Union of the Comoros, and that License attracts the legal protections set out in this Opinion. The position of the Bank, under the law of the Union of the Comoros, under public international law, and under the French civil law tradition received into the Comorian legal order, is that of an institution lawfully authorised to carry on international banking business in accordance with the terms of its License and the regulatory framework under which the License was issued.

16. QUALIFICATIONS AND RESERVATIONS

- 16.1. The Opinions stated at Section 15 are subject to the qualifications and reservations stated below.
- (a) This Opinion is rendered as of the date set forth on the cover page and is based on the law, regulations, and authorities in effect on that date. Subsequent changes in law, regulation, or fact may affect the conclusions stated. We assume no obligation to update this Opinion absent separate written instructions.

- (b) This Opinion addresses the law of the Union of the Comoros (including the law of the Autonomous Island of Anjouan as a constituent part thereof), public international law to the extent indicated, and the French civil law tradition to the extent received into the Comorian legal order under the 1975 Reception Act. No view is expressed on the law of any other jurisdiction.
- (c) This Opinion does not address, and no view is expressed in respect of, any matter of fact other than those expressly recorded herein, including in particular factual matters relating to the Bank's compliance with its statutory and regulatory obligations under the AOFA Framework, the adequacy of its capital, the propriety of its specific transactions, or the conduct of its customer due diligence.
- (d) This Opinion does not address the application of any sanctions regime, anti-corruption legislation, foreign tax requirement, or other regulatory framework of any jurisdiction other than the Union, to particular activities of the Bank or to particular counterparties dealing with the Bank.
- (e) The Opinion proceeds on the assumption (set out at paragraph 5.1(e)) that no court of competent jurisdiction has, as at the date of this Opinion, declared the AOFA Framework or any provision of it invalid or unconstitutional. If such a determination were to be made by a court of competent jurisdiction, the Opinions stated above would require reconsideration in light of the terms of that determination.
- (f) The conclusions reached on the international law of investment protection assume that the Bank, or one or more of its principal shareholders, would have standing to invoke such protections, whether under a bilateral or multilateral investment treaty to which the Union and the relevant home state are parties, or under customary international law applicable in the absence of such a treaty. The availability of specific procedural remedies (including investor-state arbitration) is a matter to be assessed on the facts as they may stand at any future material time.
- (g) Where French jurisprudence is referenced in this Opinion, that jurisprudence is treated as persuasive authority on the content of the French civil law tradition as received into the Comorian legal order, and not as binding precedent of the Comorian courts. The application of the relevant doctrines by the Comorian judiciary is, in our view, properly to be expected, given the structural reception of French law and the established practice of Comorian courts.
- (h) This Opinion is based upon the documents identified in Section 3 and upon the further materials examined in the course of its preparation. We have not undertaken independent investigation of the matters of fact relied upon. Where any material assumption stated in Section 5 is shown to be incorrect, the corresponding Opinion may require reconsideration.

- (i) Nothing in this Opinion shall be construed as advice on the commercial advisability, prudence, or appropriateness of any particular transaction with or by the Bank. The Opinion addresses legal validity only.

17. RELIANCE

- 17.1. This Opinion is rendered to the Board of Directors of IFB International Finance Bank Ltd. for the purposes set out in our engagement.
- 17.2. Subject to paragraphs 17.3 and 17.4 below, this Opinion may be relied upon by the following persons in the conduct of their bona fide due diligence in respect of the Bank: (i) correspondent banks and other financial institutions considering, establishing or maintaining relationships with the Bank; (ii) regulatory authorities of any jurisdiction making inquiry as to the legal standing of the Bank's licensing regime; (iii) professional advisers (legal, accounting, tax, compliance) engaged to advise persons described in (i) or (ii); and (iv) auditors and ratings agencies engaged by or in respect of the Bank or any of its counterparties.
- 17.3. Reliance upon this Opinion is granted on the express condition that no party may treat this Opinion as varying or extending the analysis stated within it. Selective reliance upon individual conclusions, divorced from the analysis and qualifications, is not authorised. The Opinion is to be considered as a whole.
- 17.4. This Opinion is not addressed to, and may not be relied upon by, persons other than those identified in paragraphs 17.1 and 17.2 without our prior written consent. Disclosure of this Opinion to persons outside the categories specified is permitted where required by law or regulation, by professional duty, or for the purpose of due diligence; disclosure beyond those circumstances requires our prior written consent.
- 17.5. This Opinion is governed by, and shall be construed in accordance with, the law of the Union of the Comoros. Any dispute concerning the interpretation or effect of this Opinion shall, to the extent permitted by law, be referred to the courts of the Union of the Comoros, which shall have exclusive jurisdiction.
- 17.6. The Opinion is rendered without acceptance of any duty of care or fiduciary obligation to any person other than the addressee. Reliance under paragraph 17.2 is permitted on the express understanding that no relationship of professional adviser and client thereby arises between us and any such relying party.

18. PRINCIPAL AUTHORITIES RELIED UPON

18.1. The following is a non-exhaustive list of the principal authorities upon which this Opinion is founded. A more extensive list of the documents and materials examined appears at Section 3.

A. *Constitutional and statutory*

- ((i)) Constitution of the Union of the Comoros, 23 December 2001, as revised.
- ((ii)) Constitution of the Autonomous Island of Anjouan, 2002.
- ((iii)) Offshore Finance Authority Act, No. 003 of 2005 (Anjouan).
- ((iv)) International Banks Act, No. 005 of 2005 (Anjouan).
- ((v)) International Business Companies Act, No. 004 of 2005 (Anjouan).
- ((vi)) Money Laundering (Prevention) Act, No. 008 of 2005 (Anjouan).
- ((vii)) Act No. 75-04/ANP of 29 July 1975 (Union of the Comoros).
- ((viii)) Legislation No. 80-7 of 3 May 1980 (Union of the Comoros).
- ((ix)) Code civil (France), in particular Articles 2, 1104, and 1240.
- ((x)) Declaration of the Rights of Man and of the Citizen, 26 August 1789, in particular Articles 2, 16, and 17.

B. *French constitutional and administrative law*

- ((i)) Conseil constitutionnel, decision n° 81-132 DC of 16 January 1982 (*Loi de Nationalisation*).
- ((ii)) Conseil constitutionnel, decision n° 79-105 DC of 25 July 1979 (continuité du service public).
- ((iii)) Conseil constitutionnel, decision n° 99-421 DC of 16 December 1999 (accessibilité et intelligibilité de la loi).
- ((iv)) Conseil d'État, Assemblée, *Société KPMG et autres*, n° 288460 of 24 March 2006.
- ((v)) Conseil d'État, Assemblée, *Ternon*, n° 197018 of 26 October 2001.
- ((vi)) Conseil d'État, *Société des produits laitiers La Fleurette*, decision of 14 January 1938.
- ((vii)) Conseil d'État, Assemblée, *L.*, decision of 7 January 1944, Rec. p. 5 (fonctionnaire de fait).
- ((viii)) Conseil d'État, Section, *Préfet de police c/ Mtimet*, n° 231717, decision of 16 May 2001.
- ((ix)) Conseil d'État, *Heyriès*, decision of 28 June 1918, and *Dames Dol et Laurent*, decision of 28 February 1919 (circonstances exceptionnelles).
- ((x)) Cour de cassation, decision of 1883 (Montrouge mariages).

C. Public international law

- ((i)) Aguilar-Amory and Royal Bank of Canada Claims (Great Britain v. Costa Rica) (*Tinoco Arbitration*), Award of W.H. Taft, 18 October 1923.
- ((ii)) Saudi Arabia v. Arabian American Oil Company (*Aramco*), Award of 23 August 1958.
- ((iii)) *Texaco Overseas Petroleum Co. v. Libya*, Award of 19 January 1977.
- ((iv)) *AGIP S.p.A. v. People's Republic of the Congo*, ICSID Award of 30 November 1979.
- ((v)) *S.S. Lotus (France v. Turkey)*, PCIJ, Judgment of 7 September 1927.
- ((vi)) *Mavrommatis Palestine Concessions (Greece v. United Kingdom)*, PCIJ, Judgment of 30 August 1924.
- ((vii)) ILC Articles on Responsibility of States for Internationally Wrongful Acts (2001), in particular Articles 4, 9, and 11.
- ((viii)) *Tecmed v. United Mexican States*, ICSID Case No. ARB(AF)/00/2, Award of 29 May 2003.
- ((ix)) *Saluka Investments BV v. Czech Republic*, UNCITRAL, Partial Award of 17 March 2006.
- ((x)) *Tre Traktörer AB v. Sweden*, European Court of Human Rights, Judgment of 7 July 1989.

D. Institutional and supervisory sources

- ((i)) IMF Country Report No. 10/320, October 2010.
- ((ii)) ESAAMLG Mutual Evaluation of the Union of the Comoros, 2024.
- ((iii)) Edwards, A., Review of Financial Regulation in the Crown Dependencies, Cm. 4109, November 1998.

E. Treaty and comparative materials

- ((i)) OHADA Treaty (Port Louis, 1993; revised Quebec, 2008) and the OHADA Uniform Acts.
- ((ii)) DIFC Regulatory Law 2004; ADGM Financial Services and Markets Regulations 2015.
- ((iii)) Labuan Financial Services Authority Act 1996 (Malaysia).
- ((iv)) Banking Business (Jersey) Law 1991; Banking Supervision (Bailiwick of Guernsey) Law, 1994; Financial Services Act 2008 (Isle of Man).

F. Doctrinal works

- ((i)) O'Connell, D.P., *State Succession in Municipal Law and International Law* (Cambridge, 1967).
- ((ii)) Cassese, A., *International Law* (2nd ed., Oxford, 2005).
- ((iii)) Cassia, P., "La sécurité juridique," *Recueil Dalloz* 2006, p. 1190.

Respectfully submitted,

[END OF OPINION]