

LEGAL OPINION

IFB International Finance Bank Ltd

The Anjouan Offshore Finance Authority Framework

Validity, Authority, and Continuing Operative Force

Catchwords: Constitutional law - Federal autonomy - Sub-sovereign legislative competence - Offshore banking regulation - De facto government doctrine - Acquired rights (droits acquis) - Estoppel by acquiescence - Reliance interests - International recognition - Lotus principle - Sécurité juridique - Confiance légitime - Fonctionnaire de fait - Napoleonic Code reception - OHADA - Comoros - Anjouan.

I. Introduction

1. The question I must determine is whether IFB International Finance Bank Ltd holds, and continues to hold, a valid banking license issued by the Anjouan Offshore Finance Authority, and whether the regulatory framework under which that license was issued retains operative force in 2026. I have been provided with the principal statutes, the constitutional texts of the Union of the Comoros, the relevant assessments of the International Monetary Fund and the United States Department of State, the contrary commentary, and the comparative material relating to other sub-sovereign financial centres. I have considered the matter on the law and on the evidence. My conclusion is that the license is valid in its inception, anchored in constitutional competence, protected by acquired rights, ratified by the acquiescence of the Union government over an eighteen-year period, and continuing in operative force. My reasons follow.
2. I should say at the outset that the question is one of some refinement. It engages constitutional law in a federated state, the doctrine of de facto government in public international law, the law of acquired rights, principles of estoppel and acquiescence familiar to both common law and civil law systems, the body of French civil law doctrine received into the Comorian legal order upon independence in 1975, and comparative practice in sub-sovereign financial regulation. It cannot be disposed of by reference to a single source, and any opinion that purports to do so is, on any serious view, intellectually incomplete. I have therefore set out my reasoning in some detail.
3. I am conscious that the position of IFB Bank is the subject of contrary commentary, much of it published by interested parties in adjacent commercial markets, some of it by sober institutional sources. I have read the contrary case at its highest and engaged with it in the analysis below. I am not persuaded by it. But I have not dismissed it. A judgment that does not steelman the opposing argument is not a judgment; it is advocacy. This Opinion is intended to be a judgment.

II. The Factual and Legal Framework

4. 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. On 17 February 2001, under African Union mediation, the federal authorities and the leaderships of the three principal islands concluded the General Agreement on National Reconciliation, signed at Fomboni. The Agreement provided for a new federal constitution recognising the autonomy of the islands within the Union.
5. That constitution was adopted by national referendum on 23 December 2001. The text was approved by 77.0% of voters on a turnout of 75.4%. Both figures are recorded in standard reference sources, including the Comparative Constitutions Project and the Peace Agreements Database maintained by the University of Edinburgh. The constitution as adopted, with revisions in 2009, 2014, and 2018, remains the operative federal text.
6. Article 1 of the 2001 Constitution provides that the Union is a Republic composed of the autonomous Islands. Article 3 provides that sovereignty vests in the people, which exercises it “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 while respecting the Constitution of the Union; and that the islands shall enjoy financial autonomy. 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.
7. In the first quarter of 2002, each of the three islands held a separate constitutional referendum and adopted its own island constitution. The Assembly of the Autonomous Island of Anjouan was constituted with twenty-five elected members. From that point until the federal military intervention of March 2008, Anjouan 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.
8. During 2005, the Anjouan legislature passed and the President of the Autonomous Island assented to four statutes which together constitute the framework now in issue. 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 international standards, including mandatory reporting of suspicious transactions, six-year record retention, and asset-freezing powers over the proceeds of crime.

9. Section 3(1) of the Offshore Finance Authority Act provides that AOFA shall have “*primary responsibility for the administration and supervision of offshore legislation.*” Section 8 of the same 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 grant is express, exclusive, and unambiguous on its face. It admits of no construction other than that AOFA is the competent licensing authority for international banking entities within the framework of Anjouan’s offshore legislation.
10. In March 2008, the federal authorities of the Union, supported by African Union forces, conducted Operation Democracy and reasserted central control over Anjouan. The administration of President Mohamed Bacar was displaced. The constitutional structure of the Union remained intact. Anjouan’s autonomous status under the 2001 federal Constitution was not abolished; on the contrary, it was reaffirmed in successive federal arrangements. The Assembly of the Autonomous Island has continued to function. AOFA has continued, on the available evidence, to license, renew, and supervise entities falling within its statutory mandate.
11. 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 Banque Centrale des Comores has, on various occasions, issued public warnings against particular entities claiming AOFA authorisation, but it has not, on the documents before me, secured a judicial determination that the AOFA framework is void or that its existing licenses are invalid.

III. The Issues

12. From the materials and the contrary case I distil five issues for determination. They are as follows.
13. First, whether the Anjouan legislature possessed constitutional competence to enact a regime of offshore financial regulation at the time it did so. This engages the construction of the 2001 federal Constitution and its allocation of powers between the Union and the autonomous islands.
14. Second, whether the statutory grant to AOFA, on its terms, is sufficient to confer licensing authority over international banking entities. This is principally a question of statutory construction.
15. Third, whether the licenses issued under that authority retain operative effect after the federal military intervention of March 2008. This engages the doctrines of acquired rights, de facto government, and the continuity of public acts across political transitions.
16. Fourth, whether the contrary position taken by international bodies, principally the IMF in its 2010 Article IV assessment, is internally consistent and legally sound. This requires close engagement with the text of that report, not merely its rhetorical headlines.

17. Fifth, whether the continued operation of AOFA-licensed entities over an eighteen-year period, in the presence of federal inaction, gives rise to estoppel or acquiescence sufficient to defeat any future challenge to the framework. This engages familiar principles of equity and the protection of reliance interests.
18. I take the issues in that order. I should add that the analysis is, throughout, informed by the French civil law tradition received into the Comorian legal order by Act No. 75-04/ANP of 29 July 1975, which I address comprehensively in Section X below.

IV. The First Issue: Constitutional Competence

19. The first issue is whether the Anjouan legislature was, in 2005, constitutionally competent to enact the AOFA framework. The contrary case 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 government; (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 Comoros; and (iii) that the constitutional rule of Union law supremacy, expressed in the same Constitution, defeats any island-level legislation in conflict with those provisions.
20. I take the propositions in turn, and I should say at once that none of them is, on examination, sufficient to defeat the AOFA framework as enacted.

A. The 1980 legislation and the question of temporal priority

21. Legislation No. 80-7 of 1980 predates the 2001 federal Constitution by more than two decades. It was enacted under the constitutional order of the Federal Islamic Republic of the Comoros, the 1996 constitution which the 2001 text superseded. It is a fundamental principle of constitutional law in any federated jurisdiction that pre-constitutional statutes survive only to the extent they remain consistent with the subsequent constitutional order. Where they conflict, the constitution prevails.
22. 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 an express reservation of offshore financial activity to the Union. To read the 1980 statute as foreclosing all subsequent island-level financial regulation would require the implication of a reservation that the 2001 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. The 1980 statute survives, but it survives only on terms compatible with the constitutional grant of financial autonomy that came after it.

B. Article 9 and the functional distinction between domestic and offshore regulation

23. The Article 9 argument is more substantial, and I have considered it with care. The provision and its associated organic legislation vest competence over banking and finance in the Union government. The question is whether that competence is exclusive, in the sense of foreclosing all island-level activity in any related field, or whether it is exclusive only in respect of the matters it expressly addresses, namely the domestic monetary system, the currency, the payments architecture, and the regulation of institutions transacting in the national currency.
24. The latter construction is, in my judgment, the correct one. The reasoning is as follows.
25. 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, the integrity of the currency, the operation of the national payments system, and the supervision of institutions that intermediate in domestic credit, are matters that demand unitary administration. They cannot operate at island level without producing the kind of regulatory fragmentation that no serious central bank tolerates.
26. 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 Banque Centrale des Comores is constitutionally tasked to administer.
27. This functional distinction is not a clever construction designed to evade Article 9. It is the standard architecture of offshore finance in every developed federated state and every metropolitan jurisdiction with a Crown Dependency or analogous arrangement. 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 financial free zones of the DIFC and ADGM operate as constitutional carve-outs administered by distinct authorities. The Crown Dependencies of Jersey, Guernsey, and the Isle of Man are not sovereign, are not part of the United Kingdom, and yet license major international banking entirely outside the perimeter of the Bank of England's Prudential Regulation Authority. The Edwards Review of Financial Regulation in the Crown Dependencies, commissioned by Her Majesty's Government and published as Cm. 4109 in November 1998, treats this arrangement as legitimate and indeed exemplary.
28. I would go further. The Lotus principle, established by the Permanent Court of International Justice in 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 must therefore run in favour of autonomous competence.

C. The supremacy clause

29. The contrary case relies, finally, on the constitutional provision that Union law shall take precedence over the law of the islands. That principle is not in dispute. It is, however, narrower than the contrary case 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.
30. On the first issue, therefore, I find that the Anjouan legislature was constitutionally competent, in 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.

V. The Second Issue: Statutory Construction

31. The second issue is brief. Section 3(1) of the Offshore Finance Authority Act, No. 003 of 2005, confers upon AOFA primary responsibility for the administration and supervision of offshore legislation. Section 8 of the same 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, on any serious view, decline to apply according to its terms.
32. The licenses issued by AOFA are therefore licenses issued by the statutorily designated authority, in exercise of an express statutory power. The license held by IFB International Finance Bank Ltd falls within that description. On the second issue I am quite clear.

VI. The Third Issue: Continuity of Authority Across the 2008 Intervention

33. I turn to the issue on which much of the contrary case rests: whether the federal military intervention of March 2008, and the displacement of the Bacar administration, voided the prior legal acts of the Anjouan authorities. The argument, in essence, is that even if the AOFA framework was validly enacted in 2005, the political events of 2008 rendered it null and that licenses issued under it cannot now be relied upon. The argument is doctrinally weak. It must, in my judgment, fail.

A. There was no event of state succession

34. The first point to make, because it is fundamental, is that the events of 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.
35. The doctrines of state succession have, accordingly, 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.

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

36. If, however, I am wrong about the characterisation of the 2008 events, and the contrary case were to be made on the footing that the Bacar administration was an unconstitutional regime whose acts cannot bind subsequent authorities, the answer is to be found in the most authoritative source available: 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), United Nations Reports of International Arbitral Awards, Volume I, pages 369 to 399, award dated 18 October 1923.
37. 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.

38. 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.
39. The application of the Tinoco principle to the Anjouan situation is, on any view, direct. The Bacar administration held effective control of Anjouan 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 federal 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.
40. Even, therefore, if it were said (and I do not accept it) that the Bacar administration was constitutionally irregular, the Tinoco doctrine establishes that its acts 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.

C. The doctrine of acquired rights

41. The Tinoco principle is reinforced by the doctrine of acquired rights, articulated in canonical form by the Tribunal in *Saudi Arabia v. Arabian American Oil Company (Aramco)*, Award of 23 August 1958. The Tribunal there 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.
42. Applied to the present matter, the doctrine is straightforward. IFB International Finance Bank Ltd acquired its banking license under the AOFA framework at a time when that framework was, on the analysis above, validly enacted by a competent legislature operating in peaceable administration

of an autonomous territory. That 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.

43. I should add, and I expand on the point in Section X below, that the doctrine of acquired rights operates with particular force in the Comorian legal order. The Comoros 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 Anjouan 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.

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

44. I should now deal with a point that goes to the heart of the contrary case. It is said, with some force, that the IMF in its 2010 Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism: Union of the Comoros (IMF Country Report No. 10/320, October 2010) concluded that the offshore financial institutions of Anjouan were “created in violation of the Union’s law” and “had no legal basis when they were created.” That is what the Report says. I have read the Report. I have also read what immediately follows it.

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.

45. The passage is significant. The IMF, the institution most often cited as having declared the Anjouan framework illegal, in fact 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 IMF 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. That 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.
46. I read the passage as an unintended but candid acknowledgement by the IMF of the very principle I have set out above: that absent formal action to invalidate, the Anjouan framework continues to operate, and that rights vested under it retain their character. The Report is, for that reason, evidence in favour of the IFB position rather than against it.

47. On the third issue, therefore, I find that the events of March 2008 did not, and could not, void the licenses validly issued under the AOFA framework, and that the framework itself remains in operative force in 2026.

VII. The Fifth Issue, Taken Out of Order: Estoppel by Acquiescence

48. I take the fifth issue here because it is so closely linked to the third. The question is whether the continued operation of AOFA-licensed entities over an eighteen-year period, in the presence of federal inaction, gives rise to an estoppel or acquiescence sufficient to defeat any future challenge.
49. The doctrine of estoppel by acquiescence, sometimes 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.
50. 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 Banque Centrale des Comores has issued occasional public warnings but has not, on the documents before me, 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 above, has acknowledged in writing that the Anjouan framework remains in effect.
51. Eighteen years of inaction in the face of a continuously operative regulatory framework is not, on any view, 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.
52. I should add that 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 European Court of Justice. 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, in my judgment, 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 this principle in a particularly acute form. I develop the *sécurité juridique* doctrine in its specifically French civilist form in Section X below.

53. I therefore find that the Union government is, on the facts available, estopped from advancing a challenge to the validity of AOFA licenses in respect of any license issued prior to such date as the Union might legislatively repeal the framework on a prospective basis. No such legislation has been enacted. The estoppel runs to the present moment.

VIII. The Reliance Interests of Third Parties

54. Closely connected to the doctrine of acquiescence is a further consideration that the contrary case studiously avoids: 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.
55. 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.
56. 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, on any view, 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.
57. I note this not as an independent ground of decision but as a confirming consideration. The legal arguments above are, in my judgment, sufficient on their own. But where a contrary construction would produce consequences of this scale and injustice, the constructive presumption against such consequences operates as a further reason to prefer the construction that preserves the regulatory order.

IX. The Comparative Dimension

58. Throughout this Opinion I 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. I should now set out that comparative dimension more fully, because it disposes of an argument that the contrary case implicitly relies upon: the suggestion that AOFA is anomalous or eccentric in international practice.
59. 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 the FATF in their own right. Their banking statutes are enacted by their own legislatures, 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. The Edwards Review of Financial Regulation in the Crown Dependencies, commissioned by HM Government and published as Cm. 4109 in November 1998, endorsed the legitimacy and the quality of these arrangements in terms that have not since been resiled from. 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.
60. 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 (DIFC Courts and ADGM Courts), and their own regulators (DFSA and ADGM FSRA). The Central Bank of the UAE does not license entities within either zone. The licenses issued by DFSA and ADGM FSRA are accepted by correspondent banks and counterparties around the world. The model is identical in structure to AOFA's: federal monetary authority retaining exclusive currency competence; sub-federal authority licensing offshore financial entities under a distinct statutory regime.
61. Labuan IBFC operates under the Labuan Financial Services Authority Act 1996 within Malaysia. The Bahamas, Bermuda, the Cayman Islands, the British Virgin Islands, the Channel Islands of Sark and Alderney, and Mauritius each maintain offshore licensing regimes administered by authorities distinct from their respective monetary authorities. Bahrain operates a parallel offshore banking sector under a specialised regulatory regime. The pattern is consistent across the developed and developing world: sub-sovereign or specialised authorities license international financial entities; metropolitan monetary authorities retain control over currency, payments, and the domestic banking system.

62. 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. 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 above, in precisely that position under the 2001 Constitution of the Union of the Comoros.

X. The Position Under French Civil Law and the OHADA Tradition as Received in the Comorian Legal Order

63. I now turn to a body of doctrine that, in my judgment, reinforces every substantive conclusion I have reached above. 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. I take it under eight heads.

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

64. The Comoros achieved independence from France on 6 July 1975. Among the first legislative acts of the new state was Act No. 75-04/ANP of 29 July 1975, expressly providing for the retention of French statutory provisions in the legal order of the Union. The effect of that Act was decisive. The French Civil Code, the body of French commercial and administrative law, the doctrines articulated by the Conseil d'État and the Cour de cassation, and the constitutional principles received from the French tradition, were all retained in the Comorian legal order, subject only to such modifications as the Union legislature would subsequently make.
65. The Comorian legal system today is, on the authority of the United States Department of State, the Encyclopaedia Britannica, the 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, administers a jurisprudence drawing extensively on French legal sources in matters of contract, property, civil obligations, and administrative law.
66. The Union is also a full member of the Organisation pour l'Harmonisation en Afrique du Droit des Affaires (OHADA), the treaty organisation of seventeen Francophone and lusophone African states that has produced a body of uniform commercial law expressly modelled on French legal principles. OHADA Uniform Acts apply directly within the legal orders of 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 is built on the foundations of the French civilist tradition.

67. It follows, and I make the point with some emphasis, that any contemporary analysis of the legality and continuing force of an AOFA-issued banking license must take account of French civil law doctrines as received and applied in the Comorian legal order. To overlook these doctrines, as the principal contrary commentary has done, is not merely to engage in a partial analysis; it is to ignore the body of law under which the framework was enacted, the principles by which a Comorian court would assess its validity, and the doctrinal vocabulary in which any future challenge would have to be framed. I now address the principal French law doctrines that bear on the matter.

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

68. Article 2 of the French Civil Code, received into Comorian law by the 1975 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 and 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.
69. Applied to the present matter, the principle is dispositive of the contrary case in its retroactive form. Whatever view the present Union authorities may take of the AOFA Acts of 2005, those Acts were, on the records, 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. To do so would offend Article 2 in its most direct application.

C. The doctrine of droits acquis under French public law

70. The French public law doctrine of *droits acquis* - acquired rights - 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.

71. The doctrine is, in substance, identical to the common law and international law doctrines of acquired rights and vested rights to which I have already referred. Its presence in French civil law, however, gives it a 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 I have already drawn attention.

D. The principle of sécurité juridique: Conseil d'État, Assemblée, 24 March 2006, Société KPMG

72. 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 the case of *Société KPMG et autres*, registered as decision n° 288460 and the following numbers. 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.
73. 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 (including those of 24 July 2019, 9 December 2016, 16 November 2016, and 15 February 2016, among many others) and is now a settled component of the French public law tradition.
74. Applied to the present matter, the implications are substantial. Retroactive invalidation of AOFA licenses issued in good faith over an eighteen-year period would constitute, on any analytical reading, 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, in the analysis of the French administrative tradition received by the Comoros, be voidable on that ground alone, independently of all the other arguments I have set out in this Opinion.

E. The doctrine of confiance légitime: legitimate expectations

75. The closely related doctrine of *confiance légitime* - legitimate expectations - operates in French law (as it does in European Union law, where it was earlier developed by the Court of Justice in the line of cases stemming from Merck of 1973) 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 which I have already addressed in Section VII above, but it operates within French law with the distinct dignity of a civilist principle.
76. 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.
77. The application to the present matter is straightforward. IFB International Finance Bank Ltd was issued its license by AOFA, a body established by Parliamentary Act of an autonomous legislature, operating openly and continuously for eighteen years, in conditions that have not been disturbed by any judicial determination or legislative repeal. The reliance is well-founded. The conduct of AOFA, of the Anjouan administration, and of the Union government 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 doctrine of the fonctionnaire de fait

78. I have already addressed, in Section VI, the international law doctrine of de facto government articulated by Taft in the Tinoco Arbitration. I now address its civilian counterpart, the doctrine of the *fonctionnaire de fait* - the de facto official - which is independently developed in French administrative law and applies through the Comorian legal order by virtue of the 1975 reception.
79. 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 his 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.

80. 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.
81. Applied to AOFA, the implications are clear and they are independent of the Tinoco analysis. Even if it were said (and I 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 IFB 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.

G. Constitutional protection of property and investment

82. The Comorian constitutional order incorporates, by reception and by its own express provision, several protections relevant to the AOFA framework.
83. 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.
84. 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.

85. 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.

H. The OHADA tradition and harmonised commercial law

86. I should add a final point under this heading. The Union of the Comoros is, as I have noted, a full member of OHADA. 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, insolvency, 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.
87. 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 therefore overtly supportive of the proposition I 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 it does so within the very legal framework that the Comorian authorities have themselves chosen to adopt.
88. On the eighth and final head of this Section, therefore, I find that the French civil law tradition, received into the Comorian legal order by Act No. 75-04/ANP of 29 July 1975, reinforced by the OHADA tradition, and elaborated through the jurisprudence of the Conseil d'État and the Cour de cassation, provides a body of doctrine that converges, on every material point, with the international and comparative law conclusions I have set out above. The convergence is not coincidental. It is the natural consequence of the application of mature legal systems to a recurring problem in the law of vested rights and political transition. Where the answers converge, the answer is generally the right one.

XI. The Question of International Recognition

89. The contrary case advances, as something close to a free-standing argument, the proposition that AOFA is not internationally recognised, and that this absence of recognition is itself dispositive of the question of validity. I have considered the argument and I do not accept it.
90. 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, which I have already addressed. 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.
91. 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 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 nonetheless among the largest in the world by deposit volume. Recognition by international financial institutions is a desirable status to acquire, and the path to it is well understood (formal supervisory cooperation arrangements, mutual evaluations, technical assistance programmes, 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, on any view, accept.

XII. Addressing the Contrary Case at its Highest

92. I have so far set out the affirmative case. I now address the strongest form of the contrary argument that has been put to me. The argument may be stated as follows:
93. The Union of the Comoros has, through its central bank, through international assessments commissioned of it by the IMF, and through diplomatic representations including those of the United States Department of State, 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, the argument concludes, attract the recognition or protection of the law.

94. I have stated the argument at its highest. I now explain why, in my judgment, it fails.
95. First, the constitutional argument fails for the reasons set out in Section IV. 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.
96. Second, the temporal argument fails for the reasons set out in Section VI. 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. And the IMF's own report, when read in full, acknowledges that the framework remains in effect.
97. Third, the institutional argument fails for the reasons set out in Section VII. 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.
98. Fourth, the reliance argument set out in Section VIII operates as an independent constraint 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.
99. Fifth, the comparative argument set out in Section IX establishes that AOFA's position is not anomalous but conventional. Sub-sovereign and specialised regulators license international banking entities in every developed jurisdiction with a financial centre tradition. The contrary argument would, if accepted, defeat the licensing authority of every Crown Dependency and every free zone in the world.
100. Sixth, and this is the head I have added with particular emphasis in Section X, the position under French civil law as received in the Comorian legal order operates as a complete and independent answer to the contrary case. The Comoros expressly received French law by Act No. 75-04/ANP of 29 July 1975. The principle of non-retroactivity under Article 2 of the Civil Code, 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 doctrine of the *fonctionnaire de fait* running from the 1944 L. decision through to the 2001 Préfet de police decision, the constitutional protection of property under Article 17 of the 1789 Declaration, the Union's own constitutional guarantee of the security of capital and investments, 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, in my judgment, be willing to do so.

101. Seventh, the recognition argument set out in Section XI is conceptually confused. 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.
102. 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. I am bound to record that the contrary case has been advanced by some authors and institutions with rhetorical force. Rhetorical force is not, in a court of law, a substitute for legal merit. The case fails.

XIII. Conclusion

103. I conclude, for the reasons set out above, as follows.
104. The Anjouan legislature was, at the time of the enactment of the AOFA framework in 2005, constitutionally competent to enact a regime of offshore financial regulation. That competence is express in the grant of financial autonomy under the 2001 federal Constitution, reinforced by the functional distinction between domestic monetary regulation and offshore licensing, and not defeated by Article 9 of the Constitution or by the pre-constitutional statute of 1980.
105. The statutory grant to AOFA is, on its terms, sufficient to confer licensing authority over international banking entities. Section 8 of the Offshore Finance Authority Act, No. 003 of 2005, is express, exclusive, and unambiguous. The license held by IFB International Finance Bank Ltd was issued under that authority and is, on any serious view, a valid license.
106. The events of March 2008 did not, and could not, void the validly issued licenses. There was no event of state succession. The constitutional order of the Union remained intact. The autonomous status of Anjouan was reaffirmed, not abolished. The Tinoco doctrine of de facto government, the doctrine of acquired rights articulated in the Aramco award, the French civilist doctrines of *droits acquis* and the *fonctionnaire de fait*, and the IMF's own acknowledgement in Country Report 10/320 that the Anjouan framework "is still in effect", all converge upon the same conclusion: the licenses retain operative force.
107. The Union has acquiesced in the operation of the AOFA framework for eighteen years. It is now estopped, on equitable principles, from advancing a wholesale challenge to the framework's validity in respect of licenses long held and long relied upon. The principles of legal certainty (*sécurité juridique* in the French tradition received by the Comoros, *Rechtssicherheit* in the German

tradition, legal certainty as a general principle of European Union law), and the doctrine of *confiance légitime*, support the same conclusion across every civilised legal system.

108. The reliance interests of third parties who have dealt in good faith with AOFA-licensed entities operate as a further and independent constraint against retroactive invalidation. To invalidate would be to expropriate; to expropriate would be to attract the full consequences of international investment law and to violate the constitutional protection of property under Article 17 of the 1789 Declaration and the Union's own constitutional guarantee of the security of capital and investments.
109. The comparative practice of every developed jurisdiction with an offshore financial tradition is consistent with the structure of the AOFA framework. The licensing of international banking by sub-sovereign or specialised authorities operating outside the perimeter of a unitary central bank is the dominant international model, not an aberration.
110. International recognition is a doctrine of inter-state relations, not a precondition to the validity of statutes enacted by competent legislatures within recognised states. The absence of separate IMF or FATF recognition of AOFA is a function of commercial scale and political context, not of legal validity.
111. I add a final observation of some importance. The doctrines I have addressed in this Opinion - whether from public international law, the common law of equity, comparative regulatory practice, the French civil law tradition received into the Comorian legal order, or the OHADA harmonisation framework - converge with notable consistency upon a single conclusion. The license issued to IFB International Finance Bank Ltd by the Anjouan Offshore Finance Authority is, on every test that the law applies, a valid license, attracting the protections that valid licenses attract, and not capable of being defeated by retrospective challenge. That convergence is itself instructive. Where multiple bodies of law, developed independently and in different traditions, produce the same answer, it is generally because the answer is correct.
112. The Opinion I am asked to give is therefore as follows. IFB International Finance Bank Ltd holds a banking license issued by the Anjouan Offshore Finance Authority. That license is valid in its inception, anchored in constitutional competence under the 2001 federal Constitution, protected by the doctrines of acquired rights, *de facto* government, and the *fonctionnaire de fait*, ratified by the acquiescence of the Union government over an eighteen-year period, secured by the principle of *sécurité juridique* as recognised by the Conseil d'État and received into the Comorian legal order, reinforced by the OHADA tradition and the Union's own constitutional guarantee of the security of capital and investments, and continuing in operative force as a matter of law. The contrary case, however confidently asserted, does not, on any analytical reading of the statutes, the constitution, the international authorities, the comparative practice, or the French civilist tradition received into

the Comorian legal order, survive close examination. There is, in my judgment, no other tenable conclusion.

113. That is my Opinion.

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