

**PRE-PAID INSTRUMENTS: A COMPARATIVE ANALYSIS BETWEEN INDIA  
AND THE UNITED ARAB EMIRATES**

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**ABSTRACT:** *The author in this paper tries to emphasise on how differently detailed the regulations established by India and the UAE are. This is further attributed to the discussions about payment regulation in general and digital payment regulation in particular, which have been going on in India since 2007, if not earlier. In 2007, the Indian Payment and Settlement Systems Act (the "PSSA") was published. In contrast, the UAE's Stored Value Facilities Rules (also known as the "SVFR"), which are the PPIs' equivalent, were published in September 2020. This difference, its implications and the laws regulating prepaid instruments (PPIs) in India and the United Arab Emirates (UAE) are compared in this paper. The author has elaborated on key premises and compared one jurisdiction to another using cases that were addressed in that jurisdiction.*

**KEYWORDS:** *Pre-paid instruments, PSSA, SVFR, UAE, India*

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## I. INTRODUCTION

This paper compares the laws governing prepaid instruments ('PPIs') in India and the United Arab Emirates ('UAE'). It further fleshes out distinct touchpoints and uses cases addressed in one jurisdiction, comparing it to the other.

At the outset, the author highlights that the granularity of regulations issued by India and the UAE vary substantially. This is owed to the fact that the conversation on regulating payments generally, and digital payments specifically, has been ongoing in India since 2007, if not earlier. The Indian Payment and Settlement Systems Act,<sup>1</sup> ('PSSA') was released in 2007. Compared to this, the UAE released the first regulations on stored value facilities – the equivalent of PPIs – in September 2020 through the Stored Value Facilities Regulations ('SVFR').<sup>2</sup> With time, the author anticipates the SVFR to be refined and cover specific use cases, much like its Indian counterpart.

## II. THE GROWTH OF DIGITAL PAYMENTS

The growth and resultant regulation of PPIs is a consequence of, in part, the increasing popularity of non-bank-led payment solutions. Africa and Southeast Asia have been of particular interest to PPI issuers given low banking penetration<sup>3</sup>. Financial technology service providers ('FinTechs') have moved quickly to fill in this void by providing front-end payment applications<sup>4</sup>. Typical examples can be seen in emerging markets such as India, Kenya, the Philippines, and Vietnam<sup>5</sup>. In emerging markets, noncash retail payment transactions increased at a compound annual growth rate of 25% between 2018 and 2021<sup>6</sup>. The growth of e-commerce, improved investor appetite for digital payments, global government initiatives towards digital payments, and of course the covid pandemic have all had their roles to play in the emergence of digital payments<sup>7</sup>.

Within digital payments, the increased popularity of PPIs is the story in emerging markets where the payments infrastructure is still developing, along with the absence of regulatory

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<sup>1</sup> Payment and Settlement Systems Act, 2007, No. 51, Acts of Parliament, 2007 (India).

<sup>2</sup> Stored Value Facilities Regulation, C.B.U.A.E (2020).

<sup>3</sup> Reet Chaudhuri, Carolyne Gathinji, Gustavo Tayar, and Evan Williams, *Sustaining digital payments growth: Winning models in emerging markets*, MCKINSEY & COMPANY (Oct. 13, 2022), <https://www.mckinsey.com/industries/financial-services/our-insights>.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

restrictions on non-banking entities providing such facilities<sup>8</sup>. Furthermore, simplified KYC and easy client onboarding procedures have facilitated the quick adoption of PPI solutions<sup>9</sup>. This is not to say that economies with developed financial services infrastructure have not been quick to roll out wallet solutions. DBS Bank's PayLah is an example of a successful PPI solution co-existing with matured payment systems.<sup>10</sup>

The convergence of high volume-low value payments, the possibility of increased penetration, and the layered potential of non-core services integrated into PPIs have led to monetary regulators moving swiftly to regulate these solutions. Simultaneously exist policy considerations of anti-money laundering, liquidity, and technological risks, safeguarding account requirements, and pool money deployment. A deep exploration of these factors is not within the scope of this article.

### III. REGULATIONS (INCLUDING NOMENCLATURE) AND REGULATORS

The regulatory framework in India is layered. The regulation of PPIs falls within the regulation of payment systems. The principal governing law is the PSSA, administered by the Reserve Bank of India (RBI) which is the Indian monetary regulator. A 'Payment System' is defined as "...a system that enables payment to be effected between a payer and a beneficiary, involving clearing, payment or settlement service or all of them, but does not include a stock exchange".<sup>11</sup> Payment Systems include 'Electronic Fund Transfer Systems' and 'Gross Settlement Systems',<sup>12</sup> both of which are defined in the PSSA. Consequently, the PSSA also regulates these payment systems. Section 18, PSSA governs the power of the RBI to give directions generally. Additionally, section 10 of PSSA governs the power of the RBI to determine standards. Sections 18 and 10 (2) of the PSSA were leveraged by the RBI to issue the 'Master Direction on PPIs' (MD-PPIs). The MD-PPIs were last amended in November 2021.

The Federal Decree-Law No. 14 of 2018 on the Central Bank and the Organisation of Financial Institutions and Activities (Federal Decree 14 of 2018)<sup>13</sup> governs the ambit and operation of the Central Bank of the UAE (CBUAE). It also governs financial institutions, both licensed

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Supra* note 1, § 2(1).

<sup>12</sup> *Id.* § 2.

<sup>13</sup> Federal Decree 1 (2020).

and otherwise.<sup>14</sup> Article 65 of the Federal Decree 14 of 2018 lists the financial activities subject to the CBUAE's licensing and supervision. This includes the provision of stored value facilities as well. Leveraging Articles 67 through 71 of the Federal Decree 14 of 2018, the CBUAE issued the SVFR and it also administers the same.

### **KEY OBSERVATIONS**

Note that the SVFR is a standalone principal regulation for governing SVFs, as opposed to being a sub-regulation under another law, as the MD-PPI is issued under the PSSA. Furthermore, as opposed to having a unified law on payments, such as the PSSA, the CBUAE has issued distinct regulations to regulate distinct payment systems leveraging its law-making powers in the Federal Decree 14 of 2018. Examples include the Retail Payment Services and Card Schemes Regulations, 2021; the Large Value Payment Systems Regulation, 2021; and the Retail Payment Systems Regulation, 2021. On occasion, this has led to a conflict in definitions, especially in relation to Virtual Assets, which have been defined differently under the SVFR and the Retail Payment Services and Card Schemes Regulations, 2021.

## **IV. DEFINITIONAL CONTOURS**

The MD-PPI defines PPIs as “Instruments that facilitate the purchase of goods and services, financial services, remittance facilities, etc., against the value stored therein”.<sup>15</sup> The MD-PPI further notes that “PPIs that require RBI approval/authorisation prior to issuance are classified under two types viz. (i) Small PPIs, and (ii) Full-KYC PPIs”. Small PPIs and Full-KYC PPIs are explored in greater depth below in the article.

As opposed to the MD-PPI, the SVFR defines more aspects of the process of issuing PPIs and defines several related components as well. The SVFR defines an SVF as:

*“A facility (other than cash) for or in relation to which a Customer,<sup>16</sup> or another person on the Customer's behalf, pays a sum of money (including Money's Worth such as values, reward points, Crypto-Assets or Virtual Assets) to the issuer, whether directly or indirectly, in exchange for: (a) the storage of the value of that money (including Money's Worth such as values, reward points, Crypto-Assets or Virtual Assets),*

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<sup>14</sup> Federal Decree 1 § 1 (2018).

<sup>15</sup> Reserve Bank of India, Master Directions on Prepaid Payment Instruments, RBI/DPSS/2021-22/82 (Issued on August 27, 2021).

<sup>16</sup> Stored Value Facilities Regulation, C.B.U.A.E (2020).

*whether in whole or in part, on the facility; and (b) the “Relevant Undertaking”. SVF includes Device-based Stored Value Facility and Non-device-based Stored Value Facility.”<sup>17</sup>*

## KEY OBSERVATIONS

We observe a more descriptive definition of SVFs under the SVFR than for PPIs under the MD-PPI. Specifically, the definition excludes cash, includes the possibility of another person acting on behalf of a customer, extends and clarifies the definition of value to include Money’s Worth, and introduces the concept of a Relevant Undertaking. Money’s Worth is defined as “value-added onto an SVF by the Customer; value received on the Customer’s SVF account; and value redeemed by the Customer include not only “money” in the primary sense.” Therefore, the value may be of any nature, including monetary consideration, values, reward points, and, importantly, Crypto-Assets<sup>18</sup> or Virtual Assets<sup>19</sup> may be stored on an SVF. This is absent in the MD-PPI. For a facility to qualify as an SVF it must present a Relevant Undertaking. The SVFR states:

*“In relation to an SVF, Relevant Undertaking means an undertaking by the Licensee that, upon the use of SVF by the Customer as a means for payment for goods and services (which may be or include money or Money’s Worth) or payment to another person, and whether or not some other action is also required, the Licensee, or a third party that the SVF Issuer has procured to do so, will, in accordance with the Operating Rules: (a) supply the goods or services; (b) make payment for the goods or services; or (c) make payment to the other person, or as the case requires.”<sup>20</sup>*

Therefore, the Relevant Undertaking can be about payment for goods and services as well as payment to another person. The use of the term ‘payment’, as opposed to ‘transfer’, raises questions on whether the payment must be against a payment obligation or whether this can include peer-to-peer transfers simpliciter. The author interprets it as the latter since the former is likely to be covered by sub-points (a) and (b) in the definition of a Relevant Undertaking.

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<sup>17</sup> *Id.* art. 1(27).

<sup>18</sup> *Id.* art. 1(8); SVFR defines Crypto-Assets as “cryptographically secured digital representations of value or contractual rights that use a form of distributed ledger technology and can be transferred, stored or traded electronically”.

<sup>19</sup> *Id.* art. 1(30); SVFR defines Virtual Assets as “...digital tokens (such as digital currencies, utility tokens or asset-backed tokens) and any other virtual commodities, Crypto Assets and other assets of essentially the same nature.”

<sup>20</sup> *Id.* art. 1(29).

Additionally, it is unclear whether an SVF can be used to conduct a cross-border fund transfer. This is stipulated as being permitted under the MD-PPI. Cross-border fund transfers are a distinct activity under the Retail Payment Services and Card Schemes Regulations, 2021. This indicates that such clients working at the intersection of both these financial services must procure both licenses, and securing one is unlikely to obviate the need for the other.

## V. CATEGORISATION OF PPIs

The MD-PPI currently bifurcates PPIs into two heads – Small PPIs and Full-KYC PPIs.<sup>21</sup> Small PPIs are defined as:

*“Issued by banks and non-banks after obtaining minimum details of the PPI holder. They shall be used only for purchase of goods and services. Fund transfer or cash withdrawal from such PPIs shall not be permitted. Small PPIs can be used at a group of clearly identified merchant locations/establishments which have a specific contract with the issuer (or contract through a payment aggregator/payment gateway) to accept the PPIs as payment instruments”.*<sup>22</sup>

Small PPIs are further split into PPIs up to ₹ 10,000 (with cash loading facility) and PPIs up to ₹ 10,000 (with no cash loading facility). The only difference is that in that latter facility, loading may only be done from a bank account/credit card / full-KYC PPI.<sup>23</sup> The remaining features are the same. Small PPIs can only be used for payment for goods and services and not for cash withdrawals or money transfers.<sup>24</sup> The Master Direction for KYC issued by the RBI specifies that a mobile number verification via One Time Password and a self-declaration of name and unique identity /identification number of any "mandatory document" or "Officially Valid Document" recognised in the directive are the bare minimums necessary to obtain a Small PPI.<sup>25</sup> Loading limits are ₹ 10,000 monthly, and ₹ 1,20,000 annually. Further, monthly spending cannot exceed ₹ 10,000.<sup>26</sup> Small PPIs can only be issued once to a person and must be converted to Full KYC PPIs within 2 months from the date of issuance.<sup>27</sup>

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<sup>21</sup> Reserve Bank of India, Master Directions on Prepaid Payment Instruments, RBI/DPSS/2021-22/82 (Issued on August 27, 2021).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 21, 9.1(ii).

<sup>24</sup> *Id.* at 21, 9.1.

<sup>25</sup> *Supra* note 21

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

Full-KYC PPIs are defined as those “Issued by banks and non-banks after completing Know Your Customer (KYC) of the PPI holder. These PPIs shall be used for purchase of goods and services, funds transfer or cash withdrawal.” Video Customer Identification Process is specifically stated to be allowed for obtaining Full-KYC PPIs or for converting Small PPIs to Full-KYC PPIs.<sup>28</sup> This is subject to the Master Direction for KYC issued by the RBI. The amount outstanding cannot exceed ₹ 2,00,000 at any point.<sup>29</sup> Monthly fund transfer limits have been prescribed for pre-registered beneficiaries (₹ 2,00,000) and otherwise (₹ 10,000).<sup>30</sup> In the case of bank and non-bank-issued Full-KYC PPIs,<sup>31</sup> cash withdrawals are permitted, subject to some limits.

This is a shift from India’s earlier categorisation of PPIs,<sup>32</sup> namely including (i) Closed System PPIs, (ii) Semi-closed System PPIs, and (iii) Open System PPIs. Closed System PPIs could be used to purchase goods and services from the entity which has issued the PPI and did not permit cash withdrawals.<sup>33</sup> Think of a Marks & Spencer gift card. These did not require approval/authorisation from the RBI since they did not qualify as payment instruments. Semi-closed System PPIs may be used to purchase goods and services, as well as financial and remittance services, from a group of clearly identified merchants who have agreed to accept the PPIs as payment instruments in a specific contract with the issuer.<sup>34</sup> Also, cash withdrawals were not permitted. Open System PPIs could only be issued by banks and could be used to purchase products and services from any merchant, including financial services and remittance facilities, amongst other services.<sup>35</sup> Cash withdrawals were permitted using these PPIs at ATMs, Points of Sale devices, and Business Correspondents.<sup>36</sup> This classification has been amended to promote interoperability between PPIs and with the Unified Payments Interface operating in India and to simplify the regulatory landscape.

The SVFR does not provide a categorisation of SVFs but does mention Closed Loop Payment Schemes and Single-purpose Stored Value Facilities. The SVFR defines a Closed Loop Payment Scheme as “a payment scheme, which is limited in terms of where it can be used to

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<sup>28</sup> *Id.* at 9.2.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* ¶ 2.8.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

purchase goods and services from an issuing retailer or entity”.<sup>37</sup> Further, a Single-purpose SVF is defined as:

*“a facility that in respect of which the issuer gives an undertaking that, if the facility is used as a means of making payments for goods or services (not being money or Money’s Worth) provided by the issuer, the issuer will provide the goods or services under the rules of the facility. A Closed Loop Payment Scheme is a typical Single-purpose Stored Value Facility”*.<sup>38</sup>

The SVFR lists some exemptions from licensing requirements as well. These are bonus and cash reward scheme SVFs, SVFs for digital product purchases, SVFs usable within a limited group of goods or services providers, and SVFs with an aggregate float below AED 500,000 and total users lesser than 100.

#### **KEY OBSERVATIONS**

Single Purpose SVFs envisaged under the SVFR could be seen as a parallel to Closed System PPIs defined under MD-PPIs. The exemptions listed in the SVFR also appear to be similar in nature to Closed System PPIs. This indicates that there is a common understanding across these two jurisdictions that PPIs that can be used to purchase goods or services only from the issuer of the PPI or only within a closed ecosystem, will fall outside the ambit of the relevant regulator. This may be to recognise that such PPIs do not qualify as payment systems per se, and do not pose the risks associated with other kinds of PPIs that can be used for multiple purposes.

The categorisation parameter in the MD-PPI is the level of KYC undertaken on a user before issuing a PPI to him/her. This accommodates the multiplicity of payment systems available in the Indian context that must be driven toward interoperability. Interoperability brings higher risks, which must be contained by instituting stronger user identification mechanisms. Furthermore, a KYC-level-based division of SVFs allows PPI issuers in India to start operations swiftly, with KYC requirements being fulfilled in due course. Contrarily, the SVFR states that electronic KYC methods are sufficient, but does not split SVFs basis the level of KYC undertaken.

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<sup>37</sup> *Supra* note 2, art. 1(8).

<sup>38</sup> *Id.* art.1(25).

## VI. RECOGNITION OF VIRTUAL ASSETS

The MD-PPI does not accord recognition to virtual assets. Under MD-PPI, to achieve interoperability, the guidelines recognise that PPIs can be issued in the form of wallets and cards (physical or virtual), however, does not include virtual assets as a payment method/ asset class. The definition of Money's Worth under the SFVR includes Virtual Assets/Crypto-Assets as seen earlier.<sup>39</sup>

There is something to be about the Retail Payment Services and Card Schemes Regulations, 2021 ("RPSCS"). The RPSCS defines Payment Tokens as "a type of Crypto-Asset that is backed by one or more Fiat Currencies, can be digitally traded and functions as (i) a medium of exchange; and/or (ii) a unit of account; and/or (iii) a store of value, but does not have legal tender status in any jurisdiction".<sup>40</sup> This indicates that Payment Tokens are a limited set of Crypto-Assets that are secured by one or more fiat currencies, and that they also meet the other requirements in the definition.

### KEY OBSERVATIONS

The SVFR's broad definition of Money's Worth to include Virtual Assets and Crypto-Assets creates an interesting conundrum. This may be read to indicate that Virtual Asset wallets may be licensed under the SVFR. However, this conflicts with other regional regulations, which indicate that the license required to issue a Virtual Asset wallet is that of providing custodial services. This is common across the regulations issued by the UAE's Securities and Commodities Authority,<sup>41</sup> the Financial Services Regulatory Authority (the financial regulator of the Abu Dhabi Global Market),<sup>42</sup> and the Dubai Financial Services Authority (the financial regulator of the Dubai International Financial Centre). This requirement is derived from the fact that an important aspect of providing virtual asset wallets is providing or facilitating the custody of the private keys which may be used to access that wallet. The author's experience in the region also indicates that the SVFR is also not leveraged to provide virtual asset wallet solutions in the region. Instead, the relevant custodial service license is used. The RPSCS lists a license category called 'Payment Token Services', which includes 'Custodian Services'.

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<sup>39</sup> *Supra* note 19.

<sup>40</sup> *Id.* art. 1(73).

<sup>41</sup> The Chairman of the Authority's Board of Directors' Decision No. (23/ Chairman) of 2020 Concerning Crypto Assets Activities Regulation issued by the SCA

<sup>42</sup> The Guidance – Regulation of Virtual Asset Activities in ADGM issued by the FSRA

Even here, the author understands this to be the license required to issue wallets that hold Payment Tokens, as opposed to the SVFR.

As noted above, the MD-PPI does not make such accommodations. This distinction in the regulatory approach to virtual assets in these two jurisdictions reflects the overarching positions that the respective governments have taken regarding virtual assets. While India has proceeded cautiously, the UAE intends to become a hub of all things crypto.

## VII. WHO CAN APPLY?

Section 5(1) of PSSA stipulates that “Any person desirous of commencing or carrying on a payment system may apply to the Reserve Bank for an authorisation under this Act”. PSSA places the authority on RBI to authorise who can commence or continue with payment systems under the Act. RBI’s MD-PPI provides that banks and non-banks can issue PPIs. However, the non-banks must be regulated by any of the financial sector regulators<sup>43</sup>. All entities, including both banks and non-banks, who are regulated by any of the financial sector regulators and seek approval/ authorization from the RBI under the PSSA, have to apply to the Department of Payment and Settlement Systems (DPSS), RBI, Central Office, Mumbai along with a ‘No Objection Certificate’ from their respective financial regulator, within 30 days of obtaining such clearance, to apply to RBI for authorisation.<sup>44</sup> Banks and NBFCs can issue PPIs after obtaining authorisation from RBI, they must have NOC from the Department of Payment Settlement and Systems of RBI, as a part of their eligibility criteria.

The non-bank PPI issuers must be companies incorporated in India and registered under the Companies Act, 1956 or the Companies Act, 2013.<sup>45</sup> Non-banking entities have to ensure their compliance with the applicable guidelines, and in addition to these compliances, in addition, RBI examines a number of essential factors, such as customer service and efficiency, technical and related requirements, such as safety and security, etc.<sup>46</sup> After satisfaction with these checks, these entities are granted ‘in-principle’ approval. The ‘in-principle’ approval is valid for a period of six months, and within these six months, the entities are required to submit a satisfactory System Audit Report (SAR) to RBI.<sup>47</sup> All entities can operate a payment system

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<sup>43</sup> *Supra* note 15, ¶ 4.

<sup>44</sup> *Supra* note 15, ¶ 3.1; ¶ 4.1.

<sup>45</sup> *Id.* ¶ 4.2.

<sup>46</sup> *Id.* ¶ 5.3.

<sup>47</sup> *Id.* ¶ 5.4.

for issuing PPIs to individuals/ organisations after obtaining authorisation from RBI. However, RBI creates a distinction between Bank and non-Bank entities by restricting the systems they can operate. After receiving RBI's approval, semi-closed and open system PPIs may be issued by banks that meet the eligibility requirements, including those stipulated by RBI's respective regulatory department.<sup>48</sup> On the other hand, non-Bank entities can only issue semi-closed system PPIs.<sup>49</sup>

As per Article 65 of the Federal Decree 14 of 2018, the provision of SVF is a licensed financial activity and, therefore, is subjected to the CBUAE's licensing and supervision in accordance with the provisions of the Federal Decree 14 of 2018. In accordance with this, an Applicant must satisfy the licensing requirements set by the CBUAE for SVF issuance, and continue to do so on an ongoing basis.<sup>50</sup> SVFR prohibits anyone to issue or operate an SVF without a prior license except if the issued SVF is a Single-purpose SVF.<sup>51</sup> As per Article 3(2), an applicant for an SVF license "must be a company incorporated in the State, including free zones but excluding Financial Free Zone". An applicant must comply with or demonstrate that the applicant will comply with the requirements set out in Articles 7 to 14 of the SVFR. For licensed banks, by nature of them being licensed, they are deemed to be authorized to issue SVFs. However, they are required to notify the CBUAE in writing that they plan to issue an SVF and carry out the SVF business.<sup>52</sup> The concerned licensed bank is required a "No Objection" letter from the Central Bank before it can commence the SVF business.<sup>53</sup>

## KEY OBSERVATIONS

In both jurisdictions, banking entities are permitted to issue PPIs. The requirements for banks are also lesser compared to those for non-banks. This may be because banks are already subject to higher levels of scrutiny and more frequent audits.

The treatment for non-banks seems to be slightly different between jurisdictions. In the UAE any entity can approach the CBUAE with an application to issue an SVF if they meet the requirements listed in the SVFR. The requirement under the MD-PPI indicates that the non-banking entity must first be regulated by some other financial regulator before making an

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<sup>48</sup> *Id.* ¶ 3.1.

<sup>49</sup> *Id.* ¶ 3.2.

<sup>50</sup> *Id.* art. 3.1.

<sup>51</sup> *Id.* art. 2.2.

<sup>52</sup> *Id.* art. 4.1.

<sup>53</sup> *Id.* art. 4.1.

application to the RBI. This inserts a preceding layer of scrutiny on the potential applicant, whom their existing financial regulator vets before seeking to be licensed by the RBI.

### VIII. CAPITAL REQUIREMENTS

At the time of application, all non-bank entities seeking RBI authorization under the PSSA must have a minimum positive net worth of 5 crore as per their most recent audited balance sheet. RBI processes the application based on this net worth which the non-bank entities must maintain at all times. Thereafter, by the end of the third financial year from the date of receiving final authorisation, the applicant should have achieved a minimum positive net worth of ₹15 crore which would be maintained at all times.<sup>54</sup> The Memorandum of Association (MoA) of the non-bank entity is required to cover the proposed activity of PPI issuance.<sup>55</sup> For non-bank PPI entities having Foreign Direct Investment (FDI)/Foreign Portfolio Investment (FPI)/Foreign Institutional Investment (FII), these entities must satisfy the capital requirements as applicable under the current Consolidated FDI policy guidelines of the Government of India.<sup>56</sup> Authorised non-bank PPI issuers are required to submit a net-worth certificate every year to evidence compliance with the applicable net-worth requirement as per the audited balance sheet of the financial year within six months of completion of that financial year.<sup>57</sup> Non-bank PPI issuers are also guided by the DPSS circular on Investment in entities from FATF non-compliant jurisdictions.<sup>58</sup>

The SVFR states that an entity is not permitted to carry on any other licensed financial activity without obtaining a license from the relevant authority and if the licensee wishes to conduct any secondary or ancillary businesses, the licensee is required to seek approval from the CBUAE before undertaking such activity.<sup>59</sup> The licensee is required to maintain paid-up capital of at least 15,000,000 AED or an equivalent amount in any other currency approved by the CBUAE and aggregate Capital Funds (as defined in the SVFR) must be at least 5% of the total Float received from the customers.<sup>60</sup> Aggregate Capital Funds must be calculated exclusive of accumulated losses and goodwill.<sup>61</sup>

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<sup>54</sup> *Supra* note 15, ¶ 4.5.

<sup>55</sup> *Id.* ¶ 4.4.

<sup>56</sup> *Id.* ¶ 4.3.

<sup>57</sup> *Id.* ¶ 4.7.

<sup>58</sup> *Id.* ¶ 4.9.

<sup>59</sup> *Id.* art. 7.3.

<sup>60</sup> *Id.* art. 7.4.

<sup>61</sup> *Id.* art. 7.6.

The CBUAE must be provided with adequate details on the source of funds that will be used to support the licensee's proposed business activities. The licensee must demonstrate that its financial resources are sufficient for implementing its business model in a safe, efficient, and sustainable manner, without compromising the customers' interests.<sup>62</sup> The CBUAE can impose a higher financial resources requirement on the licensee if taking into account the scale and complexity of a licensee's business if the CBUAE considers this necessary to ensure that the licensee concerned can fulfil its regulatory obligations under the SVFR.<sup>63</sup> An unconditional irrevocable bank guarantee for the full paid-up capital amount in favour of the CBUAE paid upon first demand shall also be submitted to the CBUAE with the application of the License. Such a guarantee should be renewable before expiry or based on the CBUAE's demand.<sup>64</sup> The licensee must demonstrate that it can maintain sufficient financial resources to facilitate an orderly wind-down of its SVF business, including a smooth refunding process.<sup>65</sup>

#### **KEY OBSERVATIONS**

The capital commitments under the SVFR are more onerous than those under the MD-PPI. This is exacerbated by the fact that under the SVFR, in addition to the minimum paid-up capital requirement, there is a simultaneous requirement to maintain an irrevocable bank guarantee. In the author's experience, this has been a major consideration for applicants looking to issue an SVF in the UAE. Instead, many non-banking players have collaborated with banks to leverage their exemption under the SVFR to issue co-branded PPIs in the UAE.

#### **IX. CONCLUSION**

As noted at the beginning of this article, the UAE regulations are nascent compared to their Indian counterparts. We can hope for the UAE regulations to evolve and become more sophisticated. This is the need of the hour for the UAE to maintain its position as a leader in the fintech space in the MENA region, a badge it already wears with great pride. The development of fintech regulations indicates that it's a fertile market, and that more such FinTech firms are to arrive at the horizon. It is, hence, recommended that the government and the companies work together towards the development of the same.

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<sup>62</sup> *Id.* art. 7.7.

<sup>63</sup> *Id.* art. 7.10.

<sup>64</sup> *Id.* art. 7.10.

<sup>65</sup> *Id.* art. 7.9.