

WhatsApp Runs Into Legal Tussle In Rolling Out Payment Service In India

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Mobile messaging giant WhatsApp has been asked by India's Supreme Court to respond to a petition claiming that the rollout of the company's payment service breached local laws.

In an [order](#) issued to WhatsApp on Monday, as well as several government authorities, the Facebook-backed company was given a month to issue a formal response to allegations that it has not complied with provisions of establishment rules.

The U.S. technology giant, which does not yet have an office in India, was permitted in February this year to begin testing a payment application through the Unified Payments Interface (UPI) to 1m users, but has pressed pause on the formal launch of its service.

The petition, filed on behalf of industry think tank the Centre for Accountability and Systemic Change (CASC), argued that WhatsApp was being allowed to "continue with its payment service without any checks".

It took issue with the company providing services without employing a grievance officer based in the country, arguing that the oversight violates the Information Technology Act 2000.

The plea has prompted questions over the conditions under which WhatsApp was granted permission for the payment service beta launch.

"Since a payment system needs to be subject to domestic law, it's possible that the green light for the test would have been followed by a condition that there should be an Indian establishment before a final licence would be issued for the WhatsApp Payment interface," said Kartik Ganapathy, a partner at IndusLaw.

"Most of the payment systems in vogue in India have been domestic, and hence when the possibility of a foreign provider of this service with no establishment in India emerged perhaps the regulators needed to develop rules to cover this scenario."

WhatsApp reportedly delayed the full public launch of its payment service after the Reserve Bank of India's (RBI) [unexpectedly demanded](#) in April that payment companies store transactional data in India only.

Data localisation will have significant cost implications for foreign entities operating in the country, and the shock announcement triggered [intense lobbying](#) from international payments heavyweights pushing for the requirement to be relaxed.

"To open a bank account, a customer needs to comply with KYC norms and various other formalities," the Centre for Accountability and Systemic Change said. "WhatsApp is a foreign company with no office or servers in India."

According the petition, WhatsApp also tried to encourage a rule change.

The plea alleges that the company demonstrated "defiance of the laws of India" after chief operating officer Matthew Idema discussed the issue of data servers for its payment service in a meeting with the Ministry of Electronics and Information Technology.

Under the RBI direction, firms must notify compliance with the data localisation rules by October 15 this year and submit a system audit report to certify compliance before 2019.

The petition requested that authorities prohibit WhatsApp from proceeding with its payment service until it has fully complied with those rules. However, there have been indications that some government officials are sympathetic to the concerns of foreign entities, fuelling expectations that a relaxation of the localisation requirement could become a reality.

However, Aaron Kamath and Vaibhav Parikh of Nishith Desai Associates pointed out that the RBI's data localisation requirement only applies to authorised payment system operators and various banks.

If WhatsApp is considered as only providing a technology service so that users can transact over UPI and does not actually provide a payment system or process the transaction itself, then it may not be required to have a local presence in India, the lawyers added.

The public interest litigation requested that the court take action by asking all those named to respond. The court order to WhatsApp and additional respondents "was merely making sure everyone named was directed to respond", Ganapathy explained.

The plea also sets out additional complaints related to the spread of misinformation over WhatsApp's messaging platform, which boasts more than 200m users in India.

"This petition seems to follow suit the Indian government's recent attempts in tightening the noose on WhatsApp," said Aaron Kamath and Vaibhav Parikh of Nishith Desai Associates.

The company has been under pressure from authorities to do more to tackle the epidemic after false messages spread on its platform were linked to incidents of lynching and mob killings.

WhatsApp has since pledged to take more aggressive measures to curb fake news, although the company ruled out weakening encryption of messages.

WhatsApp did not respond to enquiries by PaymentsCompliance at the time of publication.

The order comes as competition for Indian payment service users is reaching new heights, with local and international tech giants vying for a majority slice in what is expected to become a \$1trn market by 2023.

The Financial Times revealed on Monday that Paytm, India's largest payments group backed by China's Alibaba, has caught the eyes of famous investor Warren Buffett. His firm Berkshire Hathaway reportedly plans to invest at least \$300m in the firm's parent company.