

Some legal issues about credit cards in Vietnam - Compare with US law provisions

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ABSTRACT

Credit card service is a relatively special type of service. In essence, the specialness of this type of business is expressed in the fact that credit institutions have combined their two basic operations, including payment activities and credit granting activities into one type of service. The law about credit cards requires a smooth combination of the above provisions and constitutes a complete legal framework to regulate issues including the card business of credit institutions, credit card usage of customers, intermediary payment activities of card payment organizations. The initial research results show that risks in the credit card payment process are inevitable. In addition to the risks of technical and security factors, other risks involve legal risks for the obligation to ensure safety for credit card payment activities of entities related to this process. Hence, the identification of legal risks to clearly define the legal rights and obligations of related parties is a necessary study that contributes to the development of Vietnam's credit card market in the integration period. On the basis of comparing with the provisions of the law of the United States governing credit cards, the authors contend that this separate legal document for credit cards needs to be emphasized on important contents such as cardholders, credit card issuance and use contracts, the problems of clarification of responsibility to bear risks, interest rates and fees for the use of credit cards, credit limits, problems with consumer credit card abuse, and credit card fraud. These contents will be analyzed in detail to make recommendations with the aim of creating a complete legal framework in regulating credit card activities. Thereby we can take advantage of credit cards as well as minimize disadvantages from credit cards.

Key words: Credit card, cardholder, payment

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History

- Received: 18-1-2021
- Accepted: 02-8-2021
- Published: 10-8-2021

DOI : 10.32508/stdjelm.v5i4.762



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INTRODUCTION

Credit card service is a relatively special type of service, previously mainly provided by commercial banks; nonetheless, financial companies are currently also interested in this type of business. In essence, the special of this type of business is expressed in the fact that credit institutions have combined their two basic operations, including payment activities and credit granting activities, into one type of service. Corresponding to this combination, the law about credit card has to also be compiled from legal regulations governing bank's both payment operations and credit granting operations. Meanwhile, according to the author, in Vietnam, there seem to be no jurisprudence projects that fully study the legal system related to credit cards. Although there are jurisprudence projects that have laid the foundation for the study of the legal corridor about payment card business in Vietnam, credit risks and overlapping legal documents have not been specifically studied to provide an overview of benefits and shortcomings in the Vietnamese legal system. Therefore, the study to complete the legal framework to adjust credit card issues

is an urgent and necessary need in the current period. Wishing to research and learn more about the legal issues surrounding the issuance, use, and payment of credit cards in Vietnam, the author selected the topic "Some legal issues about credit cards in Vietnam - Compare with US law provisions" as the project for yourself. Hopefully, the topic will contribute useful information for similar future research.

THEORETICAL BASIS

The theory of free will

A contract can only be formed when the parties agree to have a unity of will. It means that the will is one of the main factors determining whether a contract is signed or not. Therefore, the laws of the countries governing the contract field all recognize that the basis of contract law is free will^[1, No 115].

The free will theory has been around for a long time, in France, starting in the eighteenth century, the period of the philosophy of light. From this theory, the parties are free to define the content of the credit card contract, freely agree to the terms of the contract

Cite this article : Ngan T T T, Thong T N P. **Some legal issues about credit cards in Vietnam - Compare with US law provisions.** *Sci. Tech. Dev. J. - Eco. Law Manag.*; 5(4):1822-1831.

within the limits of the law, and only need the parties to reach an agreement is considered as the contract of issuing and using a credit card has been signed.

The theory of protecting the weak in relation to the strong in order to ensure social justice

If society is in any form a "product of the interaction between people", then the movement and development of society is the result of resolving the conflict between people and people in search and protection activities to satisfy the needs of each subject. Therefore, people need the utmost care and protection in order to fully develop their capabilities and values. In a developed society, human resources are increasingly valued. However, in the process of that social division has brought undesirable, society has divided into two divisions with conflicting interests. In those two parts, there is definitely a weaker side. Therefore, they need to be regularly and fully protected by law and the community [2, No 262].

This theory serves throughout the article, to show that the card operation laws need to be quickly improved so that the weaker party - the cardholder - can take full advantage of the card's advantages in the use process, and fully protect yourself against the risks that may occur when using them.

Argumentation about the role of the State in protecting human rights in general and protecting the interests of consumers in particular

The principle of consumer protection is the responsibility of the State because only the State has sufficient power and capacity to enforce the law. The state has the main role and responsibility in protecting life for consumers. For many fields and items, consumers themselves cannot protect themselves but need intervention and management by the State.

This theory is applied in the entire article, which is the reason for the article to offer solutions to differentiate the advantages of credit card payment as well as minimize risks due to this form of payment.

CONTENT

The concept of credit card

Considering international research about credit cards, it can be seen that many researchers have different definitions in their research projects. In the book "Economics: Principles in action", two economists O'Sullivan, Arthur and Steven M. Sheffrin have defined: "A credit card is a payment card issued to users

(cardholders) to enable the cardholder to pay a merchant for goods and services based on the cardholder's promise to the card issuer to pay them for the amounts plus the other agreed charges." [3, p. 261]. In the book "Electronic Commerce", Professor Gary Schneider - Business University of California State University - has noted that: "Credit cards are different from charge cards, requiring the balance to be fully paid in each month" [4, p. 497].

In Vietnam, although Vietnamese people are gradually becoming familiar with the phrase "credit card" since the frequency of this phrase appears in the mass media more and more, researchers have yet to come up with a unified concept of credit cards [5, Page 17]. According to common sense, the card is a compact object and contains information of the cardholder for use in one or more certain purposes. The definition of the word "card" in the Vietnamese Dictionary also shows that: "The card is a certificate of some kind, usually in a compact form." [6, Page 930]. Consequently, the phrase "bank card" or "payment card" or "credit card" is mentioned frequently in social life, not only in the world but also in Vietnam today [7, Page 16-50]. According to economic points of view, payment cards can be interpreted as "multi-purpose keys for cardholders to connect with other entities to participate in card payment systems for the process of goods and currency circulation. It is pre-agreed to implement services that meet cardholder's needs" [8, Page 9]. Payment card "is a payment instrument issued by a card issuer to a customer to pay for goods or services or withdraw cash within his / her balance in the deposit account or credit limit granted under a contract signed between the card issuer and cardholder" [9, Page 6]. From the above concepts, the author would like to give a definition of the credit card as follows: Credit cards may be cruel of installments issued by a bank or a non-bank organization. The issuance is based on the understanding between the cardholder and the card backer to fulfill the credit and installment requests inside a certain credit restrain through the foundation of the installment relationship between the cardholder and the tolerating unit. Concurrently, it too builds up the obligation relationship between the cardholder and the card guarantor.

Some legal issues about credit cards in Vietnam

Legal documents on credit cards in Vietnam

The credit card market in Vietnam has a multitude of characteristics than other types of payment cards, so a separate document on payment cards is not

enough to create legal corridors for the development of credit card market. The current regulations on credit card holders only meet the basic requirements; however, they have not anticipated all arising difficulties. The main reason is that these regulations are issued to apply to all types of cards, not specifically for credit cards. According to the author learns, there are many countries in the world that have issued a separate credit card law. For example, “*The Credit Card Accountability Responsibility and Disclosure Act (or Credit CARD Act) was passed by the United States Congress in 2009, expanding on the Truth in Lending Act, and took effect in 2010. Its purpose was to curtail deceptive and abusive practices by credit card issuers. A new Federal agency, the Consumer Financial Protection Bureau (CFPB) was created to (among other things) administer the Credit CARD Act*”¹⁰. To remove this problem, the State Bank of Vietnam should unify regulations on issuance, use, and payment of credit cards in a separate document. A separate credit card document creates a balance between the borrower and the lender by terminating some activities of non-transparent credit card issuance, lack of process, and lack of goodwill with the aim of defrauding consumers - especially minority borrowers and disadvantaged parties in society - in a constant spiral of insolvency. The authors come up with that this separate legal document for credit cards need to pay attention to important contents such as cardholders, credit card issuance and use contracts, the problems of delimitation of responsibility to bear risks, interest rates and fees for the use of credit cards, credit limits, problems with consumer credit card abuse, and credit card fraud. These contents will be analyzed in detail and made recommendations in the following presentations below.

The problems of credit card holders

An individual, regardless of age, wants to use a credit card to prove that his independent income is enough to pay for credit card loans. However, the age to be able to own credit cards is a controversial issue. Currently, Vietnamese law regulates the age for primary cardholders to be individuals: People aged full 18 or older with full civil act capacity as prescribed by law to use credit card; people aged between full 15 and under 18 do not lose or limit the civil act capacity to use credit cards [¹¹, Clause 1 Article 16]. In order to analyze whether the age specified in Vietnamese law is appropriate, the author would like to analyze and compare with foreign law. Take the Credit Card Act of 2009, for example, “*the Act also eliminates excessive*

marketing to young people. Consumers under the age of 21 must prove that they have an independent income or get a co-signer before applying for a credit card. The Act also prevents credit card companies from mailing offers to consumers under 21 unless they “opt in,” and prohibits companies from wooing students with T-shirts, free pizza and other free gifts at university-sponsored events”¹². Obviously, the Credit Card Act of 2009 has a specific set of criteria for age to be able to own a credit card. If a consumer under 21 years of age, they must prove their income independently of their relatives (probably parents). In Vietnam, if only a person of full 18 years or older has full civil act capacity, he/she can use the credit card. However, this will create many internal rules that lead to the fact that people aged 18 and over can get credit cards too effortlessly by proving cursorily the personal finance. As a result, the abuse of credit cards in the younger generation occurs frequently, leading to high outstanding debts that do not pay on time. As a result, the author recommends that Vietnamese law should specify the issue of proving personal finance and age more appropriate to use credit cards. The age of 18 is not yet a reasonable age to prove a financially independent person. It utilized to be exceptionally simple for college understudies, in specific, to urge a credit card. The author thinks that the age to be able to own a credit card needs to be revised, referring to the US law as mentioned above is 21 years of age or older, of course, if under 21 they can prove their personal finances or register as a supplementary cardholder or have a guarantor to be able to own a card. However, the author recommends that it is the appropriate age for a credit card to be 22 years of age or older because 21 years of age can still be college students, so getting these people to own credit cards brings a multitude of risks for themselves, especially over-spending on credit cards lead to insolvency. The author suggested that the law of Vietnam should consult US law on the issue of cardholder’s age because, after many years of implementation, it has been proved that US laws have helped young consumers of their countries spend more reasonably and limit the loss of solvency. “*Commentators indicate that the credit CARD Act of 2009 has had limited success in protecting young consumers. Early findings indicate that issuers have continued to solicit college-aged consumers via direct mail and other means, and that card companies appear to have a continual presence on and around institutions of higher education*”¹³.

In different circumstances, a customer can completely open multiple credit cards at different banks. However, customers should not open too many credit

cards to avoid a lack of control overspending and debt problems. Currently, the use and payment for customers' credit cards have been collected and ranked credit at the Vietnam National Credit Information Center (CIC). This is an important criterion for assessing the creditworthiness of customers who can borrow money from now on, so it is not good if banks know that customers open too many credit cards and are often late in payment for card expenses¹⁴. It is clear that card issuers should not issue cards to people who have too many credit cards, or regularly incur overdue debts, or frequently transgress the law and be in breach of card use contracts. Once these conditions are in place, the risk of card issuance without secured assets is reduced. According to the author, the law should specify the conditions for issuing credit cards to cardholders regarding the maximum number of credit cards that cardholders can use, related to the credibility of repayment (the maximum amount of balance overdue debt of a cardholder for a certain period), related to the obligation to comply with the regulations of the card issuer and of the laws on the credit card.

The problems of credit card issuance contracts and delimitation's responsibility to bear risks

The problems of credit card issuance and use contracts

Currently, Article 13 of Circular 19/2016/TT-NHNN only postulates the minimum content that a credit card issuance and use contract should have, so there are many other contents agreed between card issuers and customers. Indeed, card issuers will sign with customers a credit card application form along with a table of terms and conditions' credit cards to form a legally binding contract between the organization's card issuance and customer. This contract is made in 02 (two) copies with the same legal value and takes effect from the date of signing. Each party keeps 01 (one) copy as a basis for implementation. Basically, the application for a credit card is just a document for the customer to fill in personal information for the card issuer to assess financial capability and consider whether to issue a credit card. Therefore, the more detailed a credit card application form is, the better it is for the card issuer to easily verify customer information. For example, in terms of career information, the request at Shinhan Bank requires more details at ACB for them to easily assess the monthly salary of customers who request to issue credit cards [¹⁵, Annex 7 and Annex 8].

Different from the nature of the credit card application form, the table of terms and conditions' credit

card has characteristics of a contract because it defines the rights and obligations between the parties when granting a credit card. However, despite having the important quality of a contract, the table of terms and conditions' credit card of each card issuer has different rules and use distinctive terms, sometimes confusing for customers. For example, just compare the terms and conditions of using credit cards of two card issuers (ACB and Shinhan Bank) will also see these two organizations using different terms. In Shinhan Bank, the table of terms and conditions' credit card use refer to the term "Availability Limits" and they define that: Availability limit is the maximum amount that Cardholder is allowed to spend in Credit Card from time to time, equal to the credit limit minus total debt at each time [¹⁶, Annex 9 Point i Article 1]. From the author's point of view, even when reading the definition, the term is quite difficult to understand for a customer who does not have a legal or economic-financial banking degree. Besides, in a general term of "minimum payment amount", ACB briefly requires that: The minimum payment amount is the amount specified in the transaction notice board that the cardholder is responsible for payment [¹⁷, Annex 10 - Clause 26 Article 1]. However, Shinhan Bank has more specific provisions: The Minimum Payment Amount (hereinafter "Minimum Amount") is the minimum amount of debt recorded on the Statement that the cardholder must pay to Shinhan before or on the due date. The calculation of this amount is stipulated in Article 17.4 of the table of terms and conditions' credit card use [¹⁶, Annex 9 - Point t Article 1]. However, the calculation of this amount is difficult to understand as follows: The Minimum Amount is calculated as the sum of the following amounts: (a) or for accounts with installment plans: greater number between the amount equal to a predetermined percentage of the total outstanding balance minus (-) the total installment package value plus (+) payments due for installment plans and the minimum amount specified by Shinhan bank; (b) or for accounts without installment plans: the greater number between the amount equal to a predetermined percentage of the total outstanding balance and the minimum amount specified by Shinhan bank; and (c) all unpaid minimum amounts of previous statements (if any).

Apparently, this calculation is quite troublesome for most customers, however, they still sign contracts since they are in need of credit cards, they are not interested in these risks. Accordingly, it can be viewed that the agreement contents used in card issuance contracts of card issuers are very different and there

are some terms that are difficult to understand for customers.

The author recommends that the law should provide a general contract sample for the issuance and use of credit cards. Presently, it can be assumed that the issuance and use of credit cards apply to contract forms created by card issuers. The contents of these contract forms are all dictated by card issuers, customers can only agree or disagree. Accordingly, the law should postulate a contract sample to be applied for between card issuers and cardholders. This will help unify an applicable contract sample, avoiding the situation that each card issuer has different regulations about the same problem or term that confuses customers. This model contract can be an appendix attached to a general legal document that specifically regulates credit cards, in which the contract will have a set of standard definitions, terms, and brief explanations for this term. Additionally, the author thinks that this model contract needs to be succinct because at the moment, the contract forms of card issuers are seemingly interminable and there are many detrimental regulations to cardholders. Take Shinhan Bank as an example: when using credit cards, card issuers regulate a variety of fees such as annual fee, notification fee, fee of transaction via SMS, grievance fee and incident investigation, transaction invoice request fee, installment prepayment fee,...

Similarly, in ACB, there are many other fees such as card replacement fee, fee change of credit limit, PIN re-issuance fee, exchange rate difference fee, the fee for changing the form of using cards,... The author found that card issuers regulate too many unreasonable fees. The fee for complaint and investigation of incidents specified in the card issuance and use contract at Shinhan Bank, for instance, is an unreasonable fee when customers encounter problems during the use of the service, the error does not belong to customers but they have to pay a complaint fee.

Credit card issuance and use contracts are characterized by an asymmetry between the two parties, the seller of a good or the provider of a service on the one hand and the consumer on the other. One party is usually a highly sophisticated corporation, the other— an individual, prone to the behavioral flaws that make us human. “Absent legal intervention, the sophisticated seller will often exploit the consumer’s behavioral biases. The contract itself, commonly designed by the seller, will be shaped around consumers’ systematic deviations from perfect rationality” [18, Paper 14-46].

Hence, the law should provide a model contract with a concise content of the rights and obligations of the

parties, with standard terms for general application. This will make it easier for cardholders to use credit card services as well as help them avoid puzzlement when accessing mystified terms and regulations in contract forms set by card issuers. Besides, this solution also limits the situation that card issuers impose nonsensical interest rates and fees in credit card issuance contracts. The primary regulatory strategy to date has been to criticize the disclosure of those terms – the idea being that “consumers have not been given fair warning that a default on one card will cause an increase in the rates they pay on all of their cards. The academic literature, however, suggests a more pervasive problem with the substantive design of the provisions of credit card contracts”¹⁹. Building on the behavioral economic literature, Oren Bar-Gill argues that the products that credit card issuers market to consumers are systematically designed to take advantage of common cognitive defects that limit the ability of the typical consumer to price the terms accurately. For example, Bar-Gill argues that issuers are driven to compete for customers based on “teaser rates” and “annual fees,” rather than on the longer-term interest rates or default terms that might be more important to consumers in distress.

The problems of delimitation of responsibility to bear risks

A question arises after a large number of disputes involving payment cards, that is, “Is the card issuer responsible for credit card losses? Which circumstances will they be responsible for? How much will they be responsible for?” Evidently, the issue of transparency of card issuers’ responsibility will show equality and fairness in the relationship between card issuers and customers. If the parties understand each other’s responsibilities, the parties will be more aware of the safety in issuing, using and paying credit cards.

To clearly define the responsibilities of the parties, refer to the regulations in US law provisions: “The Fair Credit Billing Act (enacted as an amendment to the Truth in Lending Act in 1974) lays out some rules for how to handle disputes about mistaken or fraudulent billing. This act gives consumers 60 days to notify issuers of fraudulent or erroneous bills. The issuer then has 30 days to respond. During that time, they cannot require that the cardholder pay the disputed charge. The act also limits consumer liability to \$50 for fraudulent payments — note that no fraud liability, something that’s offered by most issuers, reduces your liability to \$0”²⁰. Literally, in the US market, card issuers still do well with such regulations. The reason that Professor Ross Anderson (University of

Cambridge) suggests is that "US law requires that if a bank fails to prove that customers are fraudulent, the bank will be at risk that has caused US banks to build good security and anti-fraud systems" [21, No. 14, page 34-35].

The author recommends that Vietnamese law needs to more clearly define the obligations of card issuers, especially the obligation to notify, because of the current provisions of the card issuers' responsibility is inadequate. First of all, the law should apparently distinguish the obligation to announce the due and timely maturity date to credit cardholders. Some banks are nowadays very vague about this announcement or even just announce when the customer has overdue. The card issuer should have early maturity notices to the cardholder for payment. Some card issuers wishing to collect late payment interest and penalty fees have deliberately failed to notify the subjects that led to many gratuitous quarrels. According to The Credit Card Accountability Responsibility and Disclosure Act 2009: "Payments may not be treated as late unless the consumer has been provided a reasonable amount of time to make payments on their credit card. Issuers qualify for a safe harbor under this rule if they adopt reasonable procedures that are designed to ensure the mailing or delivery of periodic statements at least 21 days before the payment due date. Amendments to Regulation Z provide that when determining whether a payment is timely, cut-off times for mailed payments prior to 5 P.M. at the receiving location are considered unreasonable. If payment is due on a date when either the U.S. Postal Service does not deliver or the issuer does not accept mailed payments, payments received the next business day are considered timely" [22]. Noticeably, the US law has specific provisions on the responsibility of notifying card issuers of maturity and even set a limit of at least 21 days for the notice card issuer to be a very clear regulation. It can be said that the more obvious the law, the more likely it is to protect the weak in a transaction, which is the use of credit cards.

Next, the law should undoubtedly stipulate the responsibility of notifying the monthly amount that the cardholder needs to pay including interest, the consequences of late payment and how long it will take to pay the total amount if pay only a minimum of one agreement amount each month. Perhaps it is necessary to visibly define this responsibility to avoid the inconsistency in the process of payment of credit card debt due to the fact that when customers registered to use the card, customers did not carefully read the card issuance contract, so when paying with high interest

rates, late fees or high penalty fees led to dissatisfaction. Indubitably, skimming the contract is the fault of the credit card holder, but perhaps the law needs to be advantageous to cardholders. This is because cardholders who lack their legal knowledge and carelessness while signing a card issuance contract are a frequent occurrence. For that reason, in order to avoid superfluous risks for cardholders, the law should evidently postulate the notifying responsibility of card issuers on the matter of total debt to be paid, the total payment period of debts and legal consequences when payment is suspended. If cardholders still have delayed payment after a series of notifications, the responsibility will belong to the cardholder and card issuers will be protected by law. In connection with this matter, we may also refer to The Credit Card Accountability Responsibility and Disclosure Act 2009: "Credit card issuers must disclose to cardholders the consequences of making only minimum payments each month, namely how long it would take to pay off the entire balance if users only made the minimum monthly payment. Issuers must also provide information on how much users must pay each month if they want to pay off their balances in 36 months, including the amount of interest" [23]. It can be said that the law of the United States has just been mentioned is definitely a clear proof for the law of Vietnam can refer to the responsibility of notification of card issuers.

Contrarily, the responsibility to report risks to customers is an essential issue that needs to be specified in the law because the obligation that helps customers can conveniently use their services is a exemplary business behavior, bringing trust and advantages to cardholders. Risk notices for cardholders such as customers must notify when lost or stolen card/PIN, or customers must not commit fraud when using the card,... Currently, in Vietnam, there are also general provisions on the responsibilities of card issuers as follows: "Disseminate and instruct customers about card services, procedures to use the card properly, risks may be encountered when using card and how to deal with incidents, prohibited acts when using the card and the cardholder's responsibility when violating." It may be seen that Vietnamese law only provides general responsibility for card issuers. How is the card issuer performing this obligation not mentioned? The author sees in fact that this obligation is only recorded on the credit card issuance and use contract, the card issuer does not explain or inform more precisely to the customer. In consequence, this article of Circular 26/2017/TT-NHNN has not been absolutely applied in practice. Plainly, this announcement not only helps customers to protect their credit cards but also helps

to identify responsibilities between cardholders and card issuers. If the cardholder does not notify when encountering such problems as card loss, card theft,... they must bear the loss. According to the author's judgment, in order for customers to understand their responsibilities for notifying risks arising in the process of using the card, card issuers must first inform the risks and this responsibility for customers. This notice is not only specified in the credit card use and issuance contract but also must be notified monthly as a reminder and interested in the cardholder's use of the service.

Besides resolutions to the notification obligations of card issuers, another solution is that card issuers should set up risk provisions or the State Bank of Vietnam, industry associations, and card issuers jointly direct and establish a common risk reserve fund. This provision will replace the provision for credit losses because it will aggregate both credit risk and payment risk.

Finally, card issuers should also implement risk asset insurance products for credit card customers. Card issuers will be able to help customers share risks by increasing service fees to deduct insurance premiums. Currently, this problem is relatively difficult to implement because the number of customers is small so the ability to take charge from the majority of risk compensations for the few is not high. However, if there is this regulation, customers will definitely be more secure when dealing with card issuers, card payment organizations.

The problems of credit card fees

"Late fees are penalty fees charged when a credit card payment is not made on time. Over-the-limit fees are penalty fees charged when the card holder exceeds the dollar amount of credit authorized on the card"¹³.

Article 5 of Circular 19/2016/TT-NHNN has regulations on the collection of card usage fees, however, there is indistinct regulation on late fees, over-the-limit fees, and how much the fee is. This has created a situation where the card service tariffs at card issuers have inconsistent high fees. Synchronously, when credit card users have signed a credit card issuance and use contract, they will cover to high levels of extra costs beyond their financial capacity. Because the law allows card issuers to collect late fees as agreed in the credit card use and issuance contracts, there will be heterogeneity in the level of late fees. This brings many financial risks to cardholders. For example, according to the product policy, ACB charges a penalty fee for each time a customer violates the commitment

of 3% on the minimum amount not paid on time, at least VND 100,000.²⁴; in Shinhan Bank, 4% of the minimum amount has not been paid on time (Minimum 250,000 VND, Maximum 999,000 VND)²⁵. It may be viewed that the late fees, which only needs to be compared between these two banks, have been different, so there will be even more significant differences between many banks.

From this situation, the author submits that the law should have detailed regulations on how much money for late fees or how many percentages or ceilings are specifically for card issuers not to exceed this level. This is also to apply uniformly among card issuers. According to the author, the laws of developed countries are tending to reduce the payment penalty fee as low as possible. For instance, according to The Electronic Code of Federal Regulations (e-CFR) 2013: "In regard to safe harbor penalty fees, the CFPB set a safe harbor fee of \$25 for a first violation, and \$35 for a repeat violation of the same type, adjusted annually to reflect changes in the Consumer Price Index. If the issuer bases fees on costs, the fee must represent a reasonable proportion of the total costs incurred by the card issuer as a result of that type of violation. Card issuers are required to re-evaluate those costs annually. Furthermore, penalty fees may not exceed the dollar amount of the violation (e.g. an over-the-limit fee could not exceed the \$5 limit exceeded) and multiple fees may not be assessed for a single violation"²⁶. In the alternative, the issuer may charge a fee of 3% of the delinquent balance if the card is one which requires payment in full at the end of each billing cycle — provided the cardholder has not paid for two or more billing cycles. In addition to requiring that over-the-limit fees be reasonable and proportional, the Credit Card Act of 2009 adopted a new provision requiring the express permission of cardholders for such fees to be charged at all. The card issuer is free to extend additional credit without charge, but may not impose a fee for that privilege unless the cardholder has expressly elected to permit the card issuer to complete the transaction (an "opt-in" format). Such election requires the issuer to have provided advance notice of the fee to the cardholder, and any such election is revocable"¹³.

Undoubtedly, the United States Electronic Code of Federal Regulations 2013 (e-CFR) has specifically set a maximum penalty fee of \$25 and this is one of the steps taken by the government to limit the increase in late fees. Concomitantly, the general rules about the fees charged must be reasonable based on the penalty fee mechanism, which must not exceed the amount of infringement, which is a logical rule because if the penalty fee is higher than the amount

of violation, then making cardholders' debts increase more and unreasonably. "Early indications are that the CARD Act has had a substantial impact on over-the-limit fees. The CARD Act Factsheet promulgated by the CFPB in 2011 states that over-limit fees have virtually disappeared in the credit card industry. The relevant OCC Study showed that the number of accounts charged an over-limit fee dropped from approximately 12 percent per year to about 1 percent"¹³. I should think, after the successes of Electronic Code of Federal Regulations (e-CFR) 2013 and the Credit CARD Act of 2009, Vietnamese law should refer to US law on the regulation of the maximum late fee so that card issuers will not exceed this ceiling. Likewise, there are three general rules for regulations regarding late fees and over-the-limit fees. The first is that the penalty fee should not exceed the amount payable or the amount used beyond the credit limit. Secondly, any penalties arising out of the issuance and use of the card or the adjustment of the penalty fee and the percentage of penalty fees must be reported for customers and agreed by them, avoiding the card issuer manipulates and automatically raises the penalty fee without any action to inform the cardholder. Finally, these penalties apply only in one payment cycle because if card issuers apply the penalty fee for different payment cycles, it will create a large debt for the cardholder, resulting in customers falling easily into insolvency due to the high total debt plus a penalty. The recommendations of the author are intended to ensure cardholders' benefits during the using process of credit card services.

CONCLUSION

Credit card market in Vietnam has really developed in the past few years. In the near future, credit cards will become the most important and popular payment instrument in the payment system. With such an important role, the development of credit cards is an indispensable rule. Along with the fast pace of development, the credit card market also contains many risks. The risk to the credit card market does not stop at the physical losses between business and consumer entities but also has macroeconomic risks both in the economy and in social life. A law on credit card will be an indispensable tool to create the operating framework of the credit card market, to prevent and mitigate credit card risks, to coordinate the implementation of macroeconomic policies other. Therefore, the need to complete the legal provisions on credit cards is always set.

LIST OF ABBREVIATIONS

ACB: Asia Commercial Joint Stock Bank
 CARD: Card Accountability Responsibility and Disclosure
 CFPB: Consumer Financial Protection Bureau
 e-CFR: Electronic Code of Federal Regulations

COMPETING INTERESTS

The authors declare that they have no conflicts of interest

AUTHORS' CONTRIBUTION

- Tran Thi Thu Ngan: ABSTRACT, Introduction, Theoretical basis, Conclusion, LIST OF ACRONYMS, BIBLIOGRAPHY AND SOURCES.
 - Tran Nguyen Phuoc Thong: The concept of credit card, Some legal issues about credit cards in Vietnam.

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Một vài vấn đề pháp lý về thẻ tín dụng tại Việt Nam – so sánh với các quy định của pháp luật Hoa Kỳ

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TÓM TẮT

Dịch vụ thẻ tín dụng là một loại hình dịch vụ tương đối đặc biệt. Về bản chất, sự đặc biệt của loại hình kinh doanh này thể hiện ở việc các tổ chức tín dụng đã gộp hai nghiệp vụ cơ bản của mình là hoạt động thanh toán và hoạt động cấp tín dụng vào một loại hình dịch vụ. Pháp luật về thẻ tín dụng đòi hỏi một sự kết hợp nhuần nhuyễn các quy định liên quan, tạo thành một khung pháp lý hoàn chỉnh và đầy đủ để điều chỉnh các vấn đề phát sinh xung quanh hoạt động kinh doanh thẻ của các tổ chức tín dụng, hoạt động sử dụng thẻ tín dụng chi tiêu của các khách hàng, hoạt động thanh toán trung gian của các tổ chức thanh toán thẻ, ... Kết quả nghiên cứu ban đầu cho thấy luôn có rủi ro trong quy trình thanh toán thẻ tín dụng. Ngoài các rủi ro từ các yếu tố kỹ thuật và bảo mật, vẫn còn rủi ro pháp lý cho các nghĩa vụ đảm bảo an toàn cho các hoạt động thanh toán qua thẻ tín dụng của các chủ thể liên quan đến quy trình này. Do đó, việc xác định rủi ro pháp lý để xác định rõ ràng các quyền và nghĩa vụ pháp lý của các bên liên quan là một nghiên cứu cần thiết góp phần vào sự phát triển của thị trường thẻ tín dụng Việt Nam trong thời kỳ hội nhập. Trên cơ sở so sánh với các quy định của pháp luật Hoa Kỳ về thẻ tín dụng, nhóm tác giả cho rằng văn bản pháp luật riêng về thẻ tín dụng này cần chú ý đến các nội dung quan trọng như chủ thẻ, hợp đồng phát hành và sử dụng thẻ tín dụng, vấn đề phân định trách nhiệm chịu rủi ro, lãi suất và phí sử dụng thẻ tín dụng, thẻ, hạn mức tín dụng, vấn đề lạm dụng thẻ tín dụng tiêu dùng và gian lận thẻ tín dụng. Các nội dung này sẽ được phân tích cụ thể và đưa ra các khuyến nghị với mục đích tạo ra khung pháp lý hoàn chỉnh trong điều chỉnh hoạt động thẻ tín dụng. Từ đó góp phần tận dụng được các ưu điểm của thẻ tín dụng cũng như hạn chế đến mức tối đa các bất lợi có thể có từ thẻ tín dụng.

Từ khoá: Thẻ tín dụng, chủ sở hữu thẻ, thanh toán

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Lịch sử

- Ngày nhận: 18-1-2021
- Ngày chấp nhận: 02-8-2021
- Ngày đăng: 10-8-2021

DOI: 10.32508/stdjelm.v5i4.762



Bản quyền

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Trích dẫn bài báo này: Ngân T T T, Thông T N P. Một vài vấn đề pháp lý về thẻ tín dụng tại Việt Nam –so sánh với các quy định của pháp luật Hoa Kỳ. *Sci. Tech. Dev. J. - Eco. Law Manag.*; 5(4):1822-1831.