

## On the nature of prepaid membership card

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**Abstract.** Along with the increasingly perfecting of market economy, a new tool for settlement---- prepaid membership card appeared in our country's market economy. This article is mainly in an attempt to define the nature of prepaid membership card in our country through the analysis of foreign legislation in order to correctly understand the legal relationships between operators issuing prepaid membership card and card holders.

### The Nature and Characteristics of Prepaid Membership Card

#### A. The nature of prepaid membership card

Prepaid membership card is the membership card used when payment is before consumption, so it is also called consumer card or prepaid card. With more and more developed market economy and with the development and more stable state of credit economy, prepaid membership card consumption pattern has generally been existed in social market economy. Prepaid membership card is a mode of operation or means adopted by merchants to promote business and the stability of customers. For merchants, it has the advantages of absorbing certain capital and cultivating a number of fixed customers. For consumers, because prepaid membership card offers attractions like discounts and ease of use, it has been accepted by the consumers, and became a new type of consumption pattern with consumer acceptance. It can be said that the existence of prepaid membership card achieves a win-win situation for both merchants and consumers, and has the rationality of its existence. On the level of civil and commercial law, due to the novelty and universality of prepaid membership card, it is particularly important to analyze and discuss the related theories.

The author thinks that prepaid membership card is essentially a payment and settlement tool for the concentrated store value and dispersing spending of consumers to achieve the convenience of trading behavior. It embodies an account document recording and authorizing instructions of consumer information and consumption, and also embodies the settlement cash vouchers operator issued and signed. [1]

#### B. The characteristics of prepaid membership card:

One is prepaid certificate. Consumers buy prepaid membership card, which actually pays the price of the goods or services to the businessman in advance. Under the conditions of not consuming, they get proof of goods or services. The value of the prepaid membership card is equivalent with the value of the goods or services.

Two is discount voucher. Some operators give more discounts for prepaid membership card members than ordinary consumers. The purpose is to encourage consumers to buy and use a prepaid membership card to consume, and provides stable customer group for sustainable consumption.

Three is contract document. Consumers pay the price and the operators give them membership cards. It means the establishment of sales contract relationship between both sides. There are two constraints for consumers: one is to accept the service, the second is to give up the right of consuming. Constraints to operator are the invariance of prices for prepaid membership card holders and provide goods or persistent services many times in the amount of the prepaid membership card limits.

Four is wide use. Prepaid membership card's broadness exists in two aspects: one is the broad merchants issuing prepaid card, almost in all walks of life needing several times daily consumption; The second is very wide range of consumer groups using prepaid membership card. This is due to the

relative low threshold of purchasing prepaid membership cards, which conforms to the mass consumers demand.

### **Foreign Law Definition of the Nature of Prepaid Membership Card**

#### **A. The blanket of foreign definition of prepaid membership card**

Central Banks in European Union in 1994 described prepaid membership card in "A report of prepaid membership card to EMI committee" as "multi-purpose card existing in card form of special plastic or other materials with real purchasing power". [2]

In the United States, it called stored value card. In general sense, it is small amount, regular trading card covering the vast majority of cash replacement.

According to Japanese law definition: "Prepaid membership card refers to the evidence of recorded amount of money or quantity of goods or the use of electromagnetic method recording them."

According to German law, prepaid membership card can be defined as purchase ability with advance payment, which can substitute a small amount of cash as a bearer of payment tool. [3]

#### **B. The status quo of prepaid membership card in the United States**

Prepaid membership card, as a kind of new payment tool, belongs to a branch part of micropayment system. A number of common rules and regulations of federal law and state law control it, such as Federal Deposit Insurance Law, Electronic Funds Transfer Law, E rules, etc. Its legal regulation is focused on attention to safe operation of financial system, which mainly reflects in the following aspects:

1. To prepaid membership card belonging to the nature of deposit, Federal Deposit Insurance Corporation is responsible for the supervision. Federal Deposit Insurance Corporation has the right to require Banks to periodically report the management state, conduct on-site inspection, and has punishment power such as fine, shutter its operations. [4]

2. To set up the accounts' prepaid membership card in financial institutions, apply E rules. It gives the user a variety of protective measures, and it is more widely applicable in prepaid membership card issued by non-financial institutions.

3. To non-bank companies, Funds Transfer Act is engaged in prepaid membership card payment regulation. The amount received in non-banks usage control is strictly limited and the non-banks must supervise the subordinate branches and found for lawful operation.

#### **C. The status quo of Japanese prepaid membership card**

In service industry in Japan, prepaid membership card is referred to as "prepaid type card", whose distribution and use are very common. As early as 1989, the Prepaid Type Card Ticket demonstrated regulation law and its implementation of orders, rules and margin, which constitutes Japanese full rules for prepaid membership card ticket system, mainly including report and registration system, status inheritance, margin system and supervision system. They are mainly reflected in the following aspects:

1. The system of report and registration. Practice a system of declaration for operators issuing prepaid type certificate. There are no special restrictions for issuer identity. Both the identity of the natural person and legal person can issue. The issuer has two obligations: one is to declare balance; the second is to report on important matters.

2. Status inheritance system. In order to avoid unfulfilled ticket issue because of issuers change, Japan created the publisher status inheritance system in Prepaid Membership Card Ticket Regulation Act. The heir to the primary pedestrians bears all primary pedestrians: debt repayment obligations of prepaid membership card type ticket and its obligations include report duty, deposit pay and supervision acceptance duty, etc.

3. Margin system. Prepaid type card ticket holders is within the scope of the margin, and seek preferred payments rights for the votes represented creditors.

4. Supervision and management system. The government department of prepaid membership card has five powers for prepaid membership card ticket regulation. One is the right to review. Two is

inspection. Three is improving power. Four is the right of cancellation of registration. Five is the right of supervision and punishment.

In order to clear the applicable scope of Prepaid Membership Card Regulation Law, the law and its enforcement method further clearly define several conditions using rule out not within the scope of the above definitions of prepaid membership card: first, prepaid type certificate issued by state or local public bodies. Second, prepaid membership card is directly set up by legal person in accordance with the law or local public bodies under special law. Third, prepaid membership card is specifically for the issuer's staff, only for the use of the employee's own distribution. Fourth, prepaid membership card issued on the basis of "Discount Sales" as protection measures. Fifth, prepaid tickets provided for no specific admission, etc. [5]

#### D. The summary of prepaid membership card classification

1. Prepaid membership card can be divided into enclosed and open according to the use scope. Enclosed card refers to prepaid membership card issued by operators. Prepaid membership card purchasing power is limited to card issuers' goods or services; Open card refers to those allow the cardholder widely use in different sales terminal operators to purchase goods or services.

2. Prepaid membership can be divided into one-time card and rechargeable prepaid card according to repeated use. One-time card refers to those which cannot be recharged after using up the amount; rechargeable prepaid card refers to those which can be recharged after the amount of consumption using as the same membership card continue to be used.

3. Prepaid membership card can be divided into smart card and magnetic card according to the technical standard. Smart card takes computer chip as the core technology, compared with magnetic card, which can accommodate a greater amount of information and complete more complex transaction.

4. Prepaid membership card can be divided into money card and non-money card according to different recorded content. Money membership's card information records a certain amount, which needs to exchange the same value goods or services; Non-money membership card directly records a certain number of goods or services, and consumers get particular goods or services according to the records.

#### E. The conclusion got by the definition of foreign legislation for prepaid membership card

By studying foreign legislation for prepaid membership card, each country's definition for "prepaid membership card" is different, and each follows and accords with the actual situation of his own country particularly, but each country's scope for "prepaid membership card" has a lot of in common. Consumption type prepaid membership card is membership card, but the essence is the consumer vouchers of the contract between operators and consumers. In addition to the contractual relationship, they both are different civil main body of loose interest relationship. [6] Therefore, our country can draw lessons from the prepaid membership card law in United States and Japan to regulate what we call prepaid membership card.

### **The Legal Relationship of Prepaid Membership Card in China**

There is no clear definition for prepaid membership card in our country's current law. It is a new consumption pattern under the condition of the credit economy stimulation. The operator encourages consumers to use prepaid membership card for two main purposes: first is to get the stable customer needs for operators; second is to facilitate the needs of consumers' convenience. In most cases, consumption using prepaid membership card is persistent. We often think that prepaid membership card refers to the issuer based on profit purpose first charges consumers all or part of the price or service fee or goods then provide of the goods or services in a certain period of the agreement. [7] This spending usually offers consumers to get card right with a certain amount of money deposited in the magnetic stripe card in advance and weaves in use to reduce the amount.

In "prepaid membership card" consumption pattern, the legal relationship between the membership card holders and the operators should be defined as consumer service contract legal relationship [8]. This card is in the nature of contract, and the parties to the contract are cardholder

and card issuer. Card issuer is usually the launch institute of prepaid membership card. The cardholder includes cardholder and card issuer. That is to say, as long as consumers buy the card, then, in law this not only means a contract relationship between membership card holders and operator merchants; but means that the card payment has fulfilled the future spending by consumers or the obligation to pay. So, card consumer will have the right to enjoy the corresponding content of merchants' services.

Prepaid membership card's legal relationship is essentially a contract legal relationship, thus debtor-creditor relationship exists between card holders and operator merchants. Then civil law in our country should be applied, including General Principles of the Civil Law, Contract Law and other relevant laws and regulations. Between the two sides of format contract terms and interpretation, disputes of contract breach, assignment of creditor's rights, theoretically, should be solved in civil legal norms. Compared to mature foreign prepaid membership card and economic development, in China, it is still in the stage of exploration, and the corresponding laws and regulations remain to be perfect. Moderate theory research has a need to promote the development of its own constant improvement.

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