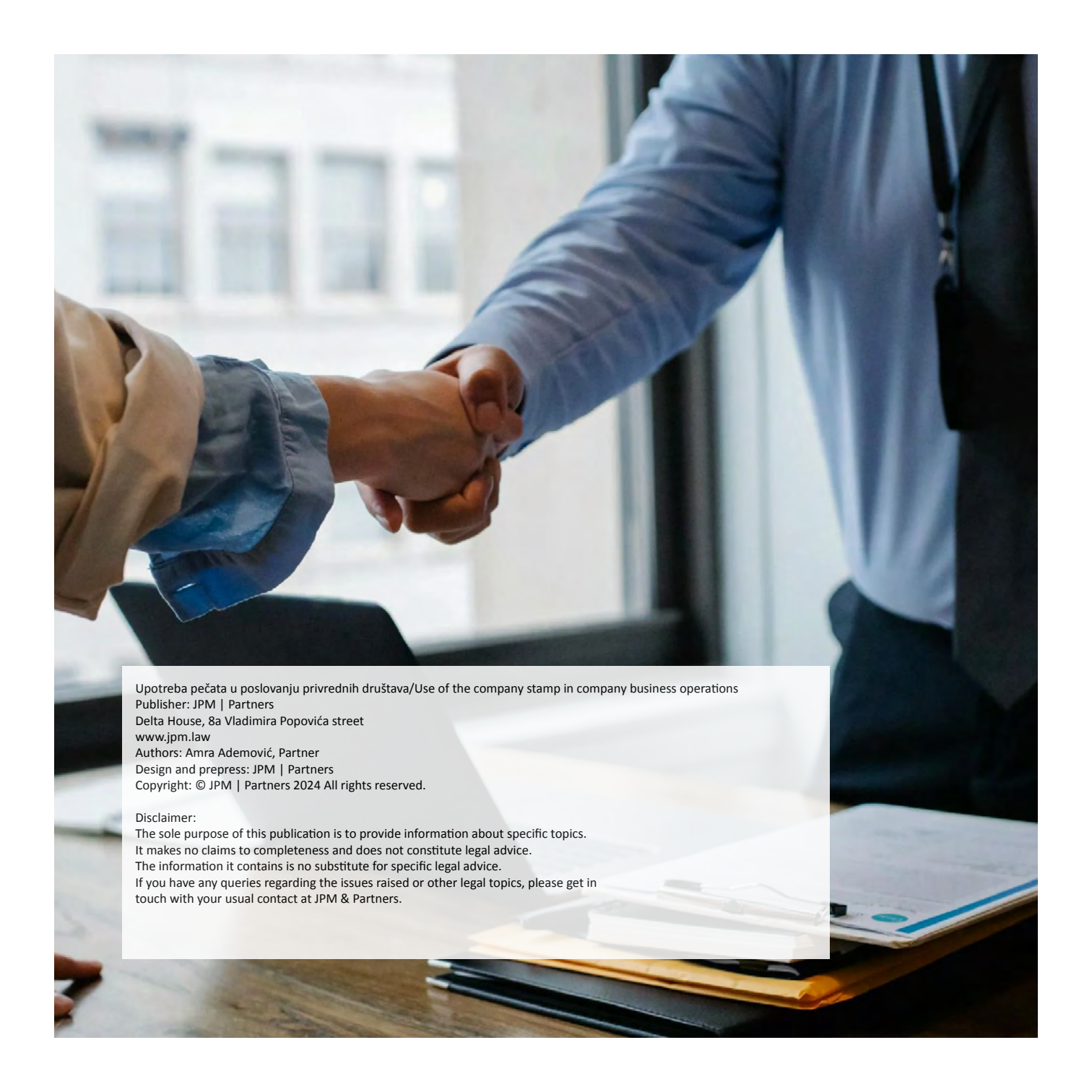




Upotreba pečata u poslovanju privrednih društava
Use of the company stamp in company business operations

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A photograph showing two people in business attire shaking hands. The person on the right is wearing a light blue shirt and a dark tie. The person on the left is wearing a light-colored jacket. They are standing in front of a window with a view of a building. In the foreground, there is a desk with a laptop, a stack of papers, and a folder.

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Privredna društva nijesu dužna da koriste pečat u poslovanju glasi član 15 stav 1 Zakona o privrednim društvima („ZPD“).

Intencija zakonodavca prilikom propisivanja slobode pri regulisanju korišćenja pečata u poslovanju bila je da se poslovanje društva ne opterećuje dodatnim formalnim uslovima, kao i da se pitanje upotrebe pečata prepusti privrednom društvu da isto reguliše opštim ili posebnim internim aktom.

Članom 114 ZPD definisano je šta obavezno sadrži statut akcionarskog društva, odnosno društva sa ograničenom odgovornošću, pa je u stavu 1 tačka 13 definisano je da statut sadrži druge odredbe od značaja za rad društva.

Companies are not obliged to use the stamp while doing business, as stated in Article 15 paragraph 1 of the Company law of Montenegro (“Company Law”).

The legislator’s intention when prescribing freedom while regulating use of stamps in doing business was to unburden the Company’s business, i.e. to not burden the business with additional formal conditions, as well as to leave the issue of the use of the stamp to the company to regulate it by a general or special internal act.

In Article 114 of Company law, it is defined what must be included in the articles of association (“AoA”) of a joint stock company, i.e. a limited liability company, in paragraph 1, item 13, it is made clear that the AoA contains other provisions of importance for the functioning of the company.

Ukoliko se privredno društvo odluči da dodatno zaštititi svoje poslovanje sa trećim licima i da unese upotrebu pečata u svoje poslovanje, obavezno je da isto unese u statut.

Ukoliko se društvo naknadno odluči u vezi upotrebe pečata dužno je da na osnovu člana 119 ZPD u roku od 7 dana od dana nastanka promjene radi registracije u Centralnom registru privrednih subjekata („CRPS“) dostavi dokumentaciju i podatke o promjenama koje se odnose na statut i posebni akt (ako statut ne sadrži podatke iz člana 114 stav 2), odnosno osnivački akt ako se promjene odnose na osnivački akt.

Dakle, u praksi se srusrijećemo sa dvije moguće situacije u kojima:

- i. privredno društvo statutom predviđa upotrebu pečata i
- ii. privredno društvo ne predviđa upotrebu pečata.

If a company decides to further protect its business with third parties and to start using the stamp in its regular business, it shall enter such information on the use of stamps in the company's AoA.

If the company subsequently decides on the use of the stamp, within 7 days from the date of the change, the Company is obliged to submit the documentation and data on changes in relation to the AoA and a special act, i.e. the Act on incorporation, to the Central Registry of Business Entities (“CRBE”).

Thus, there are two possible situations in which:

- i. the company provides for the use of stamps in the AoA and
- ii. the company does not provide for the use of stamps.

U prvom slučaju, kada privredno društvo u statutu ima definisanu upotrebu pečata, takva odredba se posmatra kao odredba imperativne prirode i privredno društvo mora u privrednom poslovanju koristiti pečat bez izuzetka, odnosno nije dozvoljena arbitrarnost u upotrebi pečata.

Kada se statutom definiše upotreba pečata daje se dodatna zaštita pravnoj snazi potpisa i djelovanja u pravnom prometu. Društvo se u tom slučaju može pozivati na upotrebu pečata u odnosima (transakcijama) sa trećim licima, pod uslovom da je podatak o pečatu uredno registrovan u CRPS-a i objavljen u Službenom listu Crne Gore.

Ukoliko privredno društvo nema statutom definisanu upotrebu pečata, zaključujemo da upotreba pečata nije dozvoljena, budući da opštim internim aktom nije definisana njegova upotreba, izgled i sl.

In the first case, when a company has provided for the use of a stamp in the AoA, such a provision is considered as an imperative natured provision and the company is obliged to use the stamp in business operations without exception, i.e. arbitrariness in the use of the stamp is not allowed.

When the AoA defines the use of stamps, additional protection is given to the legitimacy of the signature and actions in legal transactions. In this case, the company may refer to the use of the stamp in business and other transactions with third parties, provided that the stamp information is duly registered in the CRPS and published in the Official Gazette of Montenegro.

If the company does not provide for the use of the stamp in the AoA, then it is definite that the use of the stamp is not allowed, since the general internal act does not define its use.

Kao i u slučaju kada je upotreba pečata predviđena statutom, ni u ovom slučaju nije dozvoljeno arbitrarno primjenjivati pečat u privrednom poslovanju sa trećim licima, odnosno nije dozvoljeno da društvo nekada koristi, a nekada ne koristi pečat, budući da izgled i upotrebu pečata društvo nije ni predvidjelo.

U oba slučaja, bilo da se privredno društvo odluči da unese ili ne unese odredbu o upotrebi pečata u statut, javlja se izričita obaveza da društvo bude dosljedno u primjeni onoga što je u statutu, odnosno da ukoliko je predvidjelo primjenu pečata isti redovno primjenjuje pri pravnim poslovima i privrednom poslovanju, kao i u situaciji kada nije definisana upotreba pečata da se isti ne pojavljuje u pravnom prometu, niti da se vrši ovjera dokumentacije bilo kakvim pečatom.

As in the case when the use of a stamp is provided for in the AoA, it is also not allowed in this case to apply the stamp arbitrarily in business transactions with third parties, i.e. it is not allowed for the company to sometimes use and sometimes does not use the stamp in a situation when the Company has not provided for the occurrence of any kind of stamp.

In both cases, whether the company (does not) decide to prescribe a provision on the use of stamps in the AoA, there is an explicit obligation for the company to be consistent in the application of what is in the AoA, i.e. if it has provided for the application of the stamp, it regularly uses the stamp in the legal affairs and business operations, as well as in a situation when the use of the stamp is not provided so that it does not appear in legal transactions, nor to certify the documentation with any stamp.

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