

An Exception Is Not the Rule

When Is a Departure from the Usual Procedure Lawful?

Departing from the Rule Does Not Mean Departing from Legality

Government financial management operates within a framework of rules, functions, procedures and controls governing decision-making, the execution of transactions and the exercise of authority. In specific circumstances, legislation or the applicable regulatory framework may permit a departure from the general rule or usual procedure by providing for an exceptional rule or an alternative exceptional process.

However, the mere existence of an exception does not make it an alternative to the general rule. Its lawfulness remains dependent on the legal basis permitting it, its scope, the conditions governing its application and the authority required to apply or approve it.

An exception cannot be considered in isolation from the general rule to which it relates; it must be applied only within the limits in which a departure from that rule has been permitted.

The General Rule Comes First... and the Exception Remains Within Its Limits

The UAE Civil Transactions Law establishes the following rule of interpretation: "An exception shall not be extended by analogy, nor shall it be broadly interpreted". This means that an exceptional provision does not extend beyond the cases falling within its scope and must not be interpreted in a manner that exceeds those limits.

The Federal Supreme Court has also affirmed this approach in the context of jurisdiction and delegation of authority. It has held that, as a general rule, a statutory power is to be exercised by the person or authority designated by law and that delegation, being an exception to that rule, is lawful only where permitted by law. As an exception, it is subject to strict interpretation and may not be extended or applied by analogy.

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It is not sufficient for an exception merely to be stated or available within a particular procedure. Its source, the legal basis permitting it, its consistency with the legislation governing the matter and the conditions for its application must also be verified. Rules and procedures do not all have the same legal status, and the application of an exceptional procedure or process must not conflict with, or exceed the limits of, the legislation on which it is based.



Before relying on any exception, the following should be verified:

- The general rule: What procedure would ordinarily apply?
- The basis for the exception: Is there a provision or regulatory framework permitting a departure from the usual procedure, and does the exception remain within the limits permitted by the legislation governing the matter?
- Conditions of the exception: Does the case actually fall within the circumstances covered by the exception, and have its conditions been satisfied?
- Authority: Does the decision-maker have the authority to apply or approve the exception?
- Applicable requirements: Have the required approvals, justifications, supporting documents and any other applicable requirements been satisfied?

The lawfulness of an exception therefore does not arise merely from its existence. It depends on a valid basis for its application, satisfaction of its conditions, adherence to its limits and a decision by the person or authority duly empowered to make it.



When Does an Exception Become a Source of Legal Risk?

Legal risks arise in particular where:

- The exception is applied to a case that falls outside its scope or does not satisfy its conditions.
- It is interpreted broadly so as to cover cases not contemplated by the basis on which it was established.
- The decision to apply it is made by a person who does not have the required authority.
- Its application conflicts with, or exceeds the limits of, the legislation governing the matter.
- The approvals or other requirements applicable to its use are not satisfied.
- Its use effectively becomes routine, without verifying in each case that the basis and conditions for applying the exception are satisfied.

An exception applied outside its scope or without satisfying its conditions does not become lawful merely because the exceptional process is available.



Practical Example

The rules governing a financial transaction require a specified approval process but permit an exceptional process in certain circumstances, subject to specified conditions and approvals.

If the exceptional process is selected within the financial system merely to expedite the transaction, without the circumstances justifying its use being present or without obtaining the required approvals, the mere availability of that process within the system is not sufficient to make its use lawful.

Conversely, where the case falls within the exception, its conditions and requirements have been satisfied, and the decision is made by the person with the required authority, following the exceptional process constitutes proper application of the governing rules, rather than a departure from them.

Conclusion

An exception does not constitute a departure from legality where it is provided for under the applicable legal or regulatory framework, its conditions are satisfied, its scope is respected, and the relevant decision is made by the person with the required authority.

The mere existence of an exceptional process, however, does not make the general rule optional, nor does it permit the exception to be applied beyond the circumstances and limits prescribed for it.

The general rule therefore remains the starting point, while the lawfulness of any exception remains dependent on its legal basis, scope, conditions and the authority required for its application.

