

# FEMA Ke Fundae

#FamiliarwithFEMA

**Creation of Overseas Step  
Down Subsidiaries by  
Resident Individual**

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**Abhinav**  
**(Indian Investor)**

Hello, Mr. FEMA Gyani. I have invested in a US Company in 2022 and now that US company wants to create step down subsidiaries but I was informed that it has not been able to do so due to my stake, can you please explain why?

Hi Abhinav! As per the Overseas Investment Rules, A resident individual cannot make or hold Overseas Investment in a foreign entity which have step down subsidiary where the resident individual **has control** in the foreign entity.



**The FEMA Gyani**



**Abhinav  
(Indian Investor)**

But FEMA Gyani, I don't have control in the foreign entity as per Companies Act, 2013. I also have an agreement which states that I don't have any control in my entity abroad.



**The FEMA Gyani**

That's okay Abhinav but the definition of control is different under FEMA. As per FEMA, "control" means

right to appoint majority of the directors

**OR**

to control management or policy decisions

**OR**

voting agreements that entitle them to ten percent or more of voting rights or in any other manner in the entity.

By a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders' agreements or



**Abhinav  
(Indian Investor)**

Oh! That means since I hold 15% stake in the foreign entity, I am having control in it?

Yes Abhinav! You got it right, 10% or more holding in a foreign entity gives you deemed control irrespective of any agreement. Therefore, AD Bank is not allowing you to create step down subsidiary.



**The FEMA Gyani**



**Abhinav  
(Indian Investor)**

Okay Mr. FEMA Gyani, I understood but I have some doubts.



**Abhinav**  
**(Indian Investor)**

For the purpose of business operations abroad, US entity has to create step down subsidiaries, so what if I transfer some of my stake to another shareholder and make it below 10%, any which ways I don't have any control in the US Entity so there is no sense of keeping 10% stake and falling under the definition of Control?

Yes Abhinav, that can be done but there is also one more option where you can transfer your stake to an Indian entity as the Indian entity is allowed to invest in a foreign entity having Step Down Subsidiaries.



**The FEMA Gyani**

Okay Got it Mr. FEMA Gyani! Thank you so much for your explanation.



**Abhinav**  
**(Indian Investor)**

# Thank You



The FEMA Gyani

Comments

Feedbacks

Suggestions



<https://in.linkedin.com/company/jscoca>

WEBSITE

<https://jainshrimal.com/>





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