

The Objective of the Amendment to the Foreign Exchange and Foreign Trade Act

System before the amendment

- The basic principle: free investment
- Certain types of foreign direct investment (FDI) require post-investment reporting. FDI to the designated business sectors is subject to prior-notification for screening.



The need to further promote FDI conducive to sound economic growth

Global trend to strengthen measures for FDI screening from the national security viewpoint

- Adoption of FIRRMA in the United States (Aug. 2018)
- Adoption of the new EU regulation (Mar. 2019)



The amendment aims to:

- Further promote foreign direct investment conducive to sound economic growth; and
- Ensure minimal review of FDI that could pose risks to national security.

Highlights of the Amendment

Further promote FDI conducive to sound economic growth

1. Introduction of exemption scheme for Prior-notification for Stock Purchases (PN-SP)

- Investors who comply with certain conditions (See Page 5) are exempted from PN-SP requirement.
- Investor's compliance with the conditions for exemption is secured through post-investment reports and, if necessary, government actions to issue recommendations/orders for compliance.

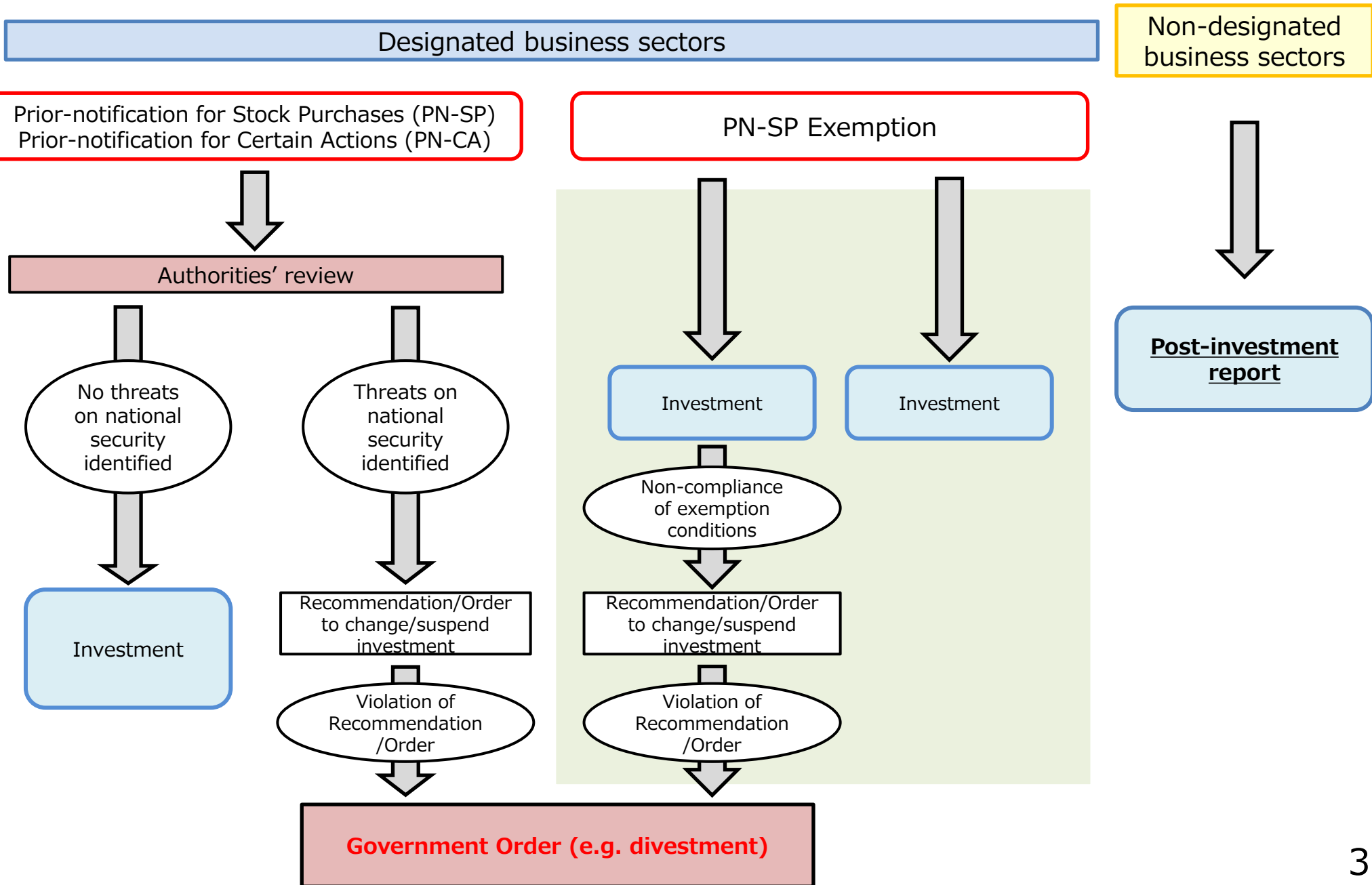
Ensure minimal review of FDI that could pose risks to national security

2. Reviewing the scope of prior-notification

- Threshold for PN-SP with regard to the acquisition of listed company's stocks is lowered from 10% to 1% (Under the Japanese Company Act, shareholders who own 1% or more of voting rights are entitled to propose an agenda to general shareholders' meetings.)
- Prior-notification is required for the following shareholders' actions:
 - ✓ Becoming board members of the investee company
 - ✓ Proposing transfer or disposition of investee company's business activities in the designated business sectors

3. Enhancing information exchange among relevant domestic authorities and with foreign counterparties

Flow of Foreign Direct Investment Review (After Amendment)



Exemption Scheme for Prior-notification of stock Purchases (PN-SP)

Foreign financial institutions

General investors
including SWFs and public pension funds accredited by the authorities

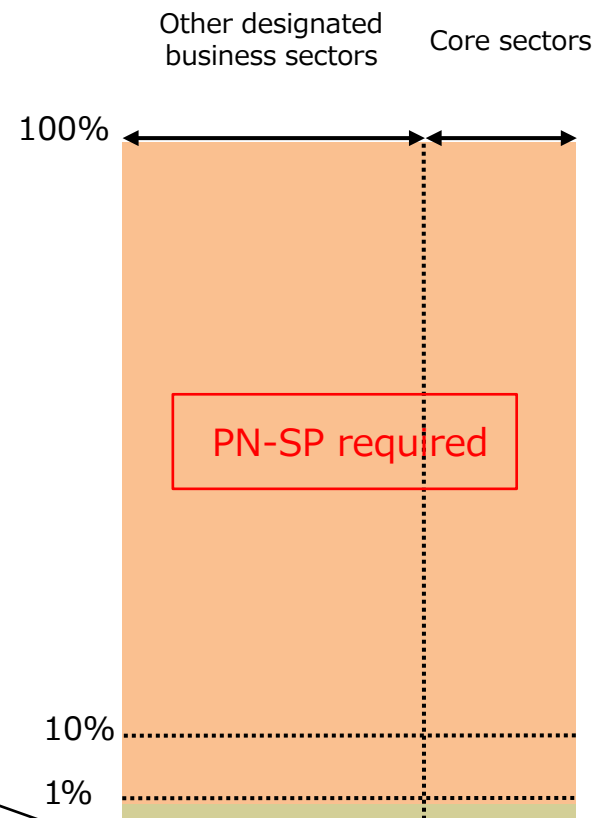
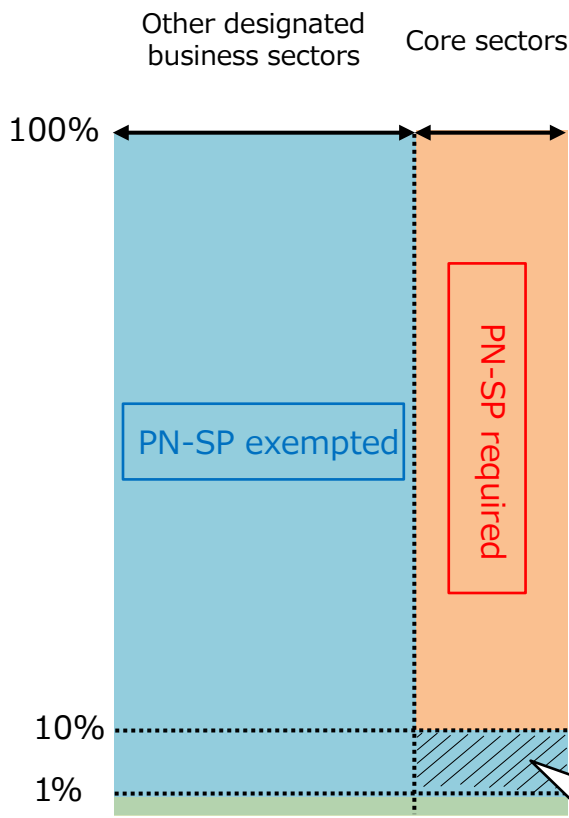
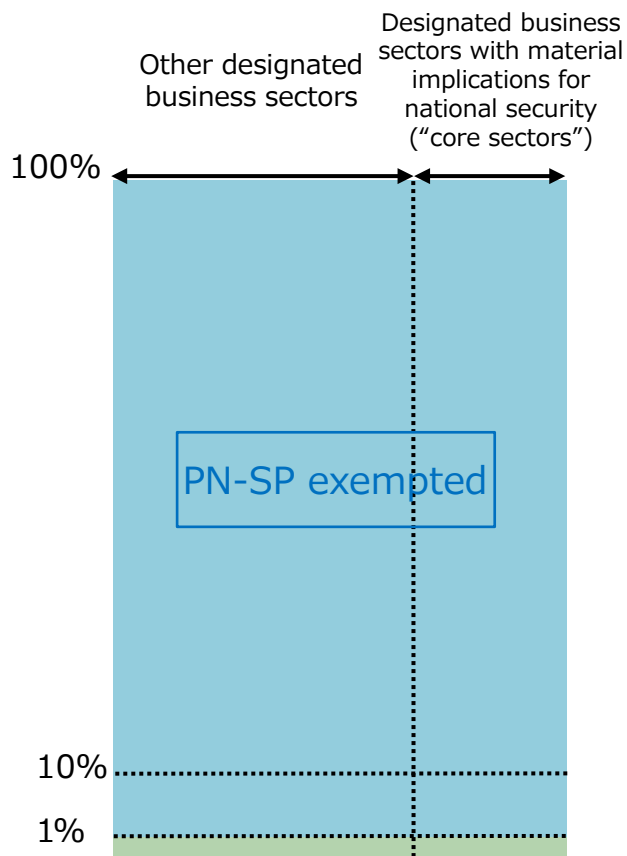
- Investors with a record of sanction due to violation of the FEFTA
- State-owned enterprises (except those who are accredited by the authorities)

Blanket exemption

*See Page 6

Regular exemption

Exemption non-applicable



Exemption Conditions on Core Sectors' Business Activities (*See Page 5)

Exemption Scheme for Prior-notification for Stock Purchases (PN-SP)

Types of investors	Scope	
<p>Foreign financial institutions (*See Page 7)</p>	<p>Designated business sectors <u>other than core sectors</u></p> <hr/> <p>Core sectors</p>	<p><“Blanket exemption”></p> <ul style="list-style-type: none"> • PN-SP will be exempted with no upper limit for investors that comply with the Exemption Conditions (a,b,c) • Post-investment report – from 1 0 %
<p>General investors (including SWFs and public pension funds accredited by the authorities)</p>	<p>Designated business sectors <u>other than core sectors</u></p> <hr/> <p>Core sectors</p>	<p><“Regular exemption”></p> <ul style="list-style-type: none"> • PN-SP will be exempted with no upper limit for investors that comply with the Exemption Conditions (a,b,c) • Post-investment report - from 1 % • PN-SP will be exempted under 1 0 % for investors that also comply with the Exemption Conditions on Core Sectors’ Business Activities (d,e) • Post-investment report - from 1 %
<ul style="list-style-type: none"> • Investors with a record of sanction due to violation of the FEFTA • State-owned enterprises (except those who are accredited by the authorities) 	<p>Designated business sectors <u>other than core sectors</u></p> <hr/> <p>Core sectors</p>	<ul style="list-style-type: none"> • No exemption is applicable.

[Exemption Conditions]

- Investors or their closely-related persons(*See Page 8) will not become board members of the investee company.
- Investors will not propose to the general shareholders’ meeting transfer or disposition of investee company’s business activities in the designated business sectors.
- Investors will not access non-public information(*See Page 9) about the investee company’s technology in relation with business activities in the designated business sectors.

[Exemption Conditions on Core Sectors’ Business Activities]

- Regarding business activities in core sectors, investors will not attend the investee companies’ executive board or committees that make important decisions in these activities.
- Regarding business activities in core sectors, investors will not make proposals, in a written form, to the executive board of the investee companies or board members requiring their responses and/or actions by certain deadlines.

Exemption for Sovereign Wealth Funds and Public Pension Funds (“SWFs”)

- In principle, state-owned enterprises are not eligible for the exemption from the prior-notification of stock-purchases. However, **SWFs that are deemed to pose no risk to national security are eligible for the regular exemption if accredited by the authorities.**

- For the accreditation, the Ministry of Finance will review whether:

1. Investment activities of the SWFs are only for economic returns; and
2. Investment decisions by the SWFs are made independently of their governments.

The Ministry of Finance will sign Memorandum of Understanding (MOU) with the SWFs to grant the accreditation.

- The decision of an accreditation and signing of MOU will not be made public.
- The MOU can set out other issues as necessary.

➤ Foreign financial institutions which are subject to regulations/supervisions under financial regulatory laws in Japan or other jurisdictions are eligible for “blanket exemption”. Such foreign financial institutions are:

- ◆ Securities firms
- ◆ Banks
- ◆ Insurance companies
- ◆ Asset management companies
- ◆ Trust companies
- ◆ Registered investment companies
(including mutual fund and exchange-traded fund)
- ◆ High-frequency traders

(Note) As for high-frequency traders, those who are registered with Japan’s Financial Services Agency (FSA) are eligible for “blanket exemption”. Other high-frequency traders are eligible for “regular exemption”.

Definition of "Closely-related Persons"

Scope of "closely-related persons" of a foreign investor	①Nomination is made by the foreign investor itself ^{1/}			②Nomination is made by a third party ^{2/} (including the investee company)		
	Board member of the foreign investor	Employee of the foreign investor	Member of the foreign investor's committee that has authority on investment decisions	Board member of the foreign investor	Employee of the foreign investor	Member of the foreign investor's committee that has authority on investment decisions
The foreign investor (if company)	○	○	○	○	×	○
Its subsidiaries, second-generation subsidiaries, parent companies, or grandparent companies ^{3/}	○	○	○	○	×	○
Its other family companies such as uncle/aunt companies, cousin companies, brother/sister companies, or nephew/niece companies ^{3/}	○	○	○	○	×	×
The foreign investors' business partners ^{4/}	○	○	○	×	×	×
Persons who receive substantial amount of financial rewards and/or other assets from the foreign investor ^{4/}	○			×		
Persons who were in the status of the above categories in the previous one year ^{4/}	○			×		
Spouse of the foreign investor (if natural person) ^{3/}	○			○		
Lineal ascent or descent of the foreign investor (if natural person) ^{3/}	○			○		
Persons (or their closely-related persons) who have agreement with the foreign investor to jointly exercise voting rights ^{3/}	○			○		

1/ This includes the case where nomination is made by a third party on behalf of the foreign investor.

2/ On-the-spot nomination at a shareholder's meeting is not subject to the prior-notification requirement.

3/ Same as the FEFTA's definition of "closely-related persons" used to calculate the total shares of investment in a single listed company.

4/ Same as the definition under the Tokyo Stock Exchange guidelines of the persons not eligible for becoming an independent board member due to conflicts of interest.

5/ If the foreign investor is a state-owned enterprise, "closely-related persons" include members of the state's central government, local governments, government agencies, central bank or political parties.

Definition of “Access to Non-public Information about the Investee Company’s Technology”

- Obtaining confidential technology-related information^{1/} managed by the investee company’s sections that conduct business activities in the designated business sectors^{2/, 3/}
- Requesting disclosure of confidential technology-related information^{3/}
- Requesting a change in the investee company’s internal rules on the treatment of confidential technology-related information

^{1/} The followings do NOT constitute confidential technology-related information:

- Information about employment terms or remuneration of board members and employees
- Financial information

^{2/} The case where the investee company voluntarily provides such information to the foreign investor does NOT constitute a breach of this exemption condition.

^{3/} Obtaining confidential technology-related information or requesting disclosure of such information by the M&A advisory services section of a financial institution does NOT constitute a breach of this exemption condition if measures are in place in the financial institution to ensure the followings:

- (i) Confidential technology-related information is not allowed to be shared with the equity market section; and
- (ii) the M&A advisory services section is not allowed to exercise influence on the investee company taking advantage of stocks of the company held by the equity market section.

Designated Business Sectors

【Designated Business Sectors】

(out of 1,465 sectors of Japan Standard Industrial Classification revised in 2013)

- Weapons
- Aircrafts
- Space
- Nuclear facilities
- Dual-use technologies
- Pharmaceutical manufacturing sector of communicable diseases
- Specially-controlled medical devices manufacturing
- Metal mining etc. of critical minerals
- Construction service business etc. which improves or maintains port facilities on Designated Remote Islands
- Cybersecurity-related (Software, Semiconductor, etc.)
- Electricity
- Gas
- Telecommunications
- Water supply
- Railway
- Petroleum
- Heat supply
- Broadcasting
- Public bus
- Biological chemicals
- Security services
- Agriculture, Forestry and Fisheries
- Leather manufacture
- Aviation transportation
- Maritime transportation

【“Core Designated Business Sectors(※) ”】

(※) See next page for more details

- **All of the following sectors**
 - Weapons; Aircrafts; Nuclear facilities; Space; Dual-use technologies
 - Pharmaceutical manufacturing sector of communicable diseases; Specially-controlled medical devices manufacturing
 - Metal mining etc. of critical minerals; Construction service business etc. which improves or maintains port facilities on Designated Remote Islands
- **Part of the following sectors**
 - Cybersecurity-related; Electricity; Gas; Telecommunications; Water supply; Railway; Petroleum

【“Non-Core Designated Business Sectors”】

- **Part of the following sectors**
 - Cybersecurity-related; Electricity; Gas; Telecommunications; Water supply; Railway; Petroleum
- **All of the following sectors**
 - Heat supply
 - Broadcasting
 - Public bus
 - Biological chemicals
 - Security services
 - Agriculture, Forestry and Fisheries
 - Leather manufacture
 - Aviation transportation
 - Maritime transportation

Scope of “Core Sectors” in the respective business sectors

Areas	Scope is narrowed to those truly necessary for national security
Weapons; Aircrafts; Space; Nuclear facilities; Dual-use technologies; Pharmaceutical manufacturing of communicable diseases; Specially-controlled medical devices manufacturing; Metal mining etc. of critical minerals; Construction service business etc. which improves or maintains port facilities on Designated Remote Islands	All
Cybersecurity	<ul style="list-style-type: none"> • Cybersecurity-related service (e.g. network security monitoring, software) • Service providers of the program designed for critical infrastructures
Electricity	<Electricity Business Act> <ul style="list-style-type: none"> • General Electricity Transmission and Distribution Utility, Electricity Transmission Utility • Electricity Generation Utility companies that own a power plant with maximum generation capacity of 50,000KW or more
Gas	<Gas Business Act> <ul style="list-style-type: none"> • General Gas/Specified Gas Pipeline Service Providers, Gas Manufacturers <Oil Stockpiling Act> <ul style="list-style-type: none"> • LP Gas companies that own a storage facility or core cylinder filling station
Telecommunications	<Telecommunications Business Act> <ul style="list-style-type: none"> • Telecommunication carriers that provide service across multiple local municipalities
Water supply	<Water Works Law> <ul style="list-style-type: none"> • Water Supply companies supplying to more than 50,000 people • Bulk Water Supply companies with a capacity of supplying over 25,000m³ per day
Railway services	<Armed Attack Situations Response Act> <ul style="list-style-type: none"> • Railway Service companies operating public facilities/infrastructures which are stipulated under the Armed Attack Situations Response Act
Petroleum	<ul style="list-style-type: none"> • Petroleum Refinery, Oil stockpiling, Crude Petroleum and Natural Gas Production

Under the current foreign investment screening system, the requirement of prior-notification for the authorities' screening applies to foreign direct investment (FDI) to manufacturers of biological chemicals (e.g. vaccine) only; manufacturers of medicine and medical equipment are out of the scope.

→ **COVID-19 crisis underscores the need to maintain the base of key medical industries directly linked to human lives and health. The Japanese government adds certain pharmaceutical products and medical devices to the designated business sectors subject to pre-screening.**

【Pharmaceutical Products】

- Outbreak of communicable diseases could be a threat to national security as well as public safety.
- In order to maintain the base of pharmaceutical manufacturing essential for prevention and treatment of communicable diseases, **FDI to the pharmaceutical manufacturing sector of communicable diseases is subject to pre-screening.**

(e.g. Medicine or vaccine for communicable diseases, its raw materials)

【Medical Devices】

- In order to respond to emergency situations of communicable disease outbreak, the production base of key medical devices should be well-maintained even under non-emergency situations.
- **FDI to the specially-controlled medical devices (Classes 3&4) manufacturing sector is subject to pre-screening.**

(e.g. Heart-lung machine, Ventilator, Pacemaker, Artificial blood vessel, Artificial dialyzer, Infusion pump, its product parts and accessories)

Background

- Overcoming vulnerabilities in the supply chain by securing a stable supply of critical minerals such as rare earths is an important issue from the perspective of economic security. As global demand for critical minerals is expected to increase further in response to climate change etc., measures to secure the stable supply of critical minerals need to be urgently taken.
 - Our ability to use critical mineral resources in our maritime area etc. over which Japan has sovereignty and sovereign rights is important from the perspective of reducing our dependency of the majority of the supply of mineral resources on overseas.
- ⇒ It is vital to properly maintain and secure exploration capability of mineral resources from the viewpoint of national security.

Addition to the Core Business Sectors (Note 1) of the FEFTA

- **The following business sectors pertaining to 34 critical minerals including rare earth.**
 - i) Metal mining (including the operation of mineral exploration vessels or land/underwater surveys for mining)
 - ii) Manufacturing, repair/maintenance or software for devices or products used for metal mining (including mineral exploration vessels, marine equipment, excavators or drilling machines)
 - iii) Component analysis services of minerals
- **Construction service business etc. which improves or maintains port facilities on Designated Remote Islands (Note 2) to secure smooth activities by mineral exploration vessels.**

(Note 1) "core business sector(s)" is a business sector which requires foreign investors (e.g. non-residents, foreign corporations) to file a prior-notification when the foreign investor conducts inward direct investment, etc. (e.g. acquiring 1% voting rights of a listed company, acquiring a share of an unlisted company) ("designated business sector") and which foreign investors are not, as a general rule, exempt from the requirement for prior notification for stock purchases etc. as being highly likely to undermine national security etc.

(Note 2) "designated remote islands" are islands remote from the mainland and are specified by a Cabinet Order under the Low Tide Line Protection Law as being important as a base of operations in light of the existence of natural resources, etc., and for which it is particularly necessary to develop facilities to serve as a base of operations (Okino-Tori-shima, Minami-Tori-shima).

List of Companies' Classification for PN-SP and Post-investment Report

- For all listed companies in Japan, the authorities published a list that classifies each company in one of the following categories:
 1. Companies subject to post-investment report only (i.e. Non-designated business sectors)
 2. Companies conducting business activities only in the designated business sectors other than core sectors
 3. Companies conducting business activities in the core sectors

<Image of a list>

証券コード (Securities code)	ISINコード (ISIN code)	会社名 (和名)	(Issue name /company name)	区分
1301	JP3257200000	株式会社極洋	KYOKUYO CO.,LTD.	②
1332	JP3718800000	日本水産株式会社	Nippon Suisan Kaisha,Ltd.	③
1333	JP3876600002	マルハニチロ株式会社	Maruha Nichiro Corporation	②
1352	JP3839400003	株式会社ハウスイ	HOHSUI CORPORATION	①
1376	JP3216200000	カネコ種苗株式会社	KANEKO SEEDS CO., LTD.	②
1377	JP3315000004	株式会社サカタのタネ	SAKATA SEED CORPORATION	②
1379	JP3843250006	ホクト株式会社	HOKUTO CORPORATION	②
1380	JP3107400008	株式会社秋川牧園	AKIKAWA FOODS & FARMS CO.,LTD.	①

PN-SP and Post-investment Report

PN-SP

- Following clearance of PN-SP by the authorities, foreign investors can purchase stocks up to the notified amount anytime within six months after submission of the PN-SP. Additional PN-SP will not be required for individual transactions up to the notified amount.
- Post-investment reports after stock purchases must be submitted within 45 days from the transaction settlement date, extended from 30 days before the amendment.

Post-investment report

- Post-investment reports after exemption will be required when the investor's total shareholding reaches:
 - (i) 1% for the first time^{1/};
 - (ii) 3% for the first time^{1/}; and
 - (iii) 10% or more for each transaction (as has been the case before the amendment).
- ^{1/} Post-investment reports will not be required at the second and subsequent transactions reaching 1% or 3%; if shareholding goes down below 1%/3% by stock sales, and subsequently returns to or beyond 1%/3% by stock purchases, post-investment reports will not be required.
- Post-investment reports must be submitted within 45 days from the transaction settlement date.
- For the following transactions, investors are not required to specify ministers responsible for business sectors in the post-investment report:
 - (a) stock purchases (under 10%) with exemption in designated business sectors; and
 - (b) stock purchases in non-designated business sectors.

Prior-notification for Certain Actions (PN-CA)

- Under the amended Act, the following actions by foreign investors are added to the definition of FDI subject to prior-notification. Foreign investors^{1/} who intend to take these actions can do so if prior-notification for these certain actions (PN-CA) is filed and cleared:
 - ✓ Voting at the shareholder's meeting for nomination of the foreign investor itself or its closely related person as a board member of the investee company;^{2/} and
 - ✓ Voting at the shareholder's meeting for a proposal, made by those foreign investors, to transfer or dispose the investee company's business activities in the designated business sectors. ^{3/}
- The screening of PN-CA will be conducted only from the objective of the Act, i.e. prevention for national security reasons of leakage of information about critical technologies and disposition of business activities in the designated business sectors.
- If the PN-CA is not of concern from national security perspectives, the authorities will notify the investor of clearance of the screening within five business days.

1/ Foreign investors who used the exemption from PN-SP can also take these actions if they file and clear a PN-CA.

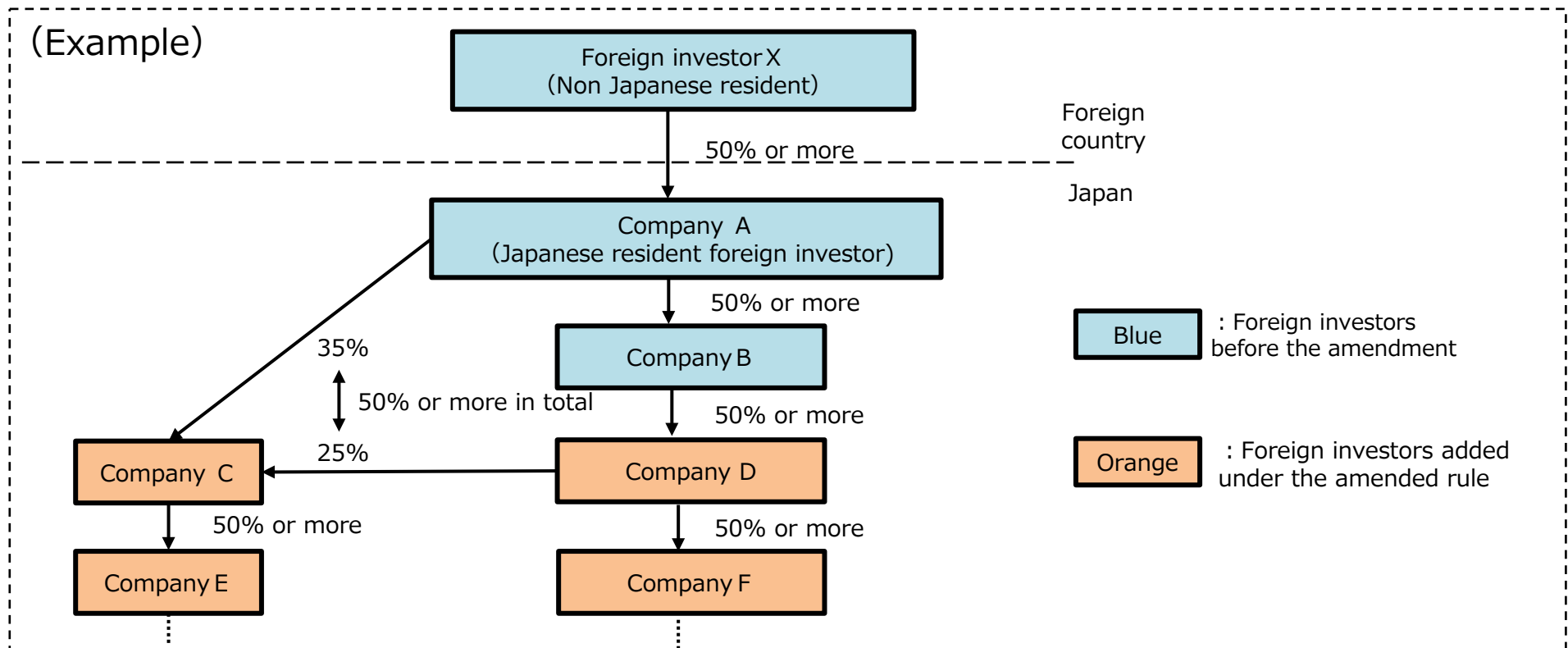
2/ PN-CA is required even if nomination is made by a third party (See Page 8 for more details).
If the nominee is neither the foreign investor itself nor its closely-related persons, PN-CA is not required.

3/ In case where the proposal is made by other shareholders, PN-CA is not required.

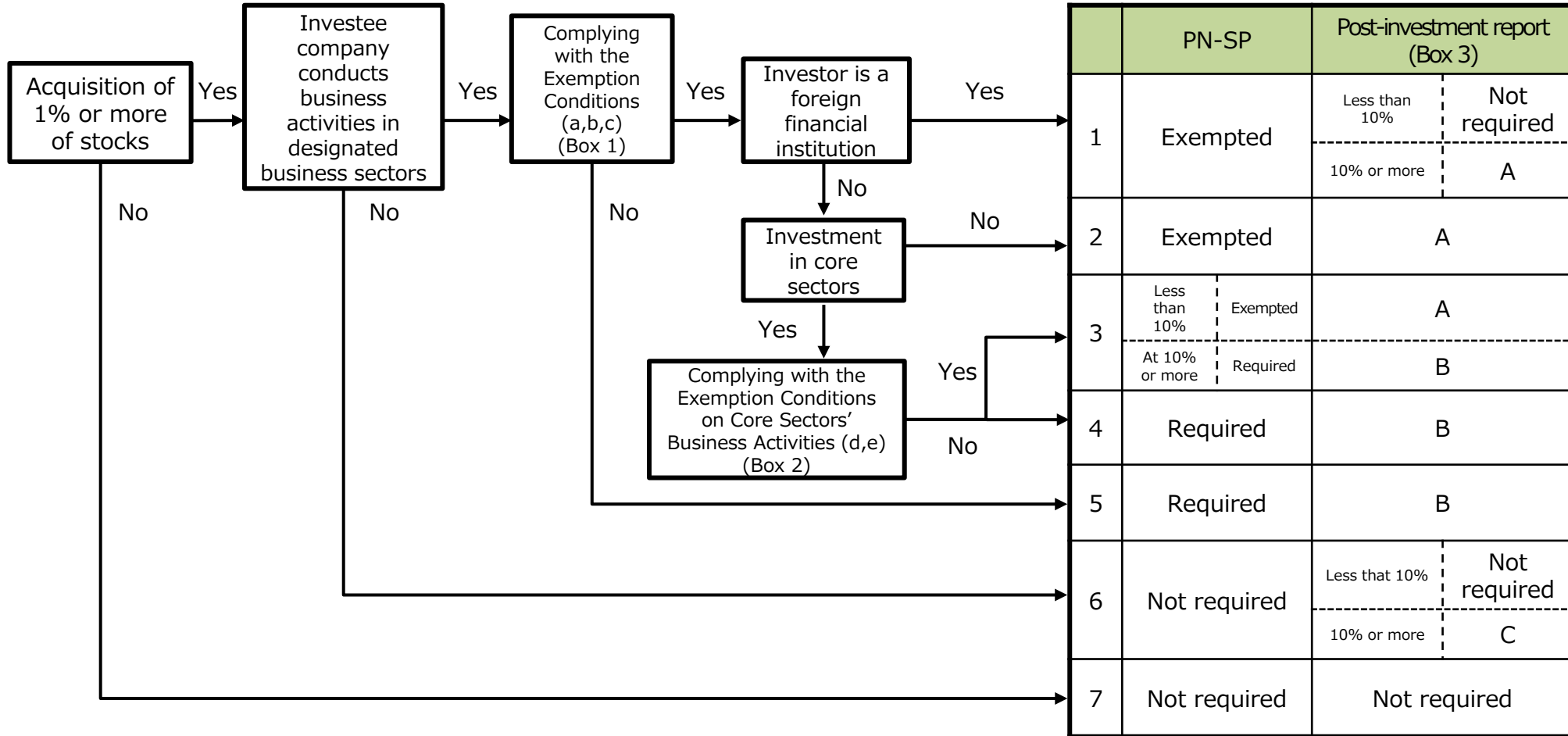
Definition of “Foreign Investor”

- Before the amendment, “foreign investor” includes companies located in Japan with 50% or more ownership of foreign investors, as well as direct subsidiaries of such companies.
- Under the amended rule, all companies that are owned 50% or more voting shares by Company A and/or Company A’s subsidiary companies^{1/} are regarded as foreign investors.

^{1/} The scope of “subsidiary companies” corresponds to the definition under Japan’s Companies Act.



PN-SP for Listed Company



(Box1)

Exemption Conditions

- a) Investors or their closely-related persons(*See Page 8) will not become board members of the investee company.
- b) Investors will not propose to the general shareholders' meeting transfer or disposition of investee company's business activities in the designated business sectors.
- c) Investors will not access non-public information(*See Page 9) about the investee company's technology in relation with business activities in the designated business sectors.

(Box2)

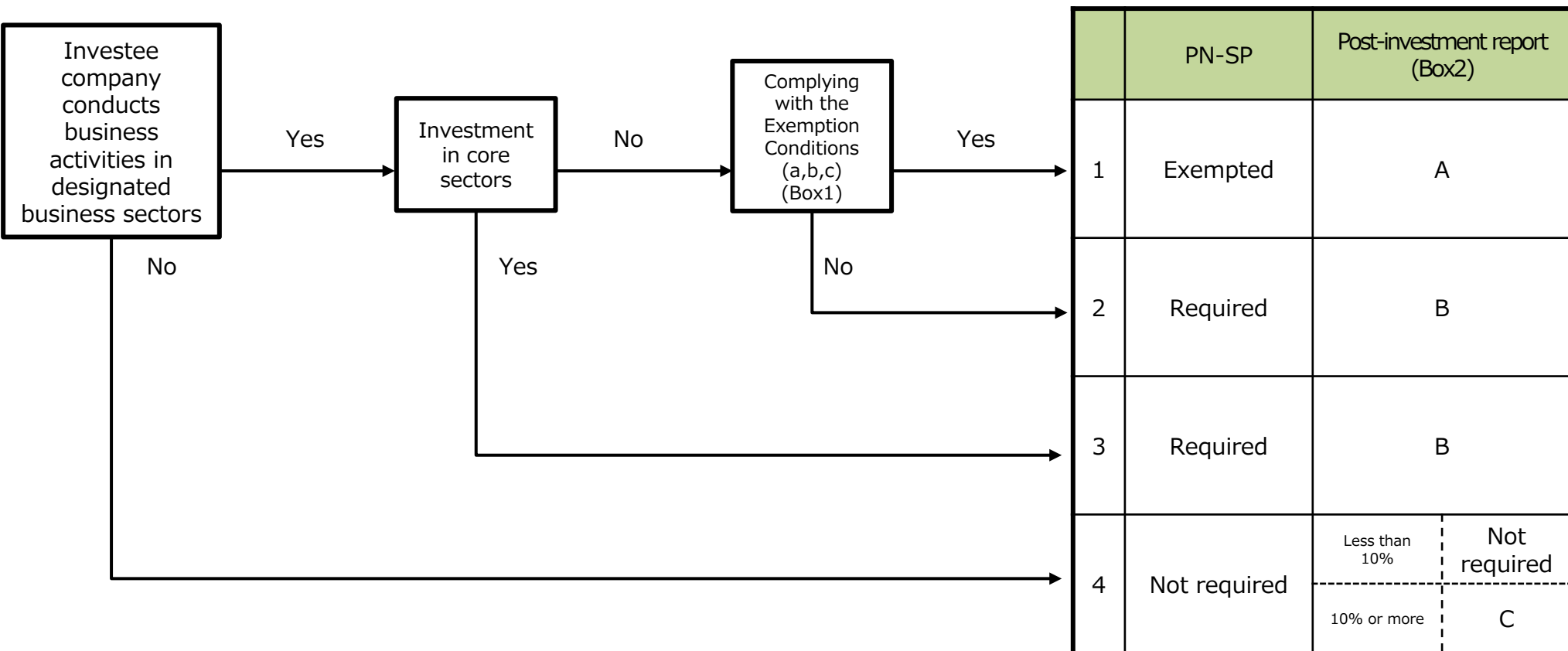
Exemption Conditions on Core Sectors' Business Activities

- d) Regarding business activities in core sectors, investors will not attend the investee companies' executive board or committees that make important decisions in these activities.
- e) Regarding business activities in core sectors, investors will not make proposals, in a written form, to the executive board of the investee companies or board members requiring their responses and/or actions by certain deadlines.

(Box3)

- A : Post-investment report under exemption
- B : Post-investment report after submission of PN-SP and clearance by the authorities
- C : Post-investment report for non-designated business sectors (No change by the amendment)

PN-SP for Unlisted Companies



(Box1)
Exemption Conditions

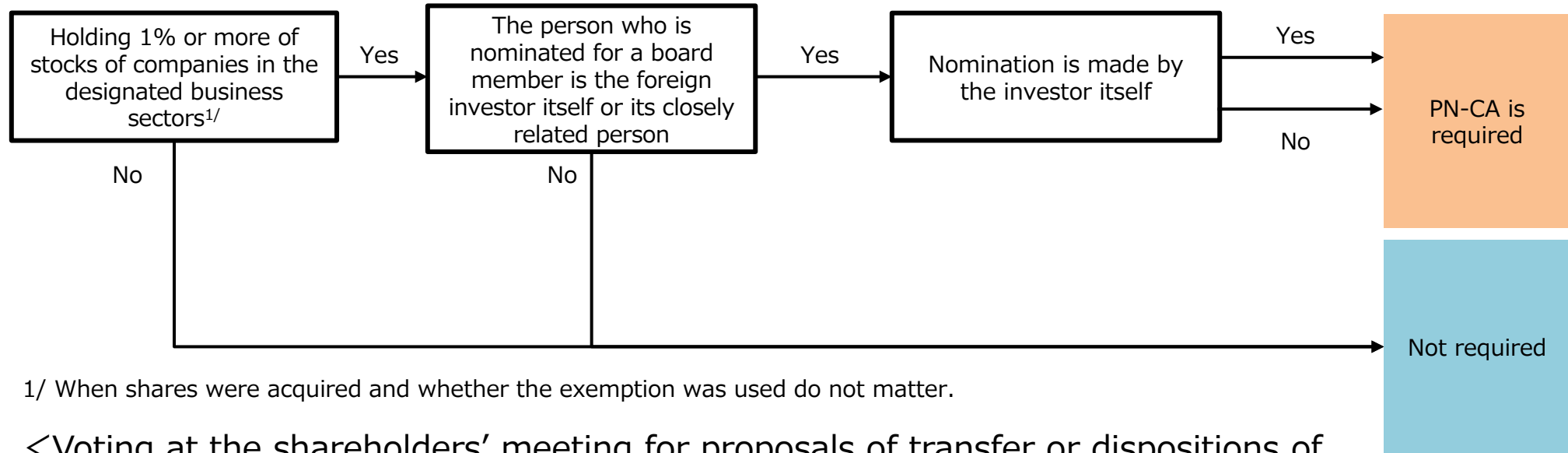
- a) Investors or their closely-related persons(*See Page 8) will not become board members of the investee company.
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(Box2)

- A : Post-investment report under exemption
- B : Post-investment report after submission of PN-SP and clearance by the authorities
- C : Post-investment report for non-designated business sectors (No change by the amendment)

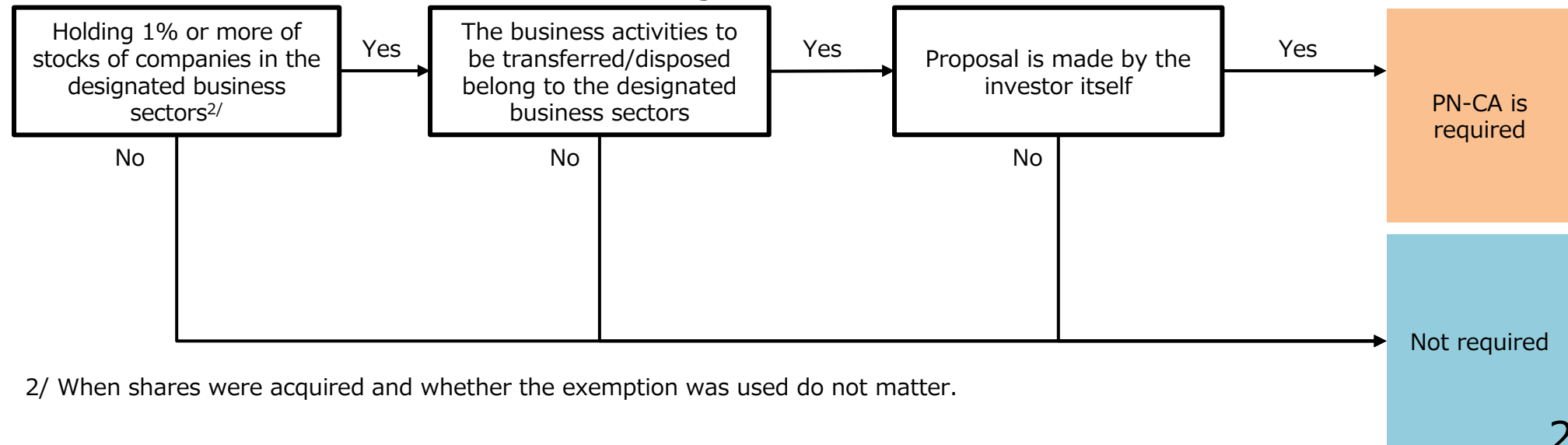
PN-CA for Listed Companies

<Voting at the shareholders' meeting for nomination of board members>



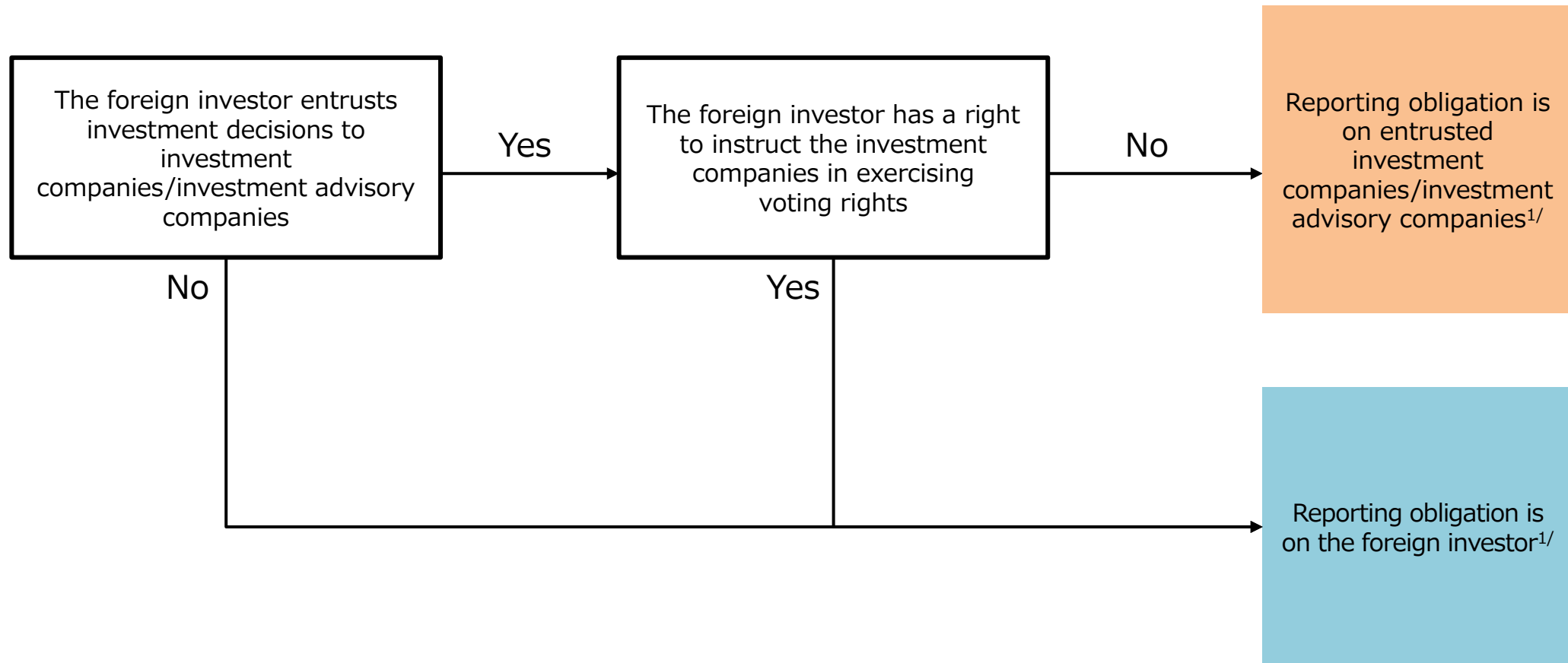
1/ When shares were acquired and whether the exemption was used do not matter.

<Voting at the shareholders' meeting for proposals of transfer or dispositions of business activities in the designated business sectors>



2/ When shares were acquired and whether the exemption was used do not matter.

Reporting Obligation for Investment Funds



1/ If investment companies/investment advisory companies fall within the definition of "foreign financial institution"(See page 7), such investment companies/investment advisor companies are eligible for the exemption from the PN-SP requirement.