

# Rules and Regulations of the Foreign Exchange and Foreign Trade Act

(April 24, 2020)

# 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) are required to post-investment reporting, whereas FDI to certain designated business sectors requires 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 (FDI) 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 4) are exempted from PN-SP requirement.
- Investor's compliance with the conditions for exemption is secured through post-investment report requirement and, if necessary, government actions to issue recommendations/orders.

## 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 will be lowered from 10% to 1% (Under the Japanese Company Act, shareholders who own 1% or more voting rights are entitled to propose an agenda to general shareholders meeting.)
- Prior notification will also be required for the following 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

# 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

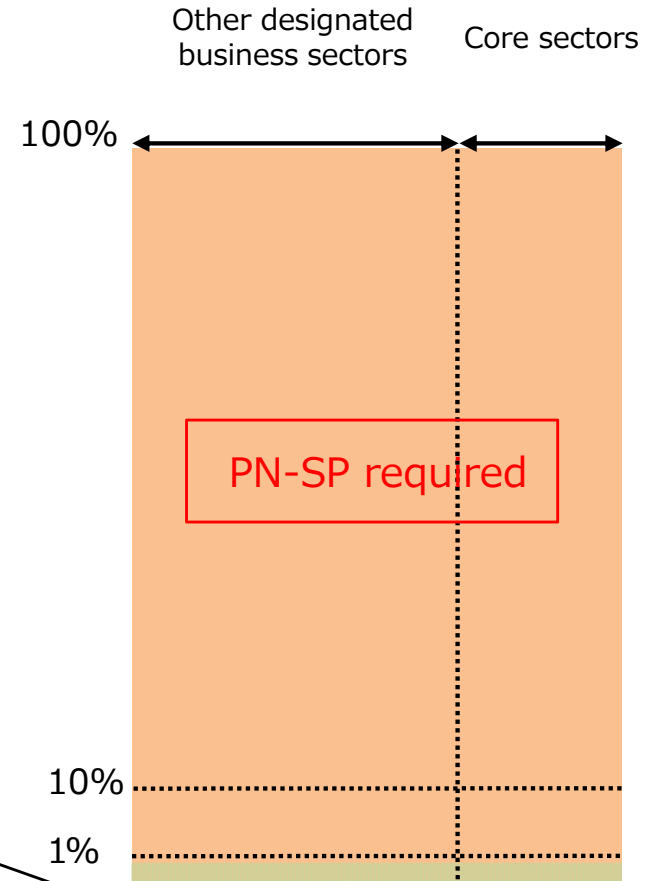
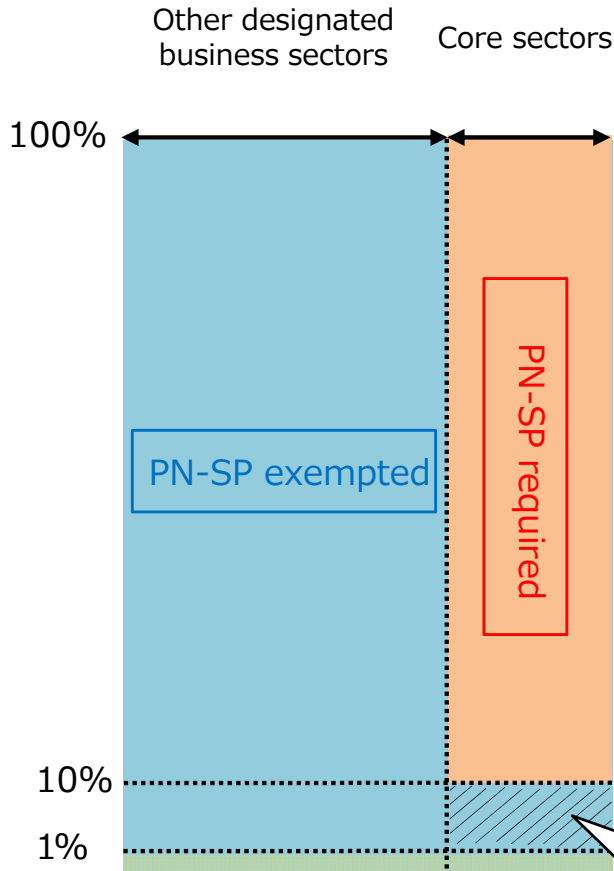
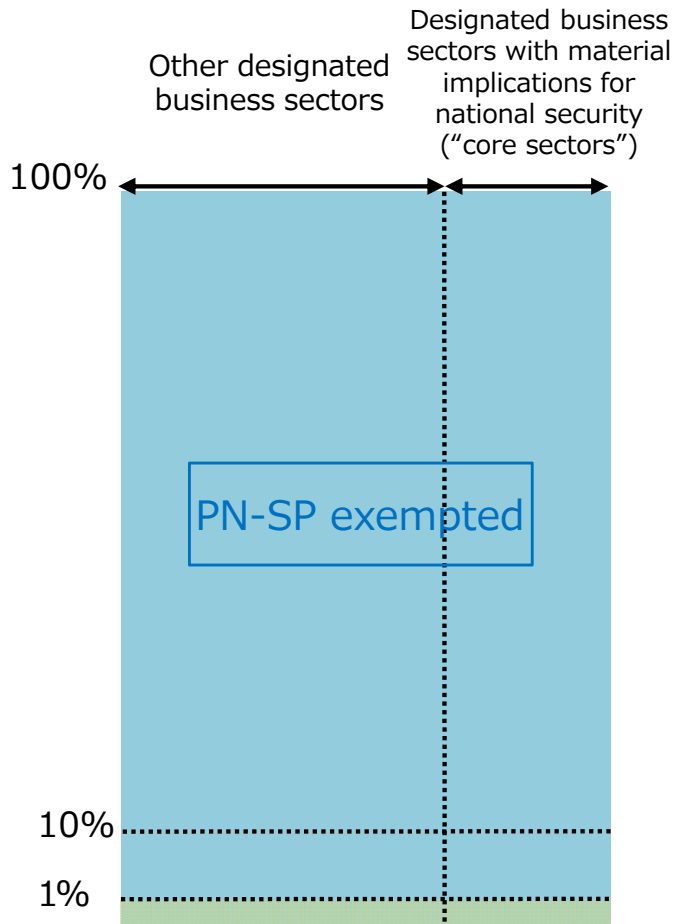
- Investors with a record of sanction due to violation of the FEFTA
- State-owned enterprises (except those who are accredited by the authorities)

**Blanket exemption**

\*See Page 5

**Regular exemption**

**Exemption non-applicable**



Exemption Conditions on Core Sectors' Business Activities (\*See Page 4)

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

Types of investors	Scope	
<b>Foreign financial institutions</b> (*See Page 6)	Designated business sectors <u>other than core sectors</u> ----- Core sectors	<“Blanket exemption”> • PN-SP will be exempted <b>with no upper limit</b> for investors that comply with the Exemption Conditions (a,b,c) • Post-investment report – from <b>1 0 %</b>
<b>General investors</b> (including SWFs and public pension funds accredited by the authorities)	Designated business sectors <u>other than core sectors</u> ----- Core sectors	<“Regular exemption”> • PN-SP will be exempted <b>with no upper limit</b> for investors that comply with the Exemption Conditions (a,b,c) • Post-investment report - from <b>1 %</b> ----- • PN-SP will be exempted <b>under 1 0 %</b> for investors that also comply with the Exemption Conditions on Core Sectors’ Business Activities (d,e) • Post-investment report - from <b>1 %</b>
<ul style="list-style-type: none"> <li>Investors with a record of sanction due to violation of the FEFTA</li> <li>State-owned enterprises (except those who are accredited by the authorities)</li> </ul>	Designated business sectors <u>other than core sectors</u> ----- Core sectors	<ul style="list-style-type: none"> <li>No exemption is applicable.</li> </ul>

## [Exemption Conditions]

- a) Investors or their closely-related persons(\*See Page 7) 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 8) about the investee company’s technology in relation with business activities in the designated business sectors.

## [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.

# 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.

## Definition of “Foreign Financial Institutions” eligible for Blanket Exemption

➤ **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 <sup>1/</sup>			②Nomination is made by a third party <sup>2/</sup> (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 <sup>3/</sup>	○	○	○	○	×	○
Its other family companies such as uncle/aunt companies, cousin companies, brother/sister companies, or nephew/niece companies <sup>3/</sup>	○	○	○	○	×	×
The foreign investors' business partners <sup>4/</sup>	○	○	○	×	×	×
Persons who receive substantial amount of financial rewards and/or other assets from the foreign investor <sup>4/</sup>	○			×		
Persons who were in the status of the above categories in the previous one year <sup>4/</sup>	○			×		
Spouse of the foreign investor (if natural person) <sup>3/</sup>	○			○		
Lineal ascent or descent of the foreign investor (if natural person) <sup>3/</sup>	○			○		
Persons (or their closely-related persons) who have agreement with the foreign investor to jointly exercise voting rights <sup>3/</sup>	○			○		

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

-----  
<sup>1/</sup> The followings do NOT constitute confidential technology-related information:

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

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

<sup>3/</sup> 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:

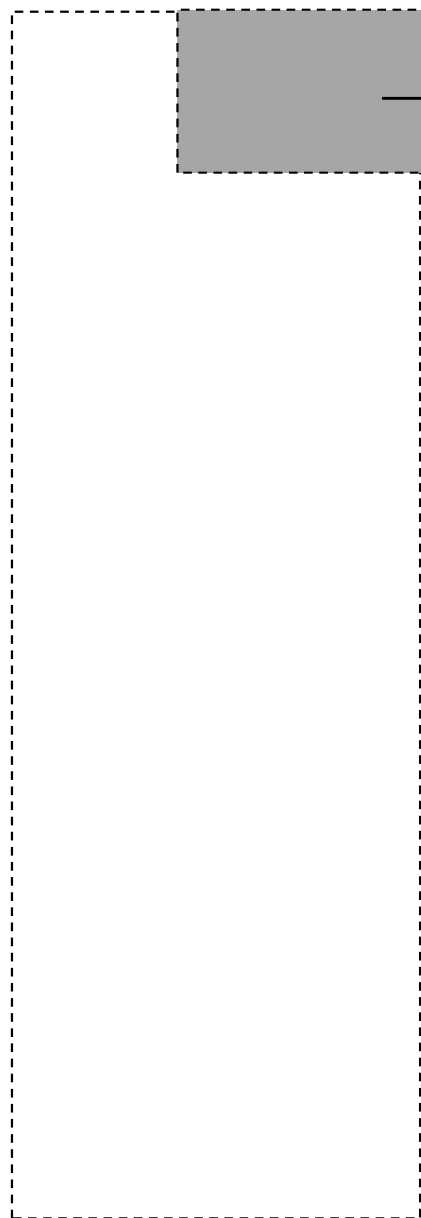
- (i) Confidential technology-related information is not allowed to be shared with the equity market section; and
- (ii) the M&A advisory services section is not allowed to exercise influence on the investee company taking advantage of stocks of the company held by the equity market section.

# Designated Business Sectors

【Japan Standard Industrial Classification published in 2013】  
(1465 sectors)

【Designated Business Sectors under the FEFTA】  
(155 Sectors)

**After the amendment**  
**【“Core Designated Business Sectors(※) ”】**



- Weapons
- Aircrafts
- Nuclear facilities
- Space
- Dual-use technologies
- Cybersecurity
- Electricity
- Gas
- Telecommunications
- Water supply
- Railway
- Oil
- Heat supply
- Broadcasting
- Public transportation
- Biological chemicals
- Security services
- Agriculture, Forestry and Fisheries
- Leather manufacture
- Air transportation
- Maritime transportation

- All of the following sectors
  - Weapons
  - Aircrafts
  - Nuclear facilities
  - Space
  - Dual-use technologies
- Part of the following sectors
  - Cybersecurity
  - Electricity
  - Gas
  - Telecommunications
  - Water supply
  - Railway
  - Oil

**【“Non-Core Designated Business Sectors”】**

- Part of the following sectors
  - Cybersecurity
  - Electricity
  - Gas
  - Telecommunications
  - Water supply
  - Railway
  - Oil
- All of the following sectors
  - Heat supply
  - Broadcasting
  - Public transportation
  - Biological chemicals
  - Security services
  - Agriculture, Forestry and Fisheries
  - Leather manufacture
  - Air transportation
  - Maritime transportation

(※) See next page for more details

# Scope of “Core Sectors” in the respective business sectors

Areas	Scope is narrowed to those truly necessary for national security
Weapons	All
Aircrafts	All
Space	All
Nuclear facilities	All
Dual-use technologies	All
Cybersecurity	<ul style="list-style-type: none"> <li>• Cybersecurity-related service (e.g. network security monitoring, software)</li> <li>• Service providers of the program designed for critical infrastructures</li> </ul>
Electricity	<p>&lt;Electricity Business Act&gt;</p> <ul style="list-style-type: none"> <li>• General Electricity Transmission and Distribution Utility</li> <li>• Electricity Transmission Utility</li> </ul> <p>&lt;Armed Attack Situations Response Act&gt;</p> <ul style="list-style-type: none"> <li>• Electricity Generation Utility companies that own a power plant with maximum generation capacity of 50,000KW or more</li> </ul>
Gas	<p>&lt;Gas Business Act&gt;</p> <ul style="list-style-type: none"> <li>• General Gas/Specified Gas Pipeline Service Providers</li> <li>• Gas Manufacturers</li> </ul> <p>&lt;Oil Stockpiling Act&gt;</p> <ul style="list-style-type: none"> <li>• LP Gas companies that own a storage facility or core cylinder filling station</li> </ul>
Telecommunications	<p>&lt;Telecommunications Business Act&gt;</p> <ul style="list-style-type: none"> <li>• Telecommunication carriers that provide service across multiple local municipalities</li> </ul>
Water supply	<p>&lt;Water Works Law&gt;</p> <ul style="list-style-type: none"> <li>• Water Supply companies supplying to more than 50,000 people</li> <li>• Bulk Water Supply companies with a capacity of supplying over 25,000m<sup>3</sup> per day</li> </ul>
Railway services	<p>&lt;Armed Attack Situations Response Act&gt;</p> <ul style="list-style-type: none"> <li>• Railway Service companies operating public facilities/infrastructures which are stipulated under the Armed Attack Situations Response Act</li> </ul>
Oil	<ul style="list-style-type: none"> <li>• Oil Refinery, Oil Storage Business, Crude Petroleum and Natural Gas Production</li> </ul>

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

- For all listed companies in Japan, the authorities will publish at the time of promulgation of the amended FEFTA 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>

Security code	I S I N code	Company name in Japanese	Company name in English	Category
****	JP*****	エービーシー	ABC CO.,LTD	1
****	JP*****	財務商事	ZAIMU,Ltd.	2
****	JP*****	エックスワイゼット	XYZ Corporation	3

# PN-SP and Post-investment Report

## PN-SP

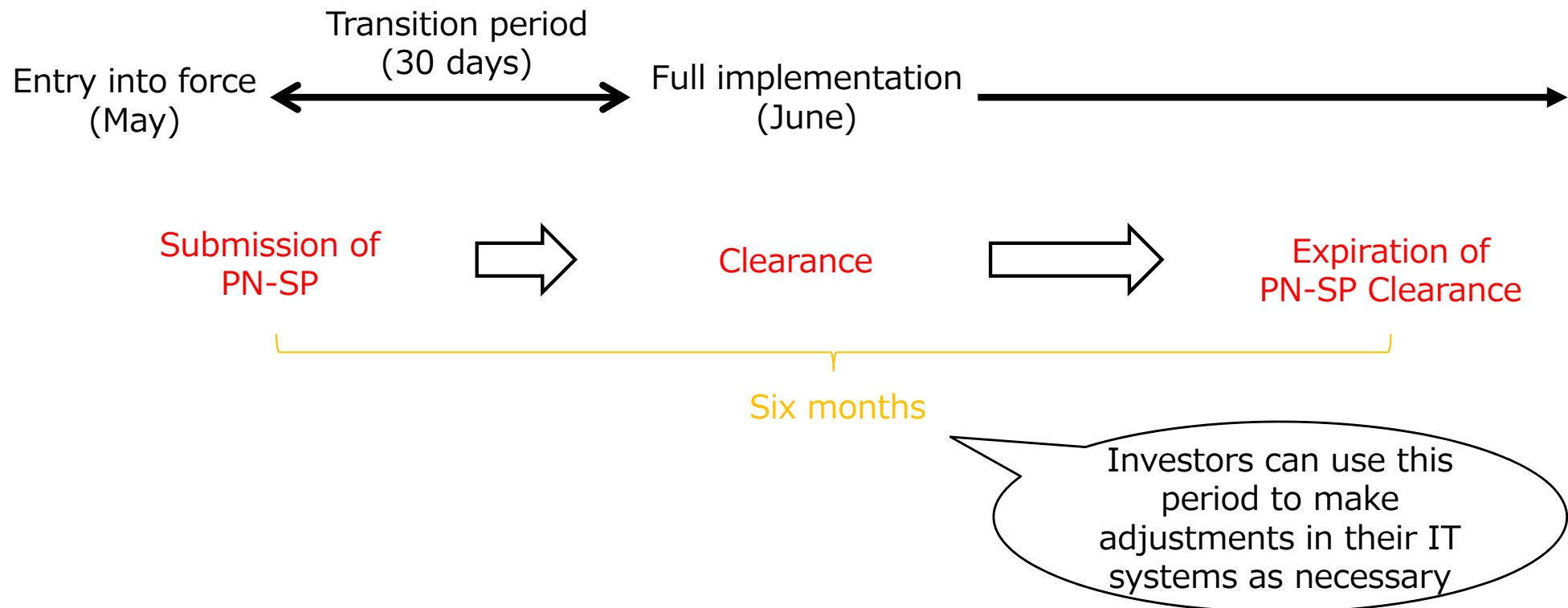
- Following clearance of PN-SP by the authorities, foreign investors can purchase stocks up to the notified amount anytime within six months after submission of the PN-SP. Additional PN-SP will not be required for individual transactions up to the notified amount.
- Post-investment reports after stock 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<sup>1/</sup>;
  - (ii) 3% for the first time<sup>1/</sup>; and
  - (iii) 10% or more for each transaction (as has been the case before the amendment).
- <sup>1/</sup> 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.

# IT System Adjustments for PN-SP under the New Rules

- The full implementation of the amended Act, Rules and Regulations will commence following the 30-day transitional period after their entry into force. During this transition period, foreign investors can submit PN-SP of 1% or more according to their stock purchase plans after the full implementation.
- Following clearance by the authorities, foreign investors can purchase stocks up to the notified amount anytime within six months after submission of the PN-SP. Accordingly, investors can use this period to make adjustments in their IT systems as necessary to comply with the new rules.



# 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<sup>1/</sup> 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;<sup>2/</sup> 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. <sup>3/</sup>
- 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.

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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 7 for more details).

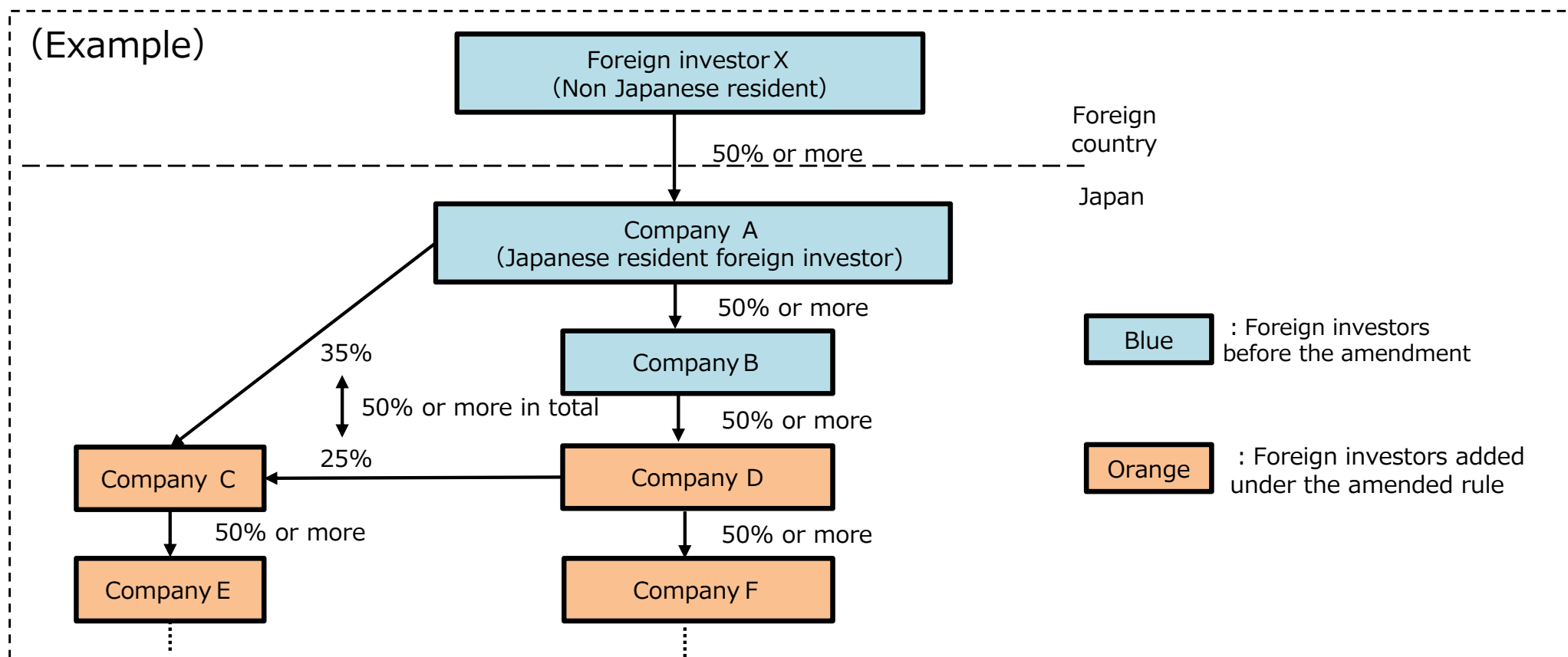
If the nominee is neither the foreign investor itself nor its closely-related persons, PN-CA is not required.

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

# Definition of “Foreign Investor”

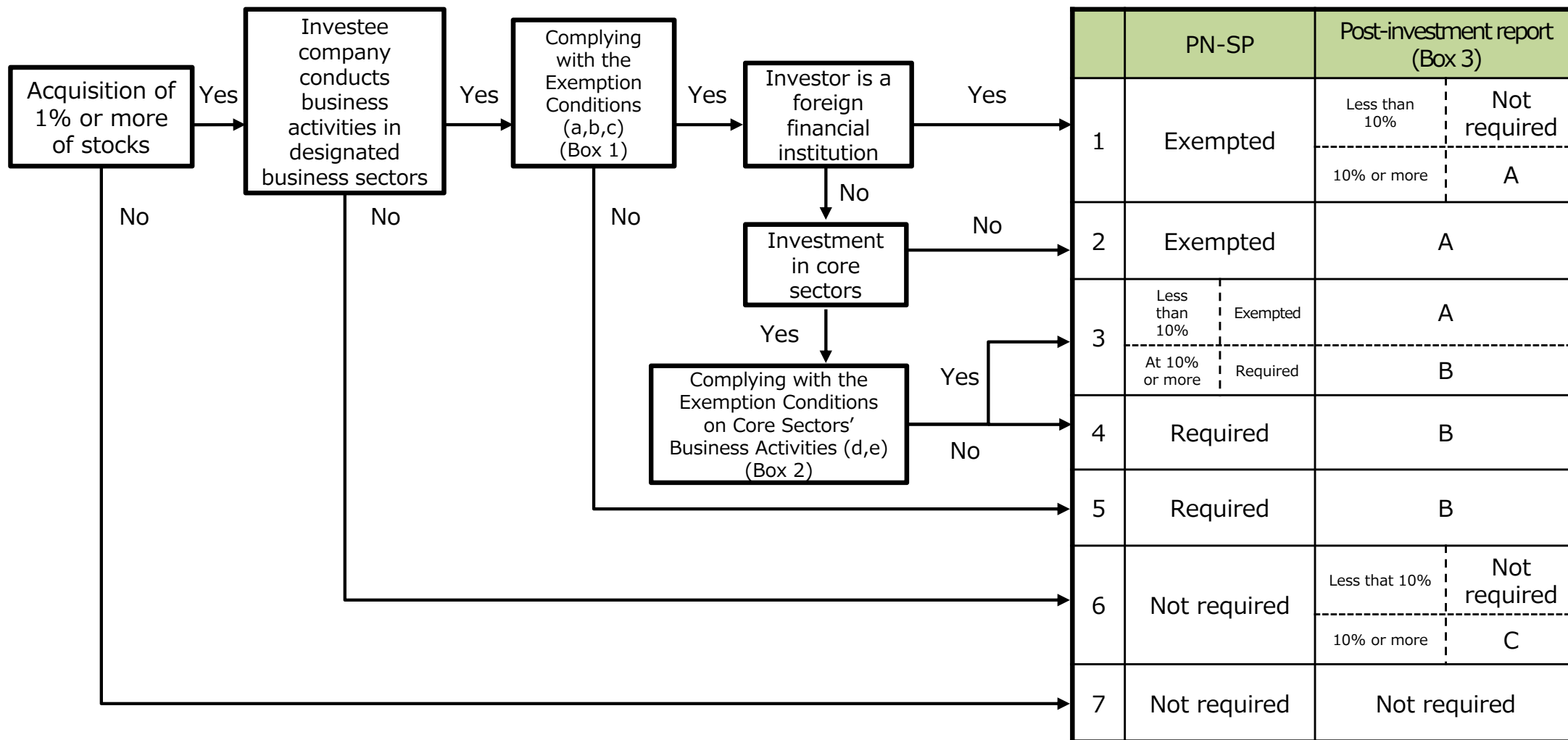
- Before the amendment, “foreign investor” includes companies located in Japan with 50% or more ownership of foreign investors, as well as direct subsidiaries of such companies.
- Under the amended rule, all companies that are owned 50% or more voting shares by Company A and/or Company A’s subsidiary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

<sup>1/</sup> 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 7) 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 8) about the investee company's technology in relation with business activities in the designated business sectors.

(Box2)

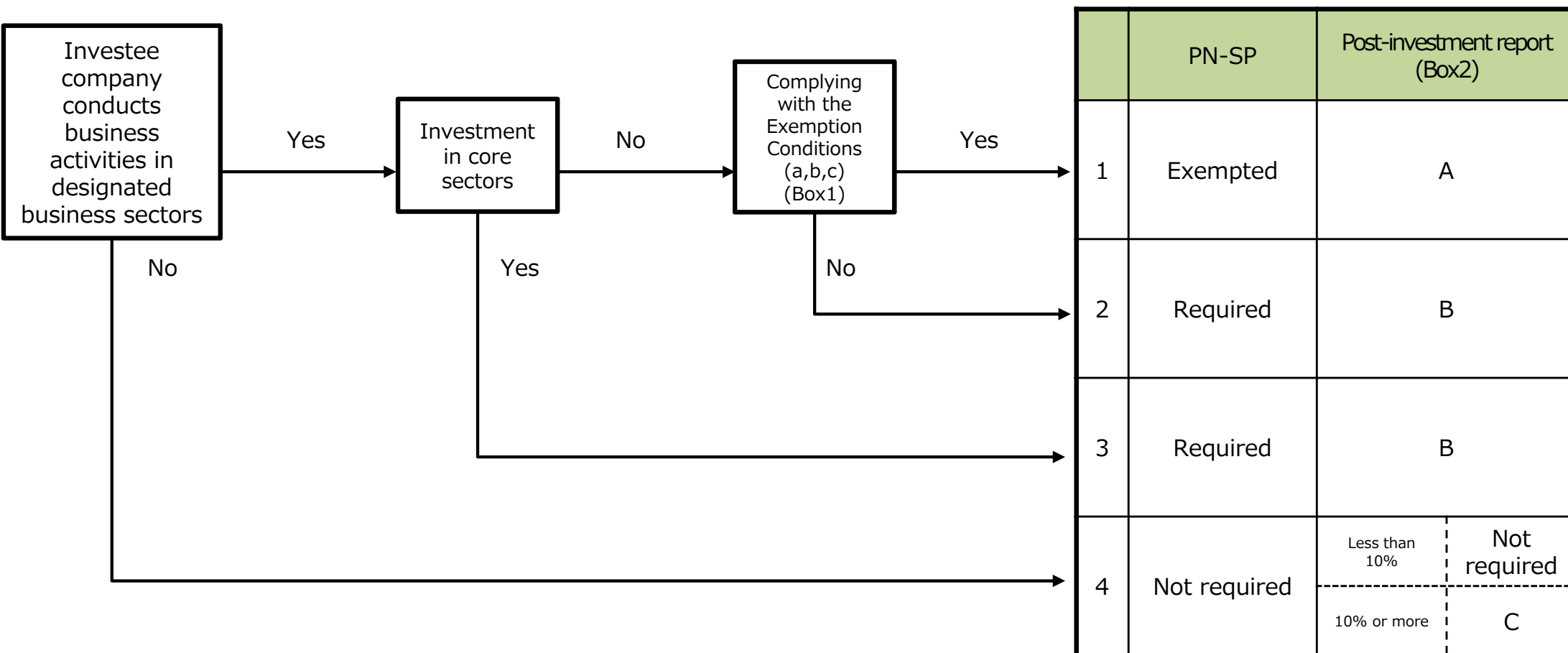
### Exemption Conditions on Core Sectors' Business Activities

- 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**

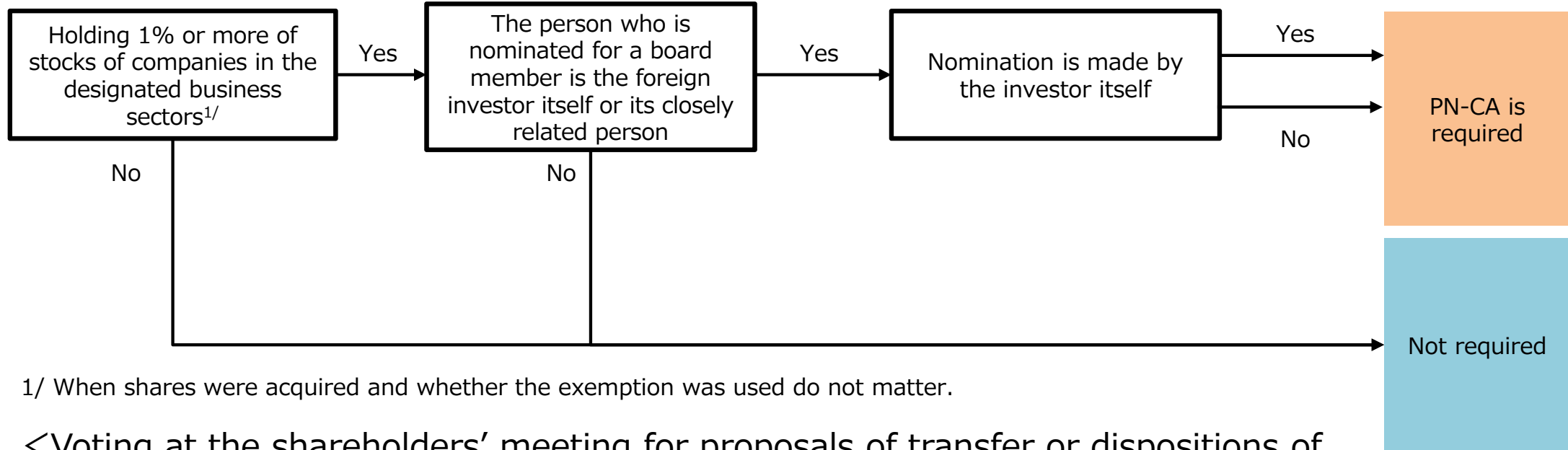
- Investors or their closely-related persons(\*See Page 7) will not become board members of the investee company.
- Investors will not propose to the general shareholders' meeting transfer or disposition of investee company's business activities in the designated business sectors.
- Investors will not access non-public information(\*See Page 8) about the investee company's technology in relation with business activities in the designated business sectors.

(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)

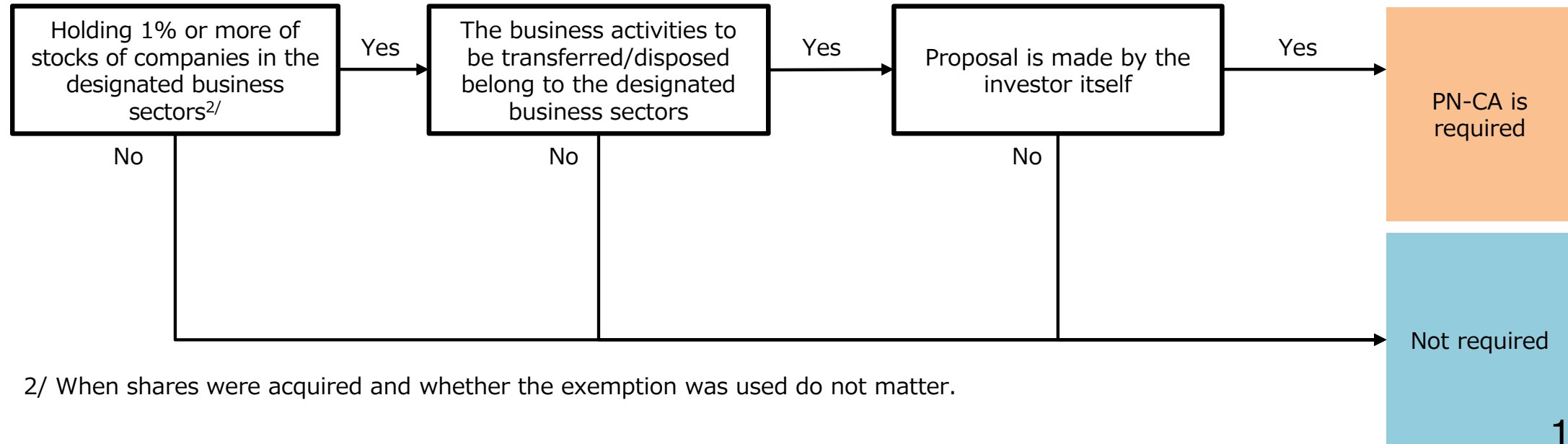
# PN-CA for Listed Companies

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



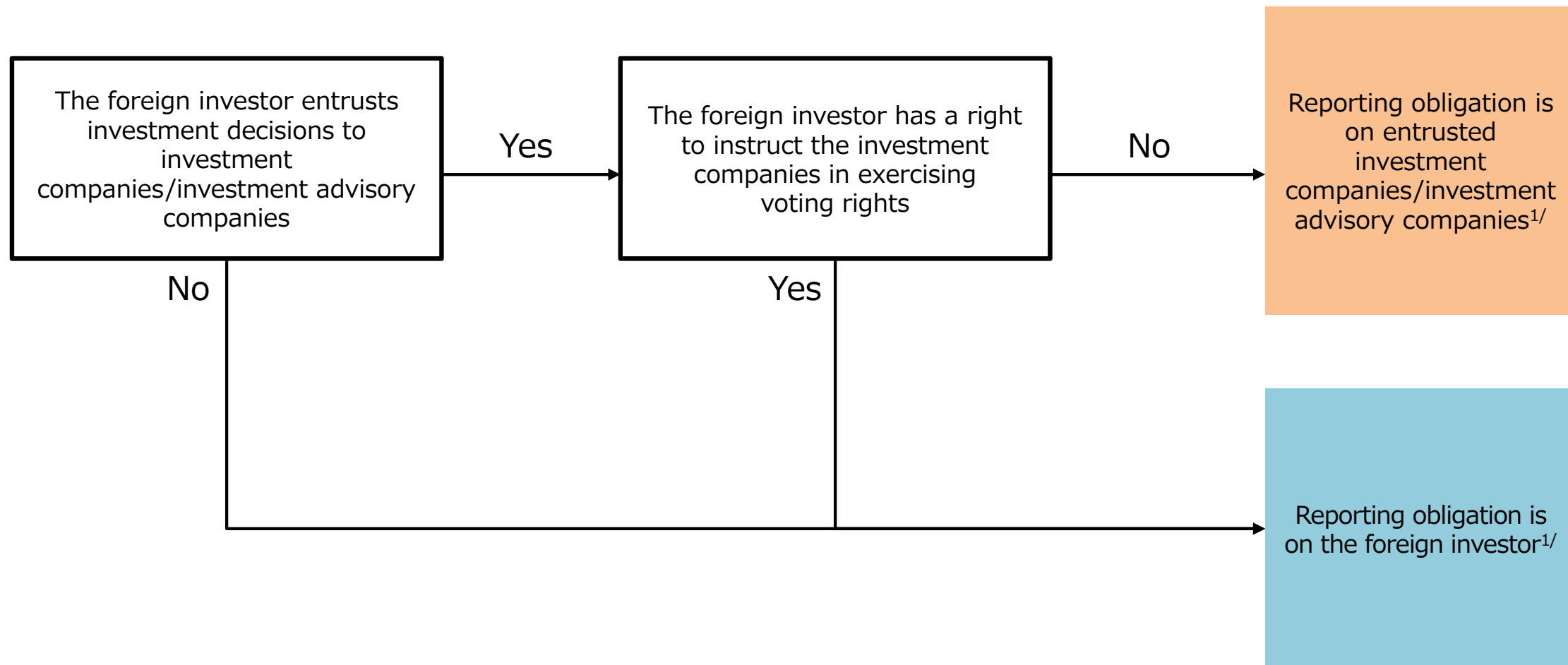
1/ When shares were acquired and whether the exemption was used do not matter.

## <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 6), such investment companies/investment advisor companies are eligible for the exemption from the PN-SP requirement.

# Indicative Schedule

Month in 2020	Events
April 24 <sup>th</sup>	➤ Authorization of the Amended Rules and Regulations
April 30 <sup>th</sup>	➤ Promulgation of the Amended Rules and Regulations
May 8 <sup>th</sup>	➤ Entry into force of the Amended Act, Rules and Regulations (Full implementation starts 30 days after its entry into force <sup>1/</sup> ) ➤ List of companies' classification made public
June 7 <sup>th</sup>	➤ Full implementation of the Amended Act, Rules and Regulations

<sup>1/</sup> Article 3, supplementary provisions of the Amended Act.