

The Overview of the Current FDI Screening System under FEFTA

- **Basic principle: free investment and minimum intervention by the authorities**
 - **FDI to the designated business sectors is subject to prior-notification for screening. This screening examines whether the FDI could pose risks to national security.**
 - **To promote FDI conducive to sound economic growth, foreign investors who comply with certain conditions* are exempt from prior-notification requirement.**
- * e.g. Investors or their closely-related persons will not become board members of the company receiving investment etc.

<Current Exemption Scheme for Prior-notification for Stock Purchases of listed companies>

Types of investors Investee's business	Foreign financial institutions (subject to regulations/supervisions under financial regulatory laws in Japan or other jurisdictions)	General investors (including SWFs and PPFs (Public Pension Funds) accredited by the authorities)	<ul style="list-style-type: none"> • Investors with a sanctions record due to violation of FEFTA • SOEs and Foreign governments
Other Designated Business Sectors	Exemption of prior-notification applicable only when complying with exemption conditions		<u>Prior-notification required</u> *Exemption NOT applicable
Core Sectors			

As for the shares of a listed company, prior-notification is required for acquisition of 1% or more of shares.

The Objective of the enhancement of FDI Screening System

Current System

- **Exemption NOT applicable to the following investors;**
 - ✓ General investors who purchase 10% or more of the shares of a listed company operating in a core business sector
 - ✓ Investors with a sanctions record due to violation of FEFTA
 - ✓ SOEs and foreign governments
 - ✓ Investors who do not comply with the exemption conditions



The need for enhancing FDI screening from the viewpoint of national security

- Need to prevent FDI that cause harm to national security



The amendment aims to **restrict utilization of prior-notification exemption by foreign investors who have a high risk of undermining national security of Japan**

- Investors **obliged to cooperate with foreign governments in collecting information related to Japan's national security based on agreements with foreign governments or laws and regulations**

Revised Exemption Scheme for Prior-notification Requirement

<In case of acquisition of listed shares> (in red: to be newly introduced this time)

Types of investors	Foreign financial institutions (subject to regulations/supervisions under financial regulatory laws in Japan or other jurisdictions)	General investors (including SWFs and PPFs accredited by the authorities)	Type-B investors (New category)		<ul style="list-style-type: none"> Investors with a sanctions record due to violation of FEFTA SOEs and Foreign governments Type-A investors
Investee's business					
Other Designated Business Sectors	Exemption of prior-notification applicable only when complying with exemption conditions				<p style="text-align: center;"><u>Prior-notification required</u></p> <p style="text-align: center;">*Exemption NOT applicable</p>
Core sectors	(Less than 10%) Exemption conditions + additional conditions on Core Sectors' Business Activities	(Less than 10%) Exemption applicable only when complying with exemption conditions + additional exemption conditions on Core Sectors' Business Activities +New Additional Conditions for Type-B investors	(10% or more) <u>Prior-notification required</u> *Exemption NOT applicable		
Designated Core Business Entities (New category)	Prior-notification required *Exemption NOT applicable				

As for the shares of a listed company, prior-notification is required for acquisition of 1% or more of shares

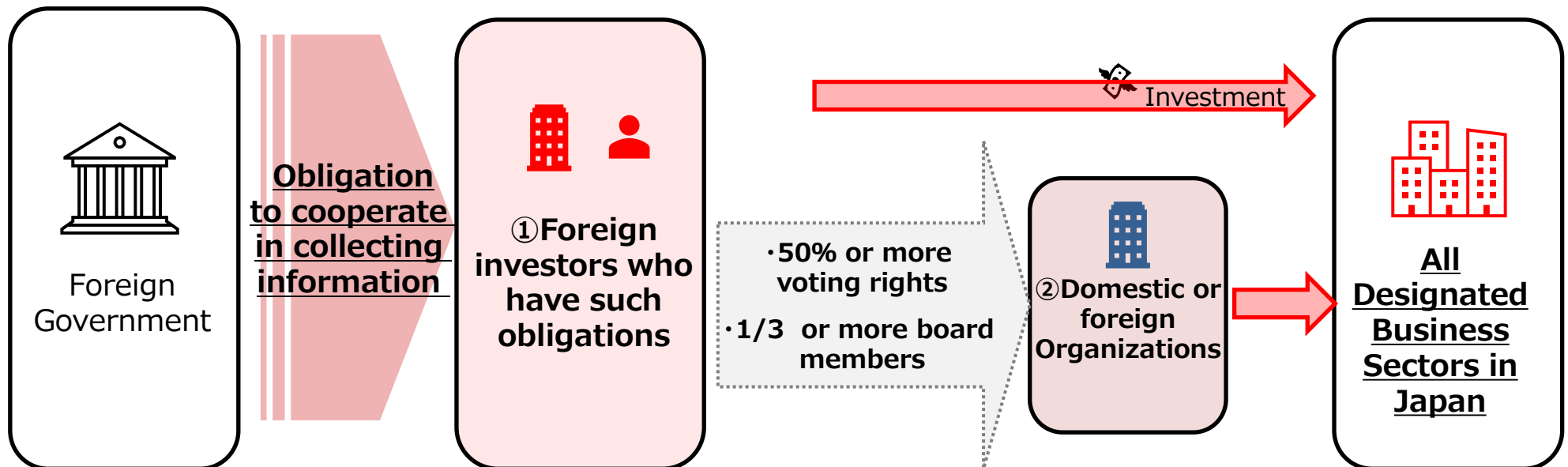
<In case of acquisition of unlisted shares> Prior notification has been required for all investors acquiring shares in core sectors under the current system. This amendment categorise Type-A investors as those who cannot use the prior notification exemption scheme, as in the case of listed shares, and prior notification is also required for the acquisition of unlisted shares in non-core designated sectors.

New category: "Type-A investors"

Foreign investors falling in either of the following categories are regarded as Type-A investors;

- ① Organisations or individuals who have **obligations to cooperate with foreign governments in collecting information related to Japan's national security based on agreements with foreign governments or foreign laws and regulations**
- ② Organisations controlled by foreign investors mentioned in ① above or by foreign governments which impose the obligations on these investors. This control may be established through 50% or greater ownership of voting shares, or by the appointment of **1/3 or more** of the organization's board members.

(this is in accordance with the current rule with respect to the foreign investors owned or controlled by foreign governments or SOEs)

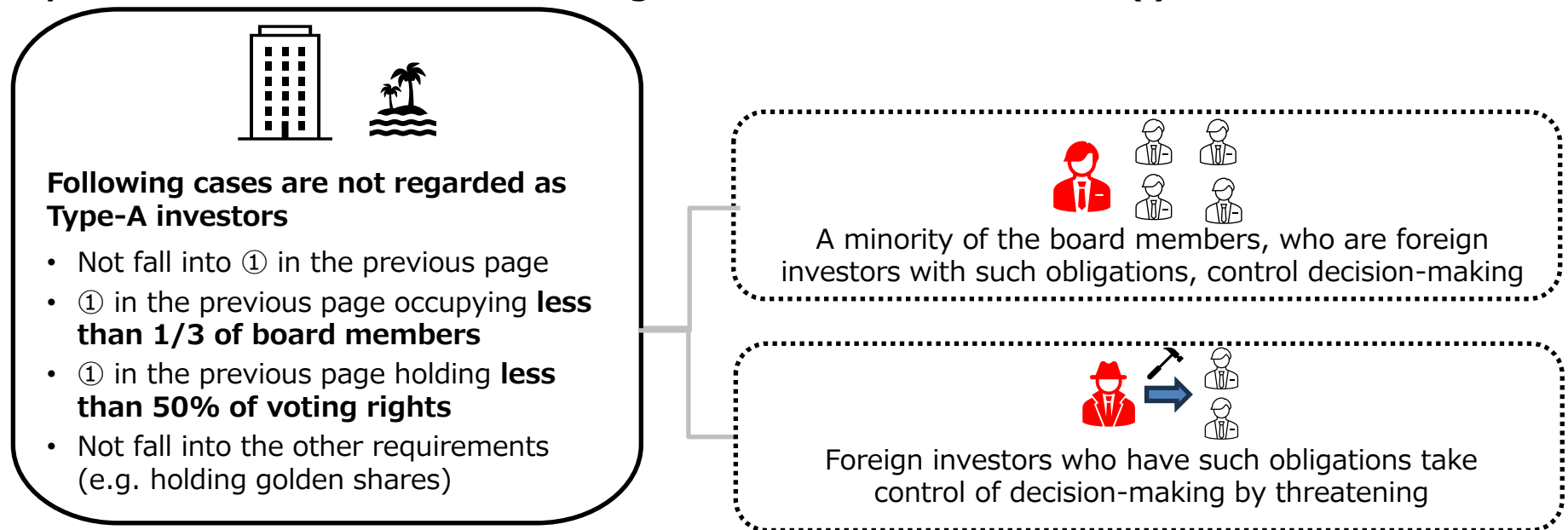


New category: "Type-B investors"

To prevent circumvention of the rules, foreign investors in the following cases are regarded as "Type-B investors";

- (i) Their substantive decision-making is controlled by organisation or individual who have obligations to cooperate with foreign governments in collecting information related to Japan's national security (① in the previous page)
- (ii) Their substantive headquarters are located in foreign countries/regions other than the countries/regions of incorporation, and their activities are affected by laws and regulations on information collection activities related to Japan's national security where their substantive headquarters are located.
- (iii) Investors with obligations to cooperate with foreign governments in collecting information related to Japan's national security based on agreements (including each agreement when having chains of similar agreements) with ① or ② in the previous page

(Example of "substantive decision-making is controlled" mentioned in (i) above)



(Note) **New Additional Exemption Conditions on Type-B investors**

- NOT to access non-publicized information about the core business sector (excluding information about board members and financial conditions of investee companies)
- NOT to send employees to investee companies and NOT to recruit or solicit executives or employees of investee companies

New category: “Designated Core Business Entities”

Companies designated as the “Specified Essential Infrastructure Service Providers” under the Economic Security Promotion Act, of which conduct business activities in the core sectors under FEFTA, will be categorized as the “Designated Core Business Entities”.

- ❑ “Specified Essential Infrastructure Service Providers”: the entities conducting specified essential infrastructure business. They are designated under Economic Security Promotion Act in order to prevent critical facilities of essential infrastructures from being misused as a means of disrupting the stable provision of services from outside Japan.
- ❑ “Designated Core Business Entities” would be posted on the website of the Ministry of Finance later on. They include the “Specified Essential Infrastructure Service Providers” from the business sectors such as electricity, railways and telecommunications.

Revision in a nutshell

- There will be no changes for the investors who plan to takeover investee companies (i.e., not complying with current exemption conditions).
 - If an investor becomes a board member of investee companies or does not comply with other exemption conditions through takeover, they cannot be exempt from prior-notification under the current system as well.
- There will be no changes for investors who do not fall into the "Type-A investors" or "Type-B investors" category.
 - If “foreign financial institutions” fall into the category of Type-A investors or Type-B investors, they will be treated as Type-A investors or Type-B investors and will not be eligible for the blanket exemption as foreign financial institutions.