

Key Items in the Act partially amending the Foreign Exchange and Foreign Trade Act

- The Act upgrades the Foreign Investment Screening System under the FEFTA (Foreign Exchange and Foreign Trade Act), striking a balance between **fostering sound inward direct investment** and **addressing national security risks**.

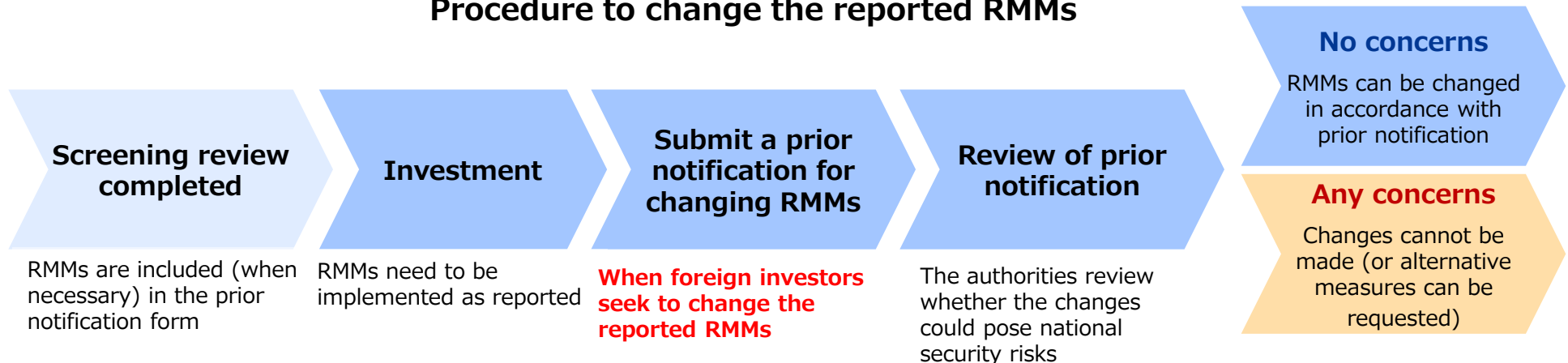
Specifically, the Act:

- (1) clarifies the use of, and the procedures for, risk mitigation measures;
- (2) addresses indirect investment;
- (3) addresses domestic investment activities under the control/strong influence of high-risk foreign persons;
- (4) enables responses to national security risks posed by investments in non-designated business sectors; and
- (5) promotes inter-ministerial cooperation

Risk mitigation measures

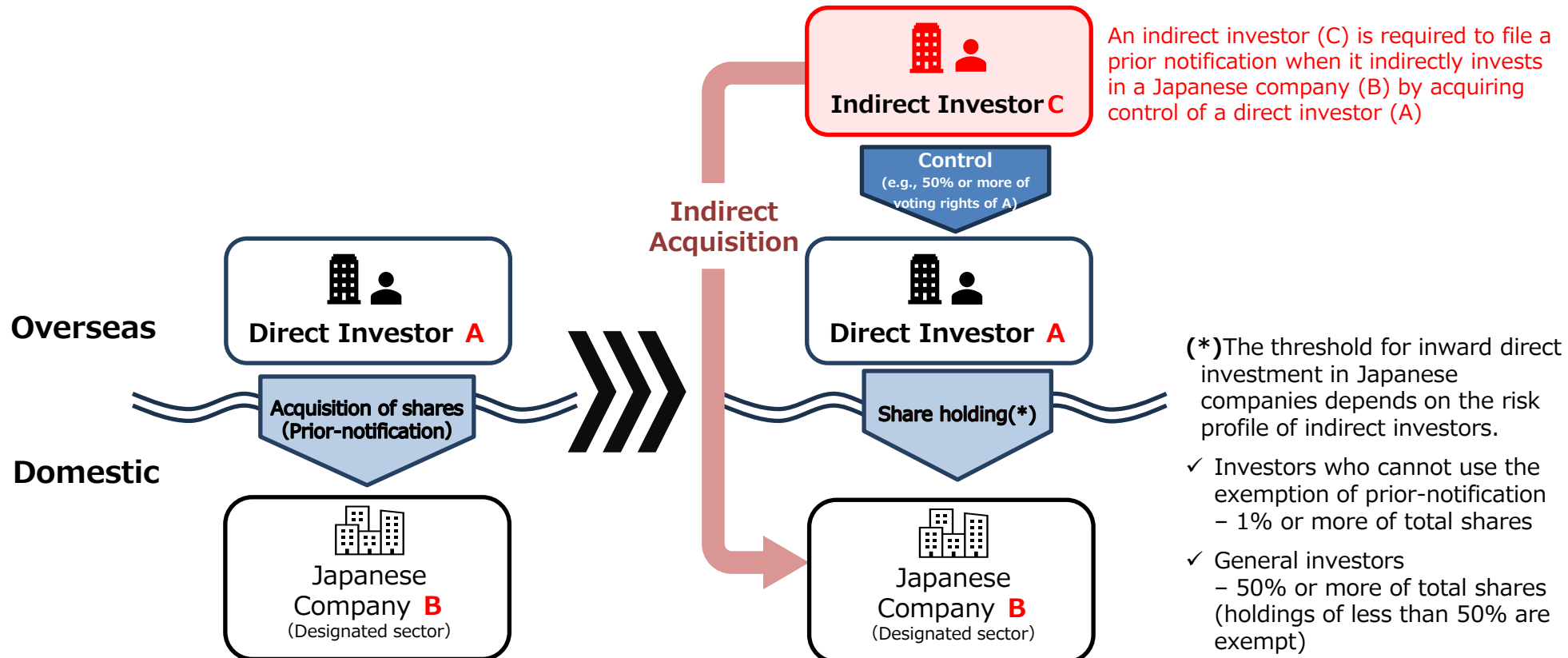
- ✓ Risk mitigation measures (RMMs) are an important tool for addressing national security risks.
- ✓ The Act **clarifies the use of and procedures for RMMs**, with a view to ensuring their proper implementation while enhancing predictability for foreign investors, including through:
 - explicitly **adding RMMs as an item on prior notification form**;
 - **clarifying the procedures foreign investors need to follow when (i) they modify RMMs in the course of the review process, and (ii) they seek to change the reported RMMs** after the execution of investment; and
 - clarifying that **the authorities' recommendations/orders may include RMMs** (in addition to requiring modification or suspension of investment)

Procedure to change the reported RMMs



Addressing indirect investment

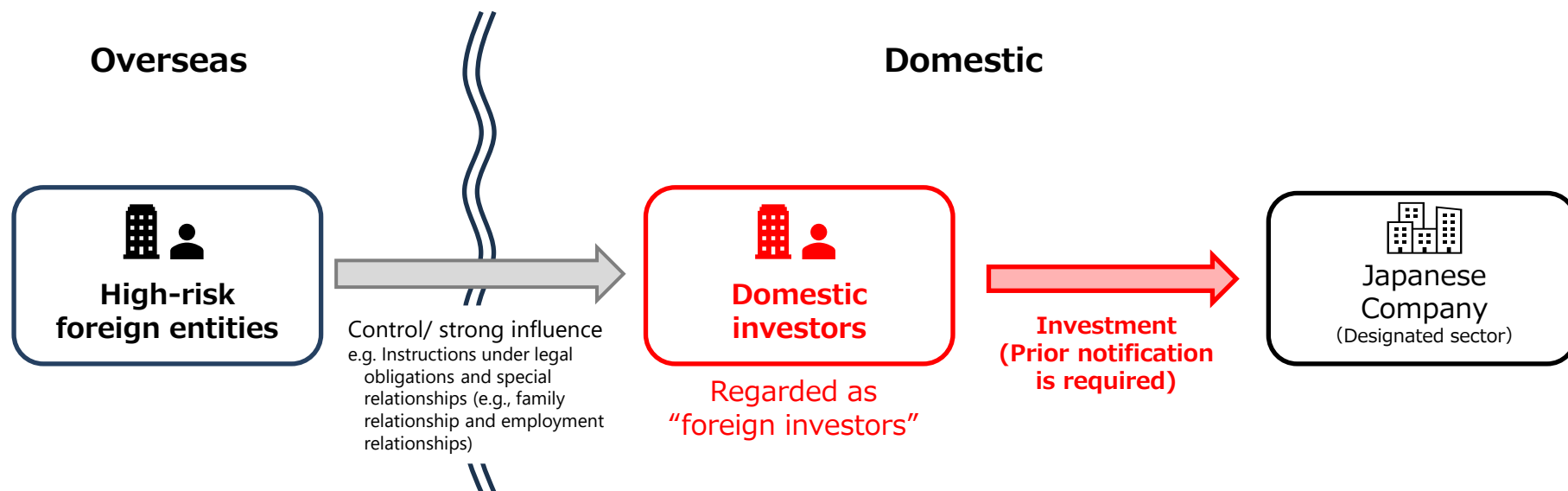
- ✓ **Indirect investment**—a foreign investor (“C” in the figure below) acquires the control of a foreign entity (“A”) that holds shares or voting rights of a Japanese company (“B”)—**is to be added to the scope of foreign investment screening.**



Domestic investment activities under the control/strong influence of high-risk foreign entities

- ✓ The current foreign investment screening system applies to investments made by Japanese companies in which non-residents or foreign investors hold 50% or more of the voting rights.
- ✓ To prevent circumvention, the Act also **applies foreign investment screening to domestic investors who are under the control/strong influence of high-risk foreign persons* and undertake investment activities for the benefit of those high-risk foreign entities.**

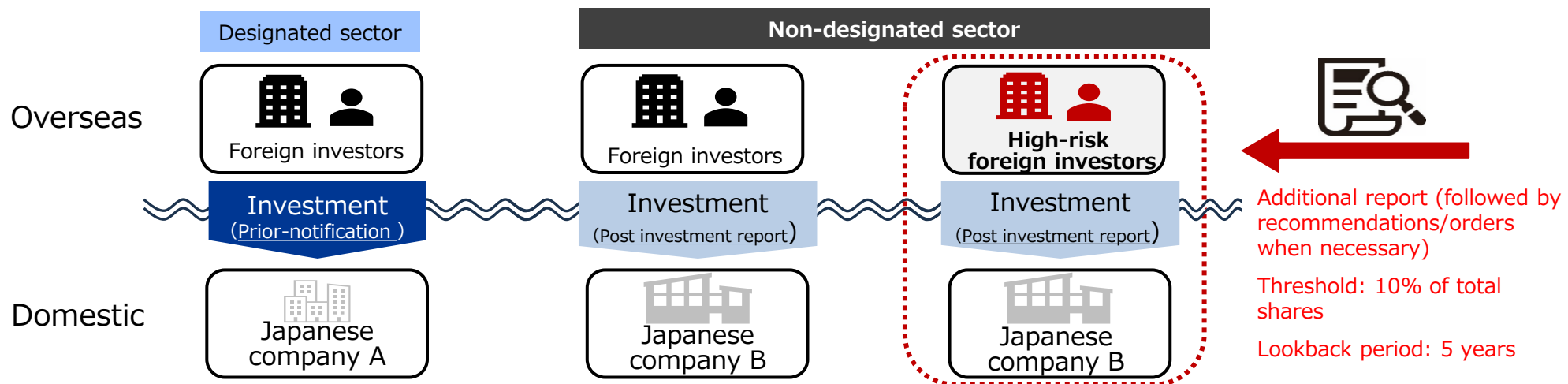
*High-risk foreign persons = Foreign persons who cannot use the exemption of prior-notification (such as foreign governments and state-owned enterprises)



Responding to national security risks in non-designated business sectors

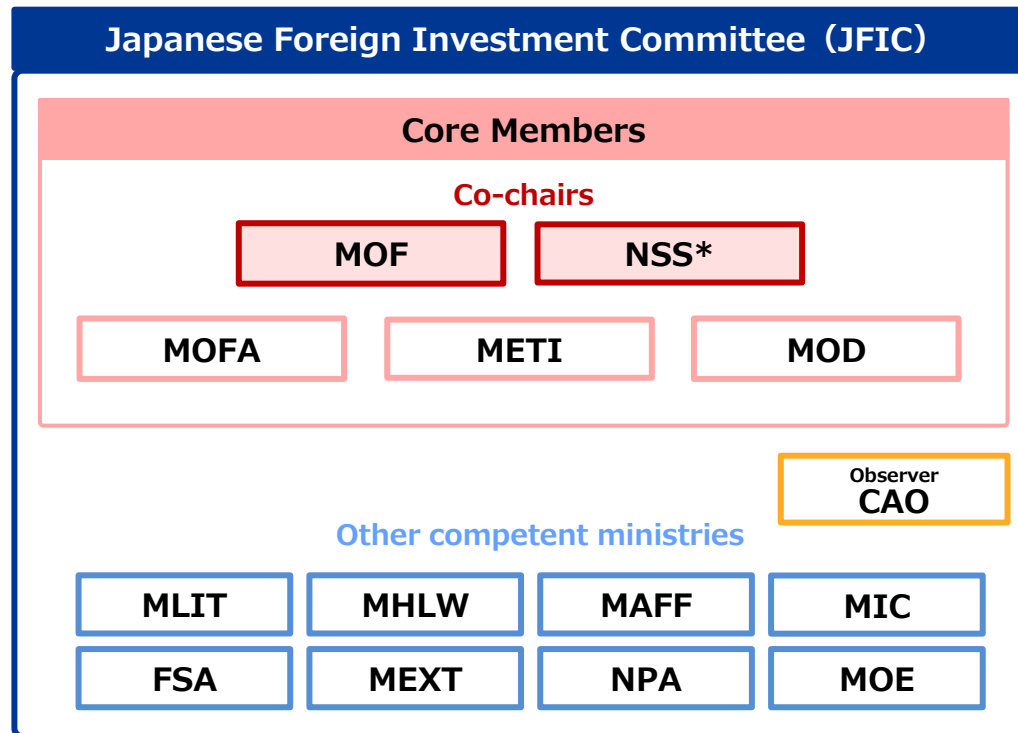
- ✓ Under the current law, only a “post investment report” is required for 10% or more acquisition of shares in non-designated business sectors.
- ✓ **The Act enables the authorities to require high-risk foreign investors* to submit an additional report in response to national security risks that have materialized arising from investment activities.** This might be followed by recommendations and orders to the extent necessary.

*High-risk foreign entities = Investors who cannot use the exemption of prior-notification (such foreign governments and state-owned enterprises)



Establishment of the Japanese Foreign Investment Committee

- ✓ **A new committee, the Japanese Foreign Investment Committee, is established** with the aim of enhancing investment screening in cooperation with the NSS and other security-related authorities.
- ✓ In order to ensure such a mechanism, **the Act requires the Minister of Finance and other competent Ministers** (in charge of specific business sectors) **to consult the NSS and other relevant authorities on individual cases** when necessary from the perspective of national security.



*National Security Secretariat

Review of Designated Business Sectors

1. Review of “Software Services Sectors”

To rationalize the scope of designated business sectors, the **prior notification requirement** for “software services sectors” will be **narrowed** based on national security considerations, including cybersecurity.

Core sectors: The prior notification requirement will, in principle, be maintained.

Non-core sectors:

The prior notification requirement will be limited to defined set of services including:

- ✓ Software services related to **critical infrastructure and essential goods** defined under the Economic Security Promotion Act.
- ✓ Software services that deal with (i) **large volumes of personal data** or (ii) **technological information managed as trade secrets**.

2. Update from Economic Security Perspectives

- ✓ Companies that hold **technologies** subject to export control under the FEFTA will be designated as “core designation” (based on technologies, not on business sectors).
- ✓ Manufacturing related to **magnetic sensors and ship hulls** (which were newly defined as critical goods under the Economic Security Promotion Act) will be added to core sectors.
- ✓ **Large-scale electricity and gas retail providers** will be designated as core sectors.
- ✓ Manufacturing related to “**essential medicines for stable supply**”(as designated under the amended Medical Care Act) will be added to designated sectors.

* Revisions under 2. are not expected to materially affect the number of prior-notifications.

Other Reforms

Prior Notification for Director Appointment Approvals

- ✓ **Prior notification will, in principle, not be required for the reappointment of directors** if they were initially appointed following prior notification.
- ✓ However, prior notification will still be required if:
 - (i) the investors are not eligible for the prior notification exemption scheme, or
 - (ii) there are material changes (e.g., the director's nationality)

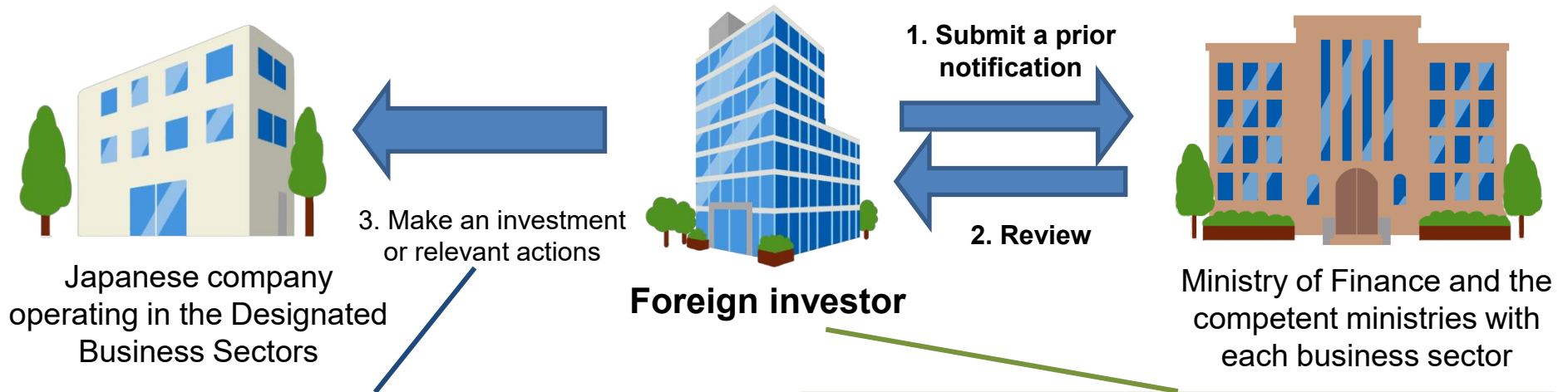
Attachment Documents

- ✓ In almost all cases, the authorities send a questionnaire during the review process and request the following information.
 - a. Information on investor
 - b. Information on investee
 - c. Information on investor's shareholders
 - d. Information on investor's ultimate parent company
- ✓ In order to **improve the efficiency and predictability of review process**, such information will be required as **attachment documents** when submitting a prior notification.

Appendix

Outline of Foreign Direct Investment Review

Under the FEFTA regime, when foreign investors make an investment in or take a relevant action to Japanese companies operating in the Designated Business Sectors, the foreign investors must submit a prior notification via a resident in Japan acting as an agent.



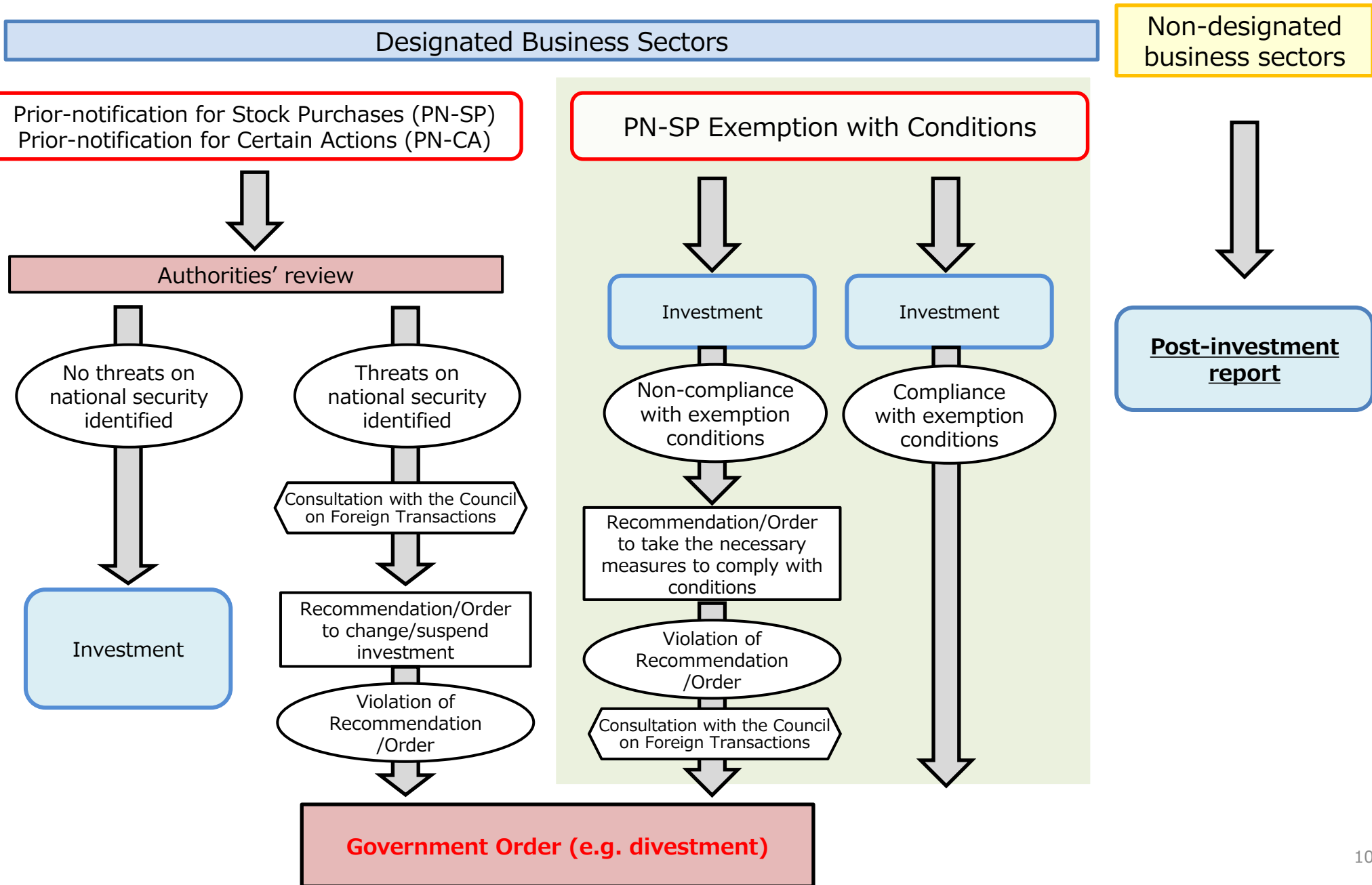
Investment and relevant actions

- Acquiring 1% or more of stocks of a listed company
- Acquiring one or more stocks of an unlisted company (no threshold)
- Giving consent to the appointment of a foreign investor or his/her closely-related person as a board member or corporate auditor of the investee company
- Proposing or giving consent to the transfer or disposition of the investee company's business etc.

Foreign Investor Categories

- ① Non-resident individuals
- ② Corporations and organizations incorporated under foreign laws and regulations
- ③ Japanese companies in which 50% or more of voting rights are held by ① or ②
- ④ Partnerships in which 50% or more of capital investments are made by ① or ②
- ⑤ Partnerships in which the majority of business-executing partners are ① or ②

Flow of Foreign Direct Investment Review



Designated Business Sectors

From the amendment of the Public Notices
in August 2024

【Designated Business Sectors】

- Weapons
- Aircrafts (incl. drones)
- Nuclear facilities
- Space
- Dual-use technologies
- Pharmaceutical manufacturing sector of communicable diseases
- Specially-controlled medical devices manufacturing
- Metal mining, smelting, refining etc. of critical minerals
- Construction service business etc. which improves or maintains port facilities on Designated Remote Islands
- Fertilizers (potassium chloride, etc.) importing
- Permanent magnets mfg., its material mfg.
- Machine tools, industrial robots manufacturing
- Manufacturing etc. of semiconductor mfg. equipment
- Manufacture of advanced electronic components
- Storage batteries mfg., its material mfg.
- Marine equipment (engine etc.) manufacturing
- Metal 3D printers mfg., metal powder mfg.
- Manufacture of multifunctional machines
- Manufacture of fibre optic cables
- Cybersecurity-related (Software, Semiconductor, etc.)
- Electricity
- Gas
- Telecommunications
- Water supply
- Railway
- Petroleum
- Heat supply
- Broadcasting
- Public transport bus
- Biological chemicals
- Security services
- Agriculture, Forestry and Fisheries
- Leather manufacture
- Aviation transportation
- Maritime transportation

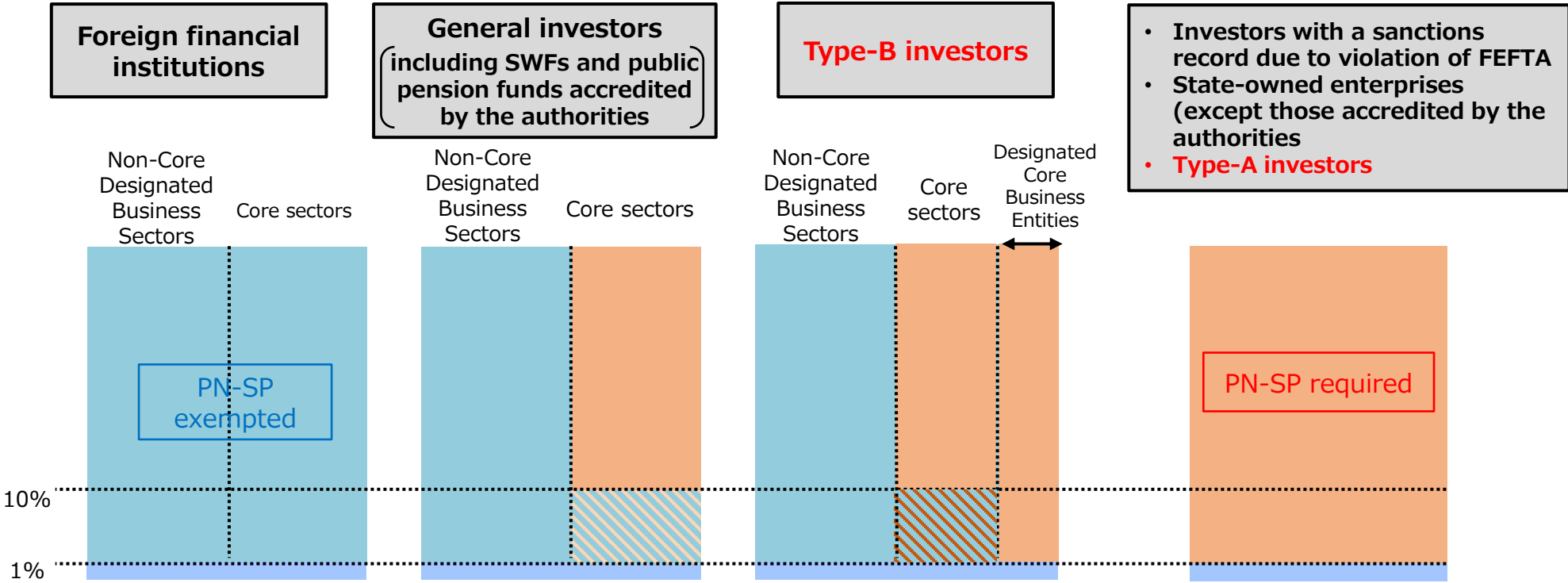
【“Core Designated Business Sectors”】



- **All of the following sectors**
 - Weapons; Aircrafts (incl. drones); Nuclear facilities; Space; Dual-use technologies
 - Pharmaceutical manufacturing sector of communicable diseases; Specially-controlled medical devices manufacturing
 - Metal mining, smelting, refining etc. of critical minerals
 - Construction service business etc. which improves or maintains port facilities on Designated Remote Islands
 - Fertilizers (potassium chloride, etc.) importing
 - Permanent magnets mfg., its material mfg.
 - Machine tools, industrial robots manufacturing
 - Manufacturing etc. of semiconductor mfg. equipment
 - Manufacture of advanced electronic components
 - Storage batteries manufacturing, its material manufacturing
 - Marine equipment (engine etc.) manufacturing
 - Metal 3D Printers mfg., metal powder mfg.
 - Manufacture of multifunctional machines
 - Manufacture of fibre optic cables
- **Part of the following sectors**
 - Cybersecurity-related; Electricity; Gas; Telecommunications; Water supply; Railway; Petroleum (incl. wholesale of natural gas)

【“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 transport bus
 - Biological chemicals
 - Security services
 - Agriculture, Forestry and Fisheries
 - Leather manufacture
 - Aviation transportation
 - Maritime transportation

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



As stipulated in the Public Notices	Exemption Conditions	<p>a) Investors or their related persons will not become board members of the investee company.</p> <p>b) Investors will not propose to the general shareholders' meeting transfer or disposition of investee company's business activities in the designated business sectors.</p> <p>c) Investors will not access non-public information about the investee company's technology in relation with business activities in the designated business sectors.</p>	
	Exemption Conditions on Core Sectors' Business Activities (in addition to above exemption conditions)	<p>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.</p> <p>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.</p>	
	Exemption Conditions on Type-B investors (in addition to all the above conditions)	<p>f) Investors will not access non-publicised information about the core business sector (excluding information about board members and the financial conditions of investee companies)</p> <p>g) investors will not send their own employees to investee companies, nor will they recruit or solicit executives or employees of investee companies</p>	