

The Corporate Counselor

- Insights into Japanese Corporate Law -

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EXTENDING THE REACH OF JAPAN'S FOREIGN DIRECT INVESTMENT LAWS

Recent Japanese government efforts towards foreign direct investment (“FDI”) reflect a divergent approach between national security protection and encouraging inbound investments. In particular, the Japanese government has made various changes to its FDI rules and regulations to make it more difficult for foreign investors to undertake greenfield investments and acquire Japanese companies, while simultaneously actively promoting FDI. Japan’s dual track approach to FDI commenced in 2020. Our June 2020 newsletter (available [here](#)) discusses the groundbreaking changes to Japan’s FDI laws that make it more difficult for overseas investors to acquire interests in a wide range of Japanese companies. Since the enactment of these amendments, geopolitical risks have increased, trade tensions between the United States and China have intensified, and Japan’s security situation has become increasingly complex, resulting in an even further tightening of Japan’s FDI laws. At the same time, Japan has introduced ambitious FDI targets and double-downed on efforts to attract foreign investors. In 2023, the Japanese government set a target of ¥100 trillion in FDI stock by 2030, which the Japanese government raised in 2025 to ¥120 trillion by 2030 and ¥150 trillion by the mid-2030s. Also, the Ministry of Economy, Trade and Industry has actively developed various policies and guidelines to strengthen the corporate governance of Japanese listed companies, and formulated Guidelines for Corporate Takeovers in 2023 that require the board of directors to give “sincere consideration” to a “*bona fide* offer.” While these guidelines do not directly focus on FDI, they have the bonus effect of stimulating FDI by enhancing institutional investors’ engagement activities and by establishing a playing field for unsolicited takeover proposals and other transactions. In addition, the Ministry of Foreign Affairs has created more than 120 overseas diplomatic missions to promote FDI, and since 2023, the Japan External Trade Organization has established more than ten overseas FDI Task Forces to engage with local executives of major companies to foster FDI.

This edition of the *Corporate Counselor* outlines

Japan’s general approach to FDI in the M&A context, and then discusses the material amendments since June 2020 that have (i) expanded the scope of industries that are subject to Japanese government approval before a foreign investor (including a Japanese company controlled by a foreign investor) can complete an acquisition, and (ii) reduced the availability of prior exemptions that permit acquisitions by foreign investors to proceed without Japanese government prior approval. As a result of these structural shifts, foreign investors should expect more detailed reviews of their FDI plans by the Japanese government, and more hurdles that must be overcome to achieve regulatory clearance. This newsletter aims to provide deal practitioners and foreign investors with greater clarity on the legal analysis that must be performed to evaluate whether clearance can be practically achieved under Japan’s FDI regime.

Overview of Foreign Investment Review Regime

Japan’s FDI screening system is governed principally by the Foreign Exchange and Foreign Trade Act of Japan (“FEFTA”), which regulates whether a foreign investor is required to obtain Japanese government prior approval and/or to make a post-acquisition notice filing with the Japanese government. The first step in the FEFTA analysis is whether a transaction qualifies as a “covered transaction.”

Although a full discussion of “covered transactions” is beyond the scope of this newsletter, examples include transactions in which a foreign investor: (i) acquires 1% or more of the outstanding voting rights or issued shares of a Japanese publicly traded company; (ii) acquires one or more shares of a privately owned Japanese company; (iii) gains control over a Japanese business through an asset purchase transaction, absorption-type company split, or merger; (iv) consents to a substantial change in the business purpose of a Japanese company (subject to the foreign investor owning at least one-third of the voting rights in that company); (v) consents to the appointment of himself/herself or its closely related person as directors or company auditors of a Japanese company or to the transfer of all or substantially all of the business of a Japanese company (in each case, subject to the foreign investor owning at least 1% of the



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outstanding voting rights or issued shares if the target company is publicly traded); (vi) establishes a branch, factory, or other establishment in Japan (other than a representative office), or changes the business purpose of a branch, factory, or other establishment in Japan (other than a representative office); (vii) lends money exceeding JPY 100 million to a Japanese company for a term in excess of one year where the loan value exceeds 50% of the total debt of the Japanese company; or (viii) purchases bonds issued by a Japanese company in a private placement in an amount in excess of JPY 100 million, where the redemption date is more than one year from the bond placement date and the value of the bonds issued by the Japanese company to the foreign investor exceeds 50% of the total debt of the Japanese company.

If an M&A transaction qualifies as a covered transaction, the second step in the FEFTA analysis is determining whether the target company, its direct or indirect subsidiaries, or the affiliates in which the target company controls 50% or more of the voting rights conducts business in a sector designated under the FEFTA as protecting Japanese national security, maintaining public order, safeguarding public safety, or upholding the smooth operation of the Japanese economy (each, a “Designated Business Sector”). If so, then Japanese government prior approval is required to complete the M&A transaction, unless an exemption applies. Annex I sets forth a granular list of industries that fall within a Designated Business Sector. Japanese government prior approval in the M&A context also is required irrespective of the target company’s business for foreign investors domiciled in a country that is not named on a 181-country approved-list promulgated under the FEFTA (however, despite appearing on the approved-list, all M&A transactions involving a purchaser from Iran will require Japanese government prior approval). In the case of an M&A transaction involving a target company not engaged in a Designated Business Sector, a post-closing notice filing to the Japanese government is *typically* required within 45 days after completion (i.e., a post-closing notice filing is not required with respect to the acquisition of less than 10% of the voting rights or issued shares of a publicly traded or privately owned company that does not engage in a Designated Business Sector).

All approval and notice filings must be submitted through the Bank of Japan to the Ministry of Finance and one or more ministries that have jurisdiction over the target company’s business sector. Approval filings can be submitted even if the acquisition agreements

have not been executed by the submission date, and must be made within six months of the anticipated closing date. An M&A transaction cannot be implemented for 30 days after a filing is accepted, which period Japanese authorities can extend to a maximum of five months and shorten to as little as approximately one or two weeks.

A further wrinkle in the application of the FEFTA applies when a foreign investor purchases shares of a Japanese company from another foreign investor (this type of transaction is defined under the FEFTA as a “Specified Acquisition”). The FDI analysis in the Specified Acquisition context hinges on the business of the target company and the type of foreign investor and seller. If the target company conducts business in a defined subset of the Designated Business Sectors, then the foreign investor will need to obtain prior Japanese government approval to proceed with the acquisition and will need to make a post-closing notice filing to the Japanese government. On the hand, if the target company does not conduct business in a defined subset of the Designated Business Sectors, then a prior government approval is not required and only a post-closing notice filing for a cross-border transaction needs to be made to the Japanese government by a Japan resident party (such as a Japanese company that is wholly owned or controlled by a foreign investor).

Expansion of Industries Subject to Japanese Government Prior Approval

Since June 2020, the Japanese government has steadily broadened the range of sectors for which government approval must be obtained before an M&A transaction can proceed.

Key sectoral expansions include:

- **2020:** Pharmaceuticals and medical devices (such as ventilators, infusion pumps and artificial dialyzers) related to infectious disease control (reflecting vulnerabilities exposed by COVID-19).
- **2021:** Critical mineral supply chains, including rare earth and materials essential to battery production, along with marine construction companies involved in developing specific island port facilities used for critical mineral resource surveys.
- **2023:** Critical supply chains, such as antimicrobial agents, fertilizers, semiconductors, batteries, permanent magnets, critical minerals, machine tools,

industrial robots, aircraft parts, cloud programs, natural gas, ship-related equipment, and metal 3D printers.

- **2024:** Critical supply chains, such as semiconductor manufacturing equipment, advanced electronic components, machine tool components, marine engines, fiber-optic cables, and multifunctional machines.

The addition of critical supply chains in 2023 and 2024 was a signal that the Japanese government sees “economic security” as encompassing not only traditional defense technologies, but also advanced manufacturing capabilities that underpin Japan’s industrial base and role in supply chains.

New Limitations on Foreign Investors Eligible to Use Exemptions

The “Blanket Exemption” and the “Regular Exemption” are the two principal exemptions from the requirement to obtain Japanese government approval prior to purchasing shares of certain Japanese companies. The availability of these exemptions depends on a complex analysis of: (i) the number of shares to be acquired, (ii) the type of foreign investor, (iii) whether the foreign investor agrees to curb its shareholder rights, (iv) the business activities of the target company, (v) whether the target company is publicly traded or privately owned, and (vi) the history of regulatory compliance by the foreign investor (as explained more thoroughly [here](#)). Since the introduction of these exemptions, the Japanese government has formed a view that certain foreign investors, who are obligated to cooperate with foreign intelligence activities, have relied on the Blanket Exemption or the Regular Exemption to buy shares of publicly traded Japanese companies, to the detriment of Japan’s national security. To address this issue, amendments to the FEFTA, which became effective in May 2025, now limit use of the Blanket Exemption and the Regular Exemption by creating two new types of foreign investors—Type-A Investors and Type-B Investors. As a result, investments in certain high-risk sectors by certain foreign investors will now be subject to Japanese government approval before the acquisition can be completed.

Type-A Investors. A foreign investor will be classified as a Type-A Investor if it is (i) an entity or individual that is legally required under laws or agreements to provide information to a non-Japanese government about matters that may relate to Japan’s national

security, or (ii) an organization controlled by (a) entities or individuals described immediately above and/or (b) a foreign government that imposes such obligations. “Control” means owning 50% or more of the voting rights or issued shares of a company, having the right to appoint at least one-third of the company’s directors, owning a golden share, or having the ability to cause the company to engage in a covered transaction.

Type-A Investors are added to the category of *persona non grata* and cannot rely on either the Blanket Exemption or the Regular Exemption. Once a Type-A Investor intends to own 1% or more of the outstanding voting rights or issued shares of a publicly traded company that operates in a Designated Business Sector, it must obtain Japanese government prior approval for each share purchase thereafter. Type-A Investors also must obtain Japanese government prior approval to acquiring any shares of a privately owned company that operates in a Designated Business Sector.

While not expressly stated in the legislation, it is believed that the Type-A Investor category was created to capture Chinese investors because China’s National Intelligence Law obligates Chinese citizens and companies to assist with national intelligence activities. Nonetheless, foreign investors from other countries in which the government has similar legislative reach also may fall within the confines of a Type-A Investor, so it is important to consult with Japanese counsel to obtain the latest updates.

Type-B Investors. A foreign investor that is not a Type-A Investor will be classified as a Type-B Investor if it meets any of the following criteria: (i) its key decisions are effectively controlled by someone who falls within subclause (i) of the definition of Type-A Investor; (ii) its actual/genuine headquarters (without regard to its place of incorporation) is located in a country where the laws require cooperation with a foreign government to collect information; or (iii) it is contractually obligated to share information with a Type-A Investor (including indirect obligations arising through chains of agreements).

Type-B Investors are not eligible to use the Blanket Exemption even if it is a foreign financial institution, but they may use the Regular Exemption when acquiring shares of certain companies so long as they comply with various conditions, as discussed below:

- *Designated Business Sector that is not a Core Sector (Non-Core Designated Business Sector).* A Type-B Investor that intends to acquire 1% or more

of the outstanding voting rights or issued shares of a publicly traded company or a privately owned company conducting business in a Non-Core Designated Business Sector may use the Regular Exemption under the same conditions as other foreign investors that are not foreign financial institutions, so long as it agrees that it will not: (i) become a board member of the target company (either itself or through a closely “related person”); (ii) make a proposal at a shareholders’ meeting for the transfer or disposition of business activities in a Designated Business Sector; and (iii) access non-public information about the target company’s technology used in a Designated Business Sector.

- *Designated Core Business Entities.* Unlike other foreign investors that are not foreign financial institutions, a Type-B Investor that intends to own 1% or more of the outstanding voting rights or issued shares of a publicly traded company that is a “Designated Core Business Entity” must obtain Japanese government prior approval for each share purchase thereafter and cannot rely on any exemption. A “Designated Core Business Entity” is a company that (i) provides essential infrastructure, as defined in Japan’s Economic Security Promotion Act (e.g., electricity, gas, telecommunications, and railways), and (ii) conducts business in a Core Sector. Annex I lists the business activities that constitute “Core Sectors.” Type-B Investors must obtain Japanese government prior approval to acquire any shares of a privately owned company that is a Designated Core Business Entity. As of July 14, 2025, according to a classification of listed companies published on the website of the Ministry of Finance, 46 publicly traded companies were classified as a Designated Core Business Entity.
- *Designated Business Sector–Core Sector.* A Type-B Investor that intends to acquire between 1% and less than 10% of the outstanding voting rights or issued shares of a publicly traded company conducting business in a Core Sector that is not identified as a Designated Core Sector Entity may use the Regular Exemption so long as the Type-B Investor agrees to all of the conditions that apply to acquisitions of companies that operate in a Non-Core Designated Business Sector (as discussed above), and that it will not: (i) attend any committee of the target company that makes important decisions with respect to business activities in a Core Sector; (ii) make written

proposals that require a response or action by a certain deadline to the board of directors of the target company (or any member thereof) or to any committee of the target company regarding business activities in a Core Sector; (iii) access non-public information about the target company’s Core Sector business (except for information related to the directors, executives, and financial information of the target company); and (iv) dispatch employees to the target company to work in the Core Sector or solicit for employment the directors, executives, or employees of the target company who work in the Core Sector. For purchases of 10% or more of the outstanding voting rights or issued shares of a publicly traded company conducting business in a Core Sector, then no exemption is available and prior approval of the Japanese government is required (just as any foreign investors that are not foreign financial institutions). Type-B Investors also must obtain Japanese government prior approval to acquire any shares of a privately owned company that operates in a Core Sector (just like any other foreign investor).

Depending on factual circumstances and legal developments, it is conceivable that foreign investors based in Hong Kong could be considered Type-B Investors, which could impact the campaigns of activist funds domiciled therein. It is important to consult with Japanese counsel familiar with applicable Hong Kong laws to obtain the latest updates.

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Japan’s FDI regime has undergone significant tightening since June 2020, reflecting the government’s emphasis on national security, economic resilience, and technological sovereignty. The expansion of the industries for which Japanese government prior approval is necessary and the creation of categories of foreign investor types who cannot rely on approval exemptions creates additional strands in an already complicated FEFTA web. The creation of new investor types reflects Japan’s broader policy shift toward economic security and supply chain resilience, which balances openness to trusted capital with stricter scrutiny of opaque or state-linked foreign investors. Deal practitioners should undertake due diligence on clients that may be perceived as susceptible to exploitation by foreign intelligence agencies, and prepare clients for potentially extensive and time consuming questions from Japanese authorities about

ownership structure, funding sources, investment intentions, scope of technology access, use of personal information, and connections to and obligations to share information with foreign governments.

To facilitate an understanding of the FEFTA in light of these updates, Annex II sets forth a FEFTA decision tree for purchases of shares in publicly traded companies, and Annex III set forth a FEFTA decision tree for purchases of shares in privately owned companies.

Annex I

Businesses Subject to Prior Notification in M&A Transactions

“**Designated Business Sector**” means any of the general business activities listed herein.

“**Core Sector**” is a subset of a Designated Business Sector and are activities that the Japanese government considers of great significance to national security (so subject to higher government scrutiny).

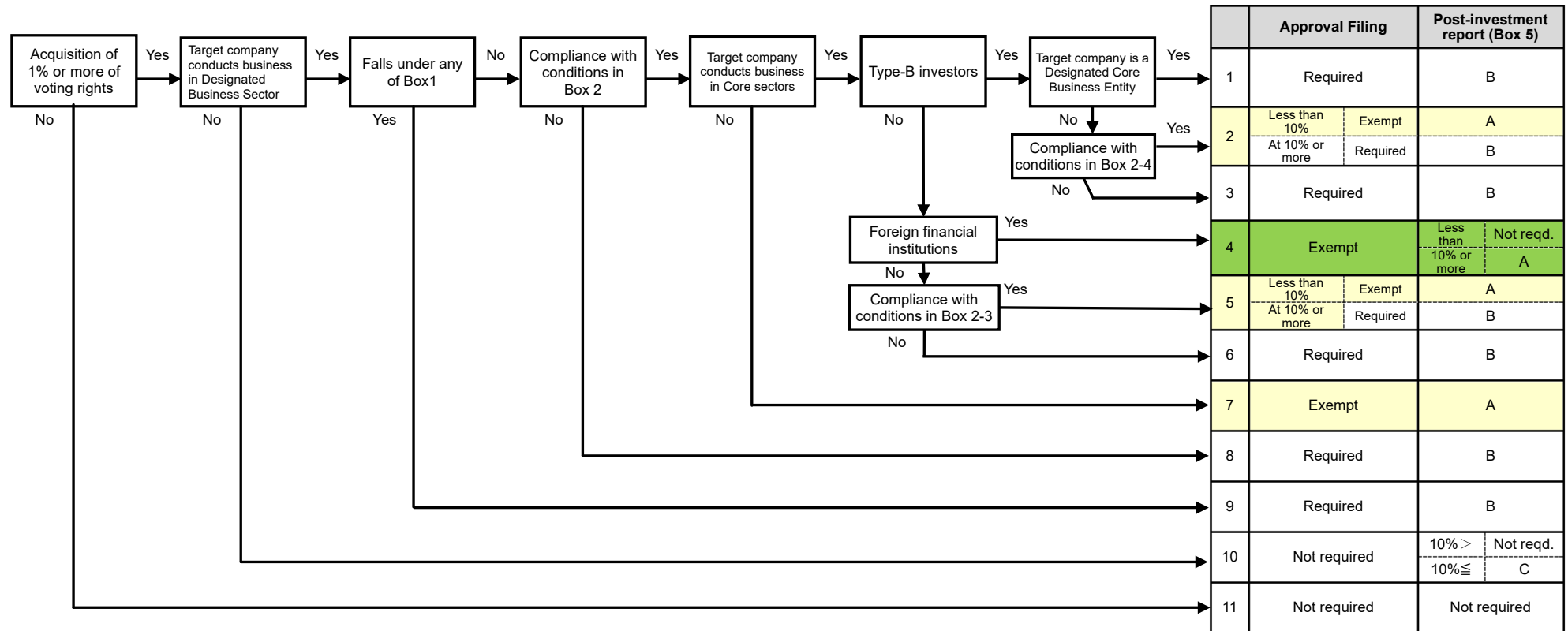
	Designated Business Sectors*	
	Core Sectors*	
Protecting Japanese national security	Weapons and defense; Aircraft (<i>i.e., the manufacturer of aircraft and rockets, and the parts thereof</i>); Nuclear facilities; Space; Dual-use technologies (<i>i.e., manufacturers, engineering service providers and software developers who deal with products and technologies that are subject to Japanese export control regulation</i>) All the business activities are denoted as Core Sectors, too.	
	Cybersecurity (<i>Software development, data processing, internet use support</i>)	• Cybersecurity-related services (e.g., network security monitoring, forensic service, remote access control system, security software against unauthorized access, malware and phishing) • Japanese language input software • Service providers of programs designed for critical infrastructure • Service providers of programs specifically designed to manage personal information and sensitive personal information of one million or more persons
	Critical Supply Chain, Specified Important Materials under the Economic Securities Promotion Act.	• Permanent magnets (limited to those used in weapons, electric motors, generators, or medical machinery and equipment) • Semiconductor manufacturing related equipment and materials incl. semiconductor elements, electronic circuit boards, testers, gases • Storage battery (Li-ion storage batteries for automotive or stationary use) • Certain advanced electronic components (such as multilayer ceramic capacitors, film capacitors, SAW/BAW filters, etc.) • Manufacturing of machine tool parts (machine tool parts such as ball screws, linear guides, and linear scales) • Ship parts (diesel engines (4 cycles with a maximum output of 735 KW or more) and parts, navigation equipment for ensuring aviation safety, propellers (diameter 1600 mm or more)) • Metal machine tools (limited to those that can be numerically controlled), industrial robot manufacturing • Natural Gas Wholesale • Fertilizer (potassium chloride, etc.)
	Minerals, rare earths, marine construction companies related to mineral resources survey	
	Metal 3D Printers	
	Fiber-optic cables	
Maintaining public order	Electricity	• General electricity transmission and distribution utilities • Electricity transmission utilities • Electricity generation utility companies that own a power plant with a maximum generation capacity of 50,000 KW or more
	Gas	• General gas/specified gas pipeline service providers • Gas manufacturers • LP gas companies that own a storage facility or core cylinder filling station
	Telecommunications	• Telecommunication carriers that provide service across multiple local municipalities
	Water supply	• Water supply companies supplying to more than 50,000 people • Bulk water supply companies with a capacity to supply over 25,000m³ of water per day
	Railway	• Railway service companies operating public facilities/infrastructures that are stipulated under Japan’s Armed Attack Situations Response Act
	Oil	• Oil refineries, Oil storage facilities, Crude petroleum facilities, Natural gas production facilities
	Heat supply	None
	Broadcasting	None
	Public transportation	None
Safeguarding public safety	Infectious disease medicines and “Specially Controlled Medical Devices”	
	Biological chemicals	None
	Security services	None
Upholding the smooth operation of the Japanese economy	Agriculture, forestry and fisheries	None
	Leather manufacture	None
	Air transportation (<i>i.e., air transportation service providers, such as Japan Airlines</i>)	None
	Maritime transportation	None

* Designated Business Sectors and Core Sectors are summarized and only the principal activities listed, so this Annex I should not be considered a complete list.

Annex II Share Purchases in Publicly Traded Companies

(based on excerpt from “Foreign Exchange and Foreign Trade Act – Foreign Investment Screening System Annual Report (FY2024)” issued by Ministry of Finance, Japan)

Exemption Color Legend: Blanket Exemption / Regular Exemption



(Box 1) Investors not eligible for exemption scheme

- Investors with a sanctions record due to violation of the FEFTA
- State-owned enterprises (except those accredited by the authorities)
- Type-A investors

(Box 3) Exemption Conditions on Core Sectors' Business Activities

- Regarding business activities in Core Sectors, Foreign Investor will not attend any committee of the investee company that make important decisions in these activities
- Regarding business activities in Core Sectors, Foreign Investor will not make proposals, in a written form, that require a response or action by a certain deadline to the board of the investee company (or any member thereof) or any committee thereof

(Box 5)

- A: Post-acquisition report under exemption
- B: Post-acquisition report after submission of approval filing and clearance by the authorities
- C: Post-acquisition report for non-Designated Business Sector

(Box 2) General Exemption Conditions

- Foreign Investor (along with its “closely related persons”) will not become board members of the investee company
- Foreign Investor will not propose at a general shareholders' meeting transfer or disposition of investee company's business activities in the Designated Business Sector
- Foreign Investor will not access non-public information about the investee company's technology in relation with business activities in the Designated Business Sector

(Box 4) Additional Exemption Conditions on Type-B investors

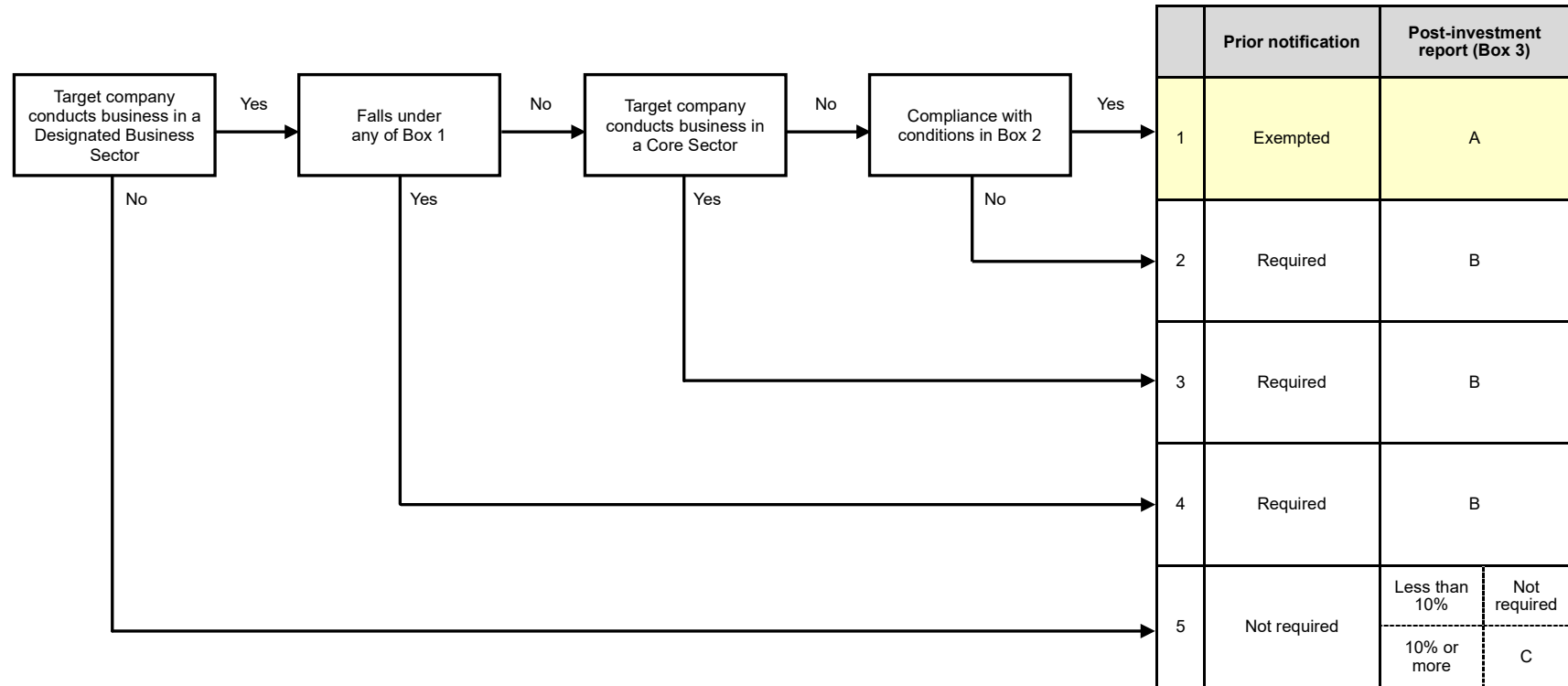
- Foreign Investor will not access non-public information about the Core Sector (excluding information about directors, executives and financial information of the investee company)
- Foreign Investor will not dispatch employees to the investee company or solicit for employment the directors, executives or employees of the investee company

Annex III

Share Purchases in Privately Owned Companies

(based on excerpt from “Foreign Exchange and Foreign Trade Act – Foreign Investment Screening System Annual Report (FY2024)” issued by Ministry of Finance, Japan)

Exemption Color Legend: Regular Exemption



(Box 1)

Investors not eligible for exemption scheme

- Investors with a sanctions record due to violation of the FEFTA
- State-owned enterprises (except those accredited by the authorities)
- Type-A investors

(Box 2) **General Exemption Conditions**

- a) Foreign Investor (along with its “closely related persons”) will not become board members of the investee company
- b) Foreign Investor will not propose at a general shareholders’ meeting transfer or disposition of investee company’s business activities in the Designated Business Sector
- c) Foreign Investor will not access non-public information about the investee company’s technology in relation with business activities in the Designated Business Sector

(Box 3)

- A: Post-acquisition report under exemption
- B: Post-acquisition report after submission of approval filing and clearance by the authorities
- C: Post-acquisition report for non-Designated Business Sector