When a foreign-invested company reinvests its earned surplus in facilities, can this be deemed foreign investment?

In accordance with an amendment to the Foreign Investment Promotion Act which was promulgated on February 4, 2020 and entered into force on August 5, 2020, an investment made by a foreign-invested company by the use of unappropriated earned surplus is recognized as foreign investment starting from August 5, 2020.
Where a foreign-invested company uses unappropriated earned surplus for the purposes prescribed by Presidential Decree including the construction or expansion of its factory facilities, it is deemed foreign investment (Article 2(1)4(d) newly added to the Foreign Investment Promotion Act).

In such case, the foreign-invested company notifying foreign investment is considered a foreigner and the amount derived by multiplying the amount of unappropriated earned surplus carried forward to the following fiscal year used for the aforementioned purposes and the foreign investment ratio indicated on the certificate of registration of a foreign-invested enterprise (the ratio of the stocks, etc. owned by a foreigner of a foreign-invested company) is recognized as the amount of foreign investment.

Prior to the enforcement of the amended regulation, a foreign-invested company was not deemed a foreign investor and was not recognized as a foreigner under the Foreign Investment Promotion Act. Subsequently, a foreign-invested company’s investment of unappropriated earned surplus was not recognized as foreign investment.

* Application form (attached Form 2-2): Foreign Investment through Use of Unappropriated Earned Surplus
  - Organization receiving notification: The president of KOTRA (other delegated agencies excluded)
  - Required documents: A statement of retained earnings for the latest fiscal year, an audit report on financial statements, an investment plan of unappropriated earned surplus (including a summary), and a copy of the certificate of registration of a foreign-invested company
  - Purposes of use: Establishment and expansion of factory or research facility (manufacturing sector) or establishment and expansion of business place or research facility (non-manufacturing sectors)