

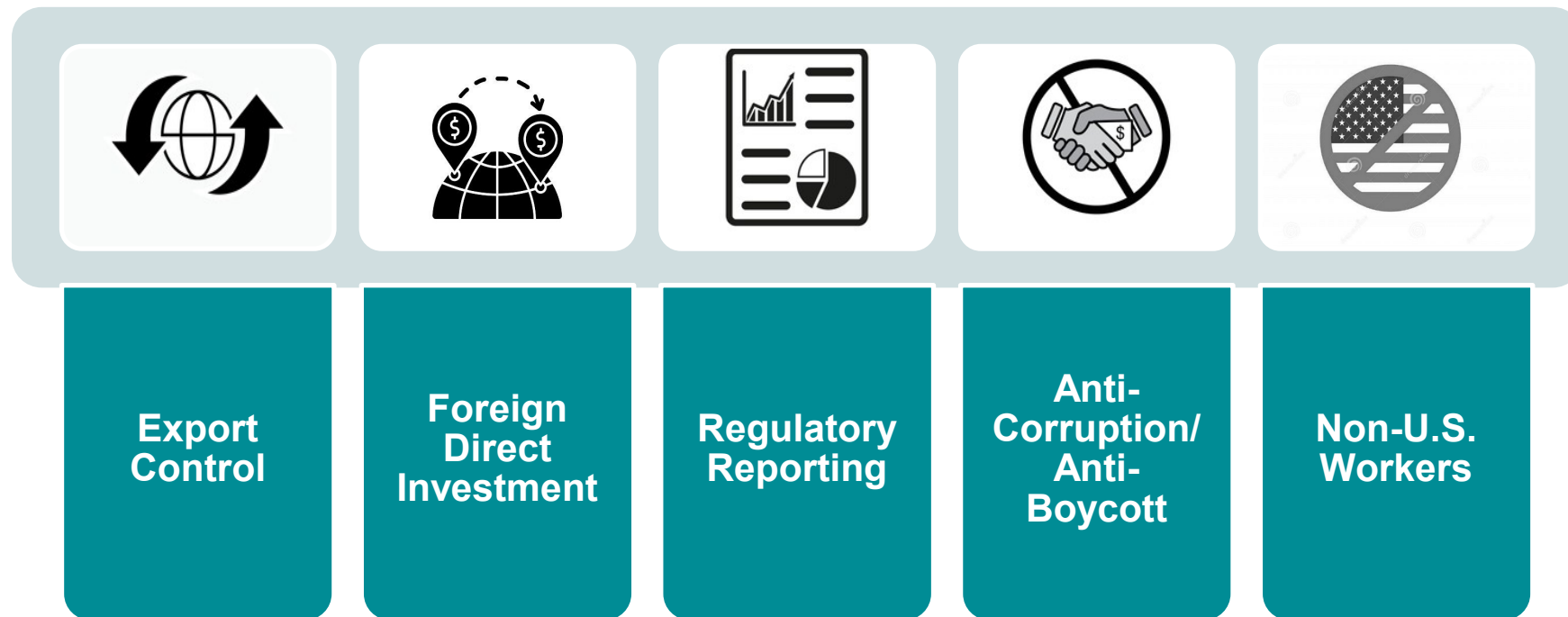
Emerging Technologies Controls and Compliance

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Presented by: David Vance Lucas

Emerging Technologies Compliance

- U.S. regulation of advanced simulation, modeling and predictive analysis technologies



Protecting U.S. National Security Interests

- **Protections of U.S. National Security and Foreign Policy Interests**
 - Denies means to adverse military
 - Limit or prevent terrorist activities
 - Implement foreign policy objectives
- **Regulations address foreign “ownership, control, influence, export, and access of the following:**
 - Certain controlled items, information, and facilities
 - Excluded foreign persons or entities
 - Inside and outside the U.S.

Compliance with US Export Regulations

- **Export Control Regulations Prohibit  of the following:**
 - Certain controlled items, information, and software
 - Excluded foreign persons or entities
 - Inside and outside the U.S.
- **U.S. National Security and Foreign Policy Agencies**
 - **State Department** – International Traffic in Arms Regulations (ITAR) - Directorate of Defense Trade Controls (DDTC)
 - **Commerce Department** – Export Administration Regulations (EAR) - Bureau of Industry and Security (BIS)



Export/Import Control Considerations

U.S. Subs of U.S. Corps are subject to U.S. Law

- Must determine U.S. export classification
- Must have U.S. export compliance program

Rest of World

- Most countries have similar controls
- May be subject to conflicting regulations

Export Administration Regulations (EAR)

- **Commerce Department**
 - Bureau of Industry and Security (BIS)
 - Covers commercial and “dual use” technologies
 - License is only required when specified for a particular item and a particular country - if an exception is not available



Export Control Reform Act (ECRA)

- **Applies to U.S. origin “critical, foundational emerging” technologies:**
 - Artificial Intelligence, Augmented Reality, Additive Manufacturing, Miltech, AV’s, Batteries, Big Data, Encryption, Fuel Cells, Gene editing, Nanotech, Semiconductors, Superconductors and Robotics
 - License is only required when specified for a particular item and a particular country - if an exception is not available
- **Restrictions on international licensing and distribution of technology**

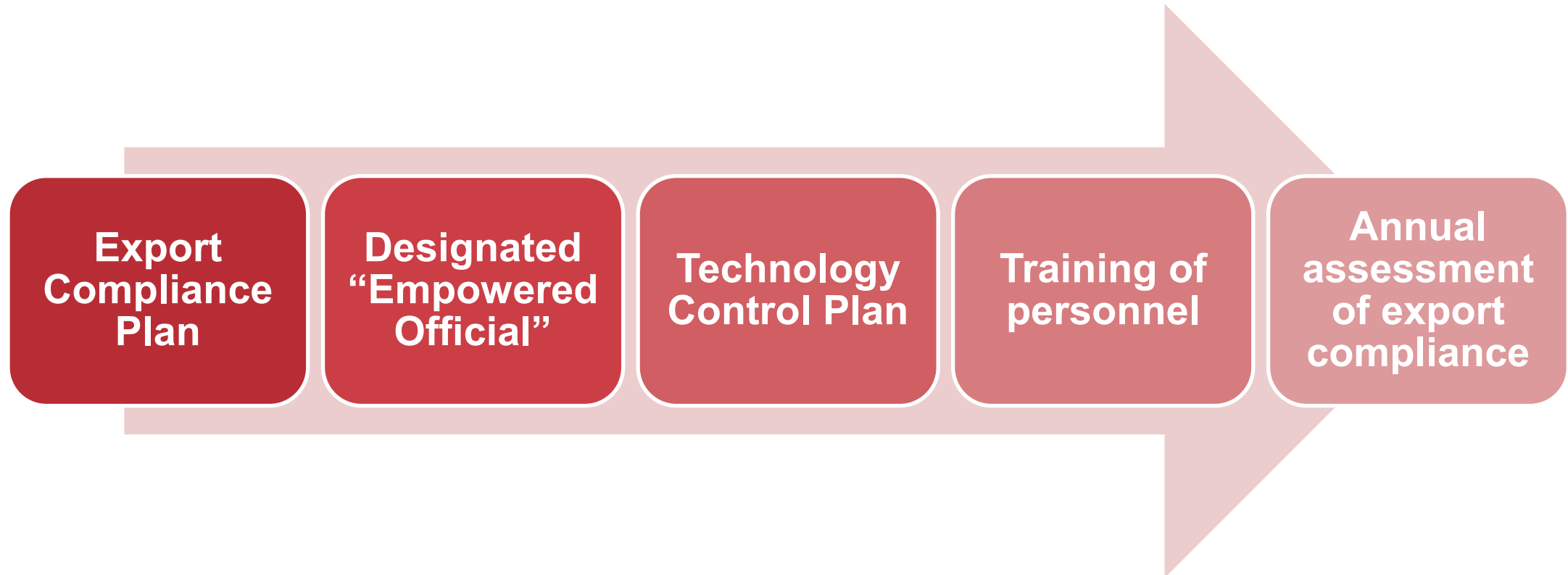
International Traffic in Arms Regulations (ITAR)

- **U.S. State Department (ITAR)**
 - Covers military and space-related technologies
 - Directorate of Defense Trade Controls (DDTC)
 - License is always required, *unless* an exemption is in place
- **Office of Foreign Asset Control (U.S. Treasury)**
 - Restrictions on licensing and distribution of technology
 - License is always required, there are few exceptions



Compliance Requirements

Export Compliance Program



Foreign Direct Investment (FDI)

Committee on Foreign Investment in the US (CFIUS)

- Basis of regulation of foreign direct investment in the US
- Historically limited directly to national security

Foreign Investment Risk Review Modernization Act (FIRRMA)

- Protection of critical Technologies, Infrastructure and Data (“TID”)
- Access to nonpublic technical information
- Membership / participation rights to boards of directors (or equivalent)
- Ability to affect the use, development, acquisition, or release of critical technologies

National Industrial Security Program Operating Manual (NISPOM)

CFIUS is under **NISPOM** “FOCI” section

- **Foreign Ownership Control and Influence (FOCI)**
 - CFIUS tracks FOCI analysis of “control or influence”
- **Applies to U.S. Business which involves:**
 - U.S. Classified Information, Facilities Personnel or Contracts
 - Certain U.S. Government sensitive or Export controlled technology, subject matters or locations



Additional restrictions beyond CFIUS and FIRRMA !

US Commerce and Agriculture Reporting



US Department of Commerce/Bureau of Economic Analysis (BEA)

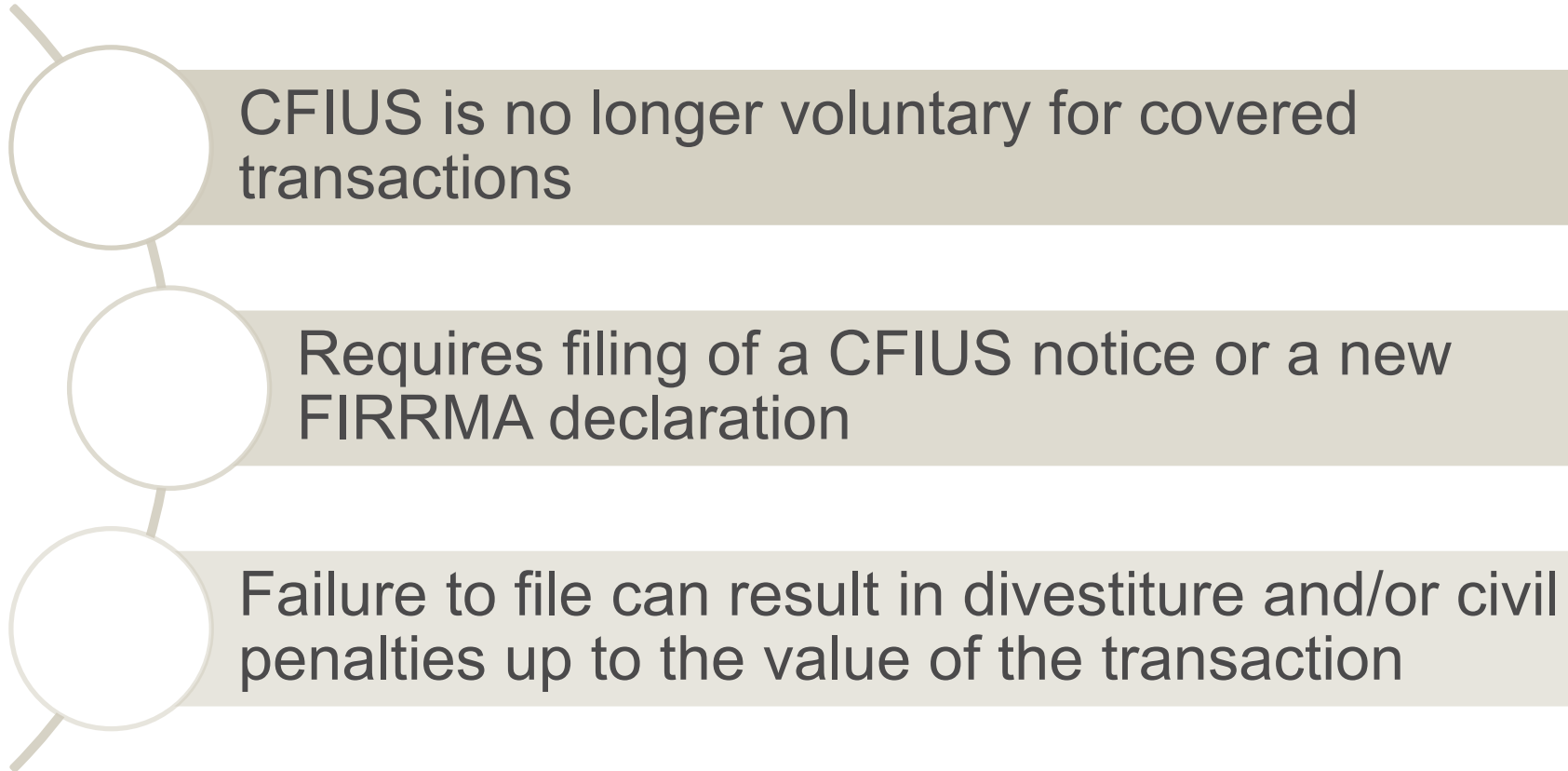
- Oversees a variety of data collection requirements from non-U.S. investors in U.S. businesses and operations



US Department of Agriculture

- Oversees similar data collection requirements for non-U.S. investors in agricultural assets and real estate.
- Agricultural Foreign Investment Disclosure Act of 1978 ("AFIDA")

U.S. FDI Compliance



Anti-Corruption / Anti-Boycott

Anti-Corruption/Bribery

- Foreign Corrupt Practices Act – U.S.
 - Subs of US companies are subject to U.S. laws
- Bribery Act – UK
 - Companies and affiliates who sell product in UK are subject to UK laws
- Most host countries have corresponding laws

Anti-Boycott

- Arab League Israel Boycott
- Sharia and similar discriminatory laws

Heightened Focus On Non-U.S. Workers

Visa's/Authorizations for Non-U.S. Workers in the U.S.



Limitations on Non-U.S. persons presence, access and work in the U.S.



Certain U.S. reporting requirements for U.S. operations and facilities



Significant enforcement powers and penalties for non-compliance

Foreign Direct Investment in the US

- Requires *pre-deal* diligence for an investment, merger or JV opportunities:
 - Existence of Non-U.S. parties
 - Critical or export-controlled technologies
 - Critical Infrastructure or USG installations

Presenter



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David Vance Lucas is a Partner in the Huntsville office of Bradley Arant Boult Cummings, LLP. David is a member of the Intellectual Property Practice Group and leads the International and Cross Border team, including CFIUS, export and other foreign direct investment. David is also North American Leader for the Worldwide Services Group Trade and Finance Practice, a global network of elite law firms which support integrated legal services throughout the world.

Much of David's experience was accumulated as general counsel for Intergraph Corporation (now Hexagon AB Group), where he garnered extensive experience in a variety of U.S. and foreign legal environments. David now advises both U.S. and non-U.S. clients on the harmonized application of U.S. and foreign law and represents clients in various proceedings in the U.S. and abroad.