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CONFIDENTIAL MEMORANDUM

To: Fortified Solar LLC

From: Seth L. Proctor
Martin W. Gitlin

Date: December 29, 2025

Re: **Foreign Entity of Concern Restrictions Under the One Big Beautiful Bill Act**

1. Introduction.

The purpose of this Memorandum is to address the timing considerations relevant based on the restrictions contained in the One Big Beautiful Bill Act, which was enacted on July 4, 2025 (the "**OBBB**").[1]

Among these are changes to the requirements to qualify for the credit (formerly known as the energy credit) allowed under section 48E of the Internal Revenue Code of 1986, as amended (the "**Code**").[2] A key potential limitation on use of the credit stems from a complex set of restrictions related to relationships with, or receiving assistance from, foreign entities of concern (each a "**FEOC**") in the process of developing and constructing projects intended to qualify for the section 48E credit (the "**CEITC**").

Currently, Fortified Solar LLC, a Delaware limited liability company ("**Fortified**") is in the business of manufacturing, marketing and selling integrated structures incorporating solar panels and solar-panel related products, as well as related services (the "**Business**"). As part of the Business, Fortified enters into agreements with customers to manufacture and cause to be installed certain structures, which include integrated solar photovoltaic power systems (each a "**Manufacturing Contract**").

Pursuant to the Manufacturing Contracts, Fortified will design, build, and supervise the installation of the contracted-for structure at the site selected by the customer. Additionally, each

[1] One Big Beautiful Bill Act, H.R. 1, 119th Cong. (2025).
[2] References in this Memorandum to "Section" or "§," unless otherwise indicated, are references to the Code or Treasury regulations promulgated under the Code.

Manufacturing Contract requires the customer to pay Fortified upon execution a non-refundable amount equal fifty percent (50%) of the total agreed upon price for the manufacture and installation of the structure. If work is conducted pursuant to the terms of the Manufacturing Contract, the customer makes periodic payments based on the progress of the work performed by Fortified and, upon final payment and delivery to the customer, the structure's ownership fully vests with the customer.

2. The FEOC Restrictions

Generally, the FEOC restrictions focus on whether taxpayers claiming the CEITC have received "material assistance from prohibited foreign entities."[3] For these purposes, "material assistance" is defined as meaning when components of the property are "extracted, processed, recycled, manufactured, or assembled by a prohibited foreign entity," as well as if "any design" of the property is "based on any copyright or patent held by a prohibited foreign entity" or when "know-how or trade secret[s]" used in the design are provided by any prohibited foreign entity.[4]

However, "material assistance" from a FEOC would not include instances where "any assembly part or constituent material is not acquired directly from a prohibited foreign entity."[5] For these purposes, generally an "assembly part" is a subcomponent that is not uniquely designed for the use in the property and a "constituent material" is generally any material not uniquely formulated to be used in the property.[6]

"Prohibited foreign entit[ies]" are generally defined as "a specified foreign entity or a foreign-influenced entity."[7] "Specified" foreign entities include the following:

(i) those that have been designated as foreign terrorist organizations by the U.S. Secretary of state;
(ii) those listed as designated nationals and blocked persons by the U.S. Department of the Treasury's Office of Foreign Assets Control;
(iii) persons alleged by the U.S. attorney general to have been convicted under the Espionage Act, Economic Espionage Act of 1996, Arms Control Act, and Export Control Reform Act of 2018 (among others);
(iv) those determined "to be engaged in unauthorized conduct that is detrimental to national security or foreign policy";[8]
(v) identified Chinese military companies operating in the U.S.;[9]
(vi) Chinese entities listed as involved in forced labor or targeting of certain persecuted groups in China;[10]

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[3] Fn. 1, *supra*, § 7512(c).
[4] OBBB, § 70512(c) (amending § 7701(a)(51)-(52).
[5] *Id*.
[6] *Id*.
[7] *Id*.
[8] *Id*. (by reference to 15 U.S.C. §4651).
[9] *See* §1260H of Pub. L. 116-283.
[10] *See* Pub. L. 117-78 (135 Stat. 1527), § 2(d)(2)(B)(i)-(ii) and (iv)-(v).

(vii) the entities specified under section 154(b) of Public Law 118-31, and any successors thereof;[11] and

(viii) "foreign-controlled entities."

"[F]oreign-controlled entities" generally include those controlled or owned, directly or indirectly, by an entity specified in (i)-(vii).[12] An entity is generally under the "control" of a FEOC if more than 50% of the entity is owned by a FEOC.[13] Accordingly, it is only entities that are more than 50% owned by persons with ties to Russia, China, North Korea, or Iran that will be considered "foreign-controlled entities" under the OBBB.

While the CEITC is be eliminated for projects that do not begin construction within a 12-month period following enactment of the OBBB, the FEOC restrictions leave a slightly longer potential runway by applying only "to taxable years beginning after the date of [the OBBB's] enactment. . . ."[14] Consequently, if the OBBB is enacted in 2025, the FEOC restrictions would take effect in 2026 (assuming a calendar year tax year).

3. Effect of the OBBB on Products of Fortified

Customers of Fortified should still be eligible for the CEITC, provided construction begins on the contracted-for structure prior to the start of each such customer's next taxable year after the enactment of the OBBB. For the purpose of determining of construction has begun before this time, there are two applicable safe harbors provided by the IRS: (i) the 5% Safe Harbor; and (ii) the safe harbor provided under the Physical Work Test.[15]

Generally, the 5% Safe Harbor focuses on the amount of costs incurred by the taxpayer with respect to potentially CEITC-eligible property. The 5% Safe Harbor deems construction to have begun as of the date on which a taxpayer can establish it has paid or incurred 5% or more of the total cost of the energy property. While costs for construction, manufacturing or producing components of the property are taken into account for meeting the test, the cost of land is not taken into account.

Because customers of Fortified make an up-front payment of fifty percent (50%) of the cost of the structure when the Manufacturing Agreement is executed, customers entering into Manufacturing Agreements with Fortified that are executed (and the 50% deposit paid) in tax year 2025 should not be affected by the new FEOC restrictions contained in the version of the

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[11] These entities are:
(i) Contemporary Amperex Technology Company, Limited;
(ii) BYD Company Limited;
(iii) Envision Energy, Limited;
(iv) EVE Energy Company, Limited;
(v) Gotion High tech Company, Limited; and
(vi) Hithium Energy Storage Technology company, Limited.

[12] *See* OBBB, § 70512(c) (amending § 7701(a)(51)(C) and (D).

[13] For these purposes, "more than 50%" is applied to either the vote or value of a corporation, 50% of the capital or profits of a partnership, or 50% of the beneficial interests for all other entities. *See id*. (amending § 7701(a)(51)(F)).

[14] OBBB, § 70513(g).

[15] A detailed discussion of each of these safe harbors is beyond the scope of this Memorandum.

OBBB that passed the U.S. House of Representatives. While the 5% Safe Harbor is not met if the total cost of a project exceeds its anticipated total cost, i.e., 5% of the anticipated cost is less than 5% of the actual cost, this should not affect customers of Fortified because the initial 50% up-front payment provides significant leeway for unanticipated cost overruns.

Customers of Fortified could also rely on satisfying the Physical Work Test. Though the actions taken by Fortified largely occur off-site for the customer, such off-site work is still considered for the purposes of the Physical Work Test, which focuses on work of a "significant" nature having begun on a specific date. Because the Physical Work Test considers work undertaken pursuant to a binding written agreement, and because each Manufacturing Agreement is a binding written agreement signed by Fortified and the Customer, the work undertaken by Fortified pursuant to a Manufacturing Agreement should be taken into account under the Physical Work Test.

Additionally, suppliers of raw materials, sub-components, and other items incorporated into the energy property produced by Fortified are subject to the certification requirement provided in section 7701(a)(52)(D)(iii)(IV). Based on our understanding, Fortified maintains documentation related to such a certification by its suppliers in order to ensure both compliance with the post-OBBBA rules with respect to FEOCs. As such, the requisite documentation and supporting information should be, and remain, available to affirm Fortified's compliance with the applicable FEOC restrictions regarding the energy property produced by Fortified.

Accordingly, a customer of Fortified who enters into a Manufacturing Agreement with Fortified prior the beginning of such a customer's next taxable year following the enactment of the OBBB should not be subject to the FEOC restrictions with respect to the CEITC property manufactured by Fortified. While either the 5% Safe Harbor or Physical Work Test should allow customers of Fortified to claim the CEITC, this conclusion assumes that the continuity and continuous construction requirements are met once construction is deemed to have begun. However, based on the current draft of the Manufacturing Agreement intended to be used by Fortified, these requirements of continuous progress should also be satisfied.