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**WEEKLY**

# The DeFacto Gazette

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A WEEKLY GLOBAL, NATIONAL, INDEPENDENT, ANALYTICAL NEWSPAPER COVERING THE POLITICS AND ECONOMICS OF MONGOLIA

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**HAVE POLITICAL PARTIES  
BECOME MORE MATURE?**

The graphic features a dark teal background with a faint image of a classical building. On the left, there are several logos: the Mongolian national flag, a red rose, a blue and white horse logo, a purple logo with a crown and 'Хөдөлмөртэйг үндэсний нам' (Workers' Party of Mongolia), a red and white circular logo, a blue flag with a yellow horse, a yellow logo with a flame and 'Хүннү' (Mongolian People's Party), and a blue and green flag with a white 'E'.



№ 495

JARGALSAIKHAN Dambadarjaa

For weekly articles,  
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## HAVE POLITICAL PARTIES BECOME MORE MATURE?

Thirty years ago, Mongolia was a one-party state. In 2018, the number of political parties reached 29 and now, a year after, we count 33. The role of a political party is not restricted to competing in elections or holding political power when elected, but also extends to the provision of political education for the public and representing the views of the public. Even though the number of Mongolian political parties has multiplied, the level of maturity is still unsatisfactory. Instead of uniting and representing the public, political parties have become *extractive clubs* in Mongolia.

The Defacto Institute, an independent research institute, began publishing “The Index of Internal Democracy of Mongolian Political Parties” last year. The study aims to promote openness, transparency, and accountability of political parties by increasing internal and external checks and balances. A second study was conducted from April to June 2019.

Following four indicators were used for assessing the internal party democracy: participation, competition, representation, and funding-transparency. The political parties are scored on a scale of 0 to 100. If a party scores between 0 and 30 it is classified as non-democratic, 31 to 60 as semi-democratic, and 61 to 100 as democratic.

The participating parties of the previous study were the Democratic Party (“DP”), Mongolian People’s Party (“MPP”), Mongolian People’s Revolutionary Party

(“MPRP”), National Labour Party (“NLP”), Civil Will Green Party (CWGP), and Motherland Party (“MP”). In addition to these six parties, the Mongolian Green Party (“MGP”) and Truth and Just Party (“TJP”) agreed to join this year’s study. Other political parties were absent from the study for several reasons: they could not be contacted by the research team, they were hesitant to participate, or they merely refused to participate.

Last year, the team surveyed political party members via phone call for the quantitative part and conducted interviews with experts for the qualitative part of the study. A qualitative research method was solely utilized to advance the methodology of this year’s study.

*Table 1: The Internal Democracy Index of Mongolian Political Parties 2019*

№	Political Parties	Index	Category
1	Mongolia Green Party	66	Democratic
2	Mongolian People’s Revolutionary Party	66	Democratic
3	Democratic Party	65	Democratic
4	National Labour Party	63	Democratic
5	Mongolian People’s Party	55	Semi-Democratic
6	Motherland Party	47	Semi-Democratic
7	Truth and Just Party	42	Semi-Democratic
8	Civil-Will Green Party	32	Semi-Democratic

### POLITICAL PARTY IS NOT A CLUB

Through this research on political party rules the team discovered that only the MPP, DP, MPRP, and MGP’s internal rules were accessible through their official website. While the NLP sent its rules after a request, the TJP did not share its rules out of concern that other parties might illegally copy their documents.

Furthermore, the team made an official request to the Supreme Court, where all political parties in Mongolia must previously be registered. However, under Article 12.5 of the General Law on State Registration, in order to acquire detailed information of a political party a written consent of concerning legal entity is required, and as a result, the court denied the team’s request. It is a common practice of democratic countries to ensure public access to information on political parties or public bodies. For instance, the German Political Party Act,

Article 6.3 stipulates that

1. The statutes and party program;
2. The names and functions of the members of the Executive Committees of the party and its Land branches;
3. The dissolution of the party or any of its Land branches. These records shall be available for public inspection (...) Copies of such records shall be provided free of charge upon request.

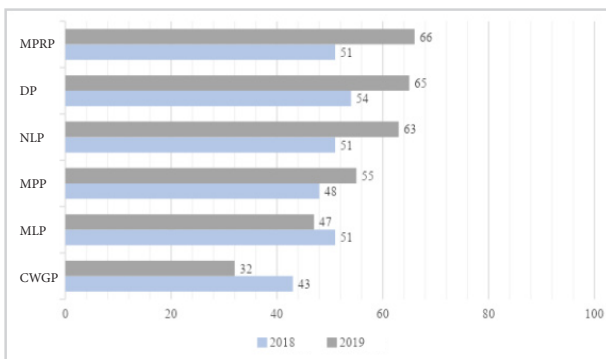
Political parties are public authorities that guarantee open and transparent activities, rules, policies, and funding. At the very least, the party’s rules must be accessible through the respective official website or social networking sites. ▶▶

► **WHAT HAS CHANGED?**

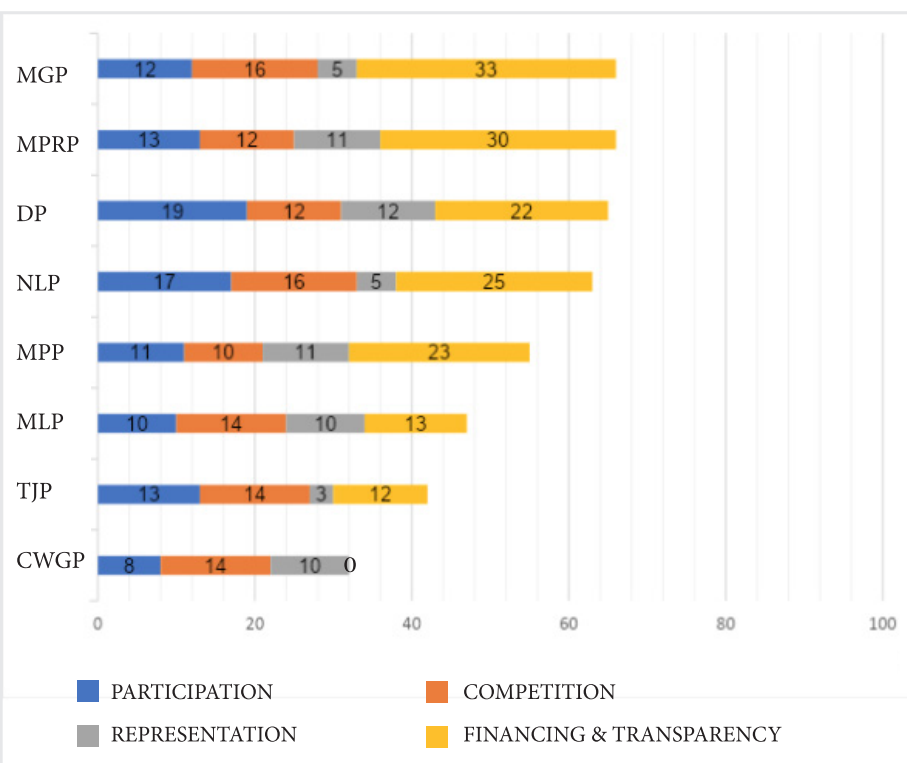
The participation of political party members is activated at all levels due to the preparation and selection of candidates to the re-election of the 42nd electoral district. Moreover, 2019 is the year preceding the election to parliament, and consequently the participation of members relatively increased because political parties have been holding the central and local meetings.

The following chart shows the changes that took place in six political parties which participated last year. Improvement can be seen on internal democracy of four political parties, whereas the internal democracy of two political parties, the MP and CWGP, weakened.

*Figure 1: Comparison of the Internal Democracy Indexes of Mongolian Political Parties of 2018 and 2019*



*Figure 2: The Internal Democracy Index of Mongolian Political Parties, by dimension*



In terms of **participation**, political parties hardly hold internal policy debates. The methods of discussing and solving internal matters are diverse, but it was commonly observed that political parties rarely involve party members or supporters in determining the party internal policy.

Regarding **competition**, there were incidents in 2019 which could be considered as worst practices of internal democracy of the MPP and DP, two political parties that hold majority and minority seats in the parliament. The two political parties suspended memberships based on the reason that members stood against the party position on the matter. J. Batzandan, the member of the parliament, was suspended and the DP's became factionless. Civil representative S. Munkhchuluun was also suspended due to his decision to run for city governor, which opposed the MPP's collective decision. Nowadays, only few select the candidates and determine their position under the party council or representative body name.

Political parties must ensure the **representation** of all social groups. Even though the parties have representatives of all social groups, including the young, old, and women, the proportion of female candidates within a party standing for election to parliament or to decision-making positions is not sufficient across all parties. In fact, the Law on Election set the minimum threshold for women in the candidate list at 20%. Moreover, several political parties have set higher gender quotas in their rules, but in reality these are not enforced effectively.

Under the Law on Political Parties, the financial activities of the Mongolian parties must be audited by an external agent and disclosed to the public. Only the NLP and the MGP are setting an example of best practices by carrying publicly open and transparent financial activities in accordance with the law, as their audited **financial reports** are made public on official websites and social networking accounts. Among other political parties it is quite common to regard transparency and openness as internal principles concerning only its members.

In the previous year, all participating political parties fell under the category of semi-democratic. This year, the MGP, MPRP, DP, and NLP made progress and leaped to the democratic category. It is noteworthy, that the scores of each assessment vary among political parties.

It is an imperative for the Mongolian political parties to mature.

# WHAT IS A "HACK AND LEAK"

## *information operation*

**Jargal Defacto:** Certainly, cybersecurity is an important topic. Around 5 years ago, I was invited to your cybersecurity course that lasted for ten days. I must say at that time I was deeply impressed with your accomplishments. I believe that Mongolia, a country with a small population, needs to utilize digital technology to empower its citizens. However, adopting such technology brings certain risks, namely an interference in election, trolls, and spread of fake news.

Two weeks ago, I attended the Eurasian Media Forum in Almaty, Kazakhstan. Interestingly, this year Steve Bannon, a White House Chief Strategist in the administration of Donald Trump, and George Galloway, a British politician and broadcaster, were invited to the Forum and discussed topics such as manipulation, trolls, and fake news. I believe that those are not country-specific issues but of global concern. In Mongolia, there were few incidents such as vote-buying, trolls, and fake news during the previous election. Thus, I would like to know if there are commonalities between interferences in the elections? Or is it country-specific?

**Jean-Baptiste Jeangène Vilmer:** If you carefully look into each case, you will discover both differences and commonalities among interferences in the election. In general, it is a three-step process which is called information "hack and leak".

The first step is spreading a false, biased, or exaggerated rumor to discredit the target through mainstream media.

The second step is hacking. Hacking can be conducted either directly, on a candidate's account, or indirectly on their close associate's account. In Clinton's case, her account was directly hacked. In Macron's case, the accounts of close associates were hacked and they accumulated 21,000 professional and personal emails that were sent between 2009 to 2017.

The last step is leaking the hacked information. In France, the stolen data was leaked two days before poll closing to make it harder for the candidate to respond properly.

On the other hand, in the Macron's case, there was an intermediary step between the second and third step which is called a 'tentative leak'. If hackers could not find incriminating information, they modify information to make it look more scandalous. For instance, some sources claimed that Macron used cocaine, or Macron is gay. This four-step process is called "hack distort leak".

**JD:** What is the best way to prevent and combat disinformation?

**JV:** A long term prevention is media literacy. Media literacy and critical thinking should be taught to citizens so they can assess online information. Though, it would only produce an effect after 5 to 15 years.

A short term solution is to create an institution. In France, the Council of State (“Conseil d’État”), a temporary institution, was set up and was in charge of ensuring equity and neutrality of the election. On the night of the leak, the Conseil d’État took action in a timely manner and produced a brief press communication in which it urged all media not to report the content of leaked information. The media worked in collaboration by only spreading the news that there was a leak and did not reveal the content of the leak. Therefore, it was eye catching for the public, and at the same time, less harmful for the candidate.

In the US, there are no neutral institutions that assess online content. Obama did not intervene in the electoral process so he would not give the impression that he is supporting Clinton, and many were confident that Clinton would win. This is an indication that the government can not act neutrally and independently. Hence, there must be an independent and neutral body that can assess online content and take appropriate measures. Currently, both the US and Canada are considering the creation of an independent body. The Canadian Minister of democratic institutions, Karina Gould, mentioned that Canada is planning to establish an independent body modeled on the French Conseil d’État during her interview with the IRSEM.

**JD:** To sum it up, the first solution is media literacy, the second is the development of an independent body. What is the third solution?

**JV:** The third is a swift reaction of civil society. It can be said that the state is biased in a certain sense and thus, the civil society, including NGOs, think tanks, and media, can independently assess and take measures against misinformation. There are two types of actions civil society could take. One is a fact-checking. It can be done by directly interviewing candidates, or by labelling information as false, true, or unverified. However, fact-checking is not enough because we are facing

not only information warfare, but also narrative warfare. Not all people are interested in facts but in exciting stories, regardless of reliability. Therefore, a civil society can develop narratives to counter disinformation. To illustrate, the Atlantic Council’s Digital Forensic Research Lab (“DFRLab”) identifies, exposes, and explains disinformation. For instance, when the DFRLab finds a Twitter account that is behaving in a suspicious way, they demonstrate that it is a fake account, or it is under Bellingcat’s investigation. As people are curious about who is spreading the fake news, what are the underlying objectives or which country is behind those actors, the Bellingcat develops narratives around that.

**JD:** Is it indeed true that the Russians made a chemical attack in the UK?

**JV:** It is true. The Bellingcat demonstrated that two tourists with fake identities were behind the attack. They found out that one is a colonel and another is a doctor in the Military Intelligence Service of the Russian Federation. Despite that, we should not be paranoid by Russia, or we should not focus on one state, and instead, we should focus on methods to prevent it.

**JD:** How can we encourage and enhance the joint efforts of democratic countries to combat disinformation?

**JV:** That is an excellent question. We can plan and organize international meetings more frequently. At this moment, the majority of meetings are organized by the NATO Strategic Communications Centre of Excellence. It is a meeting point for intellectual exchange between participants who are engaged in the diverse fields of strategic communications. During the first few years, it mostly involved participants from North America and Europe but in recent years, the number of participants from Asia is rapidly growing. Moreover, other meetings are also being held in Prague, Washington DC, and Singapore. To solve the global security challenges, we need to facilitate an exchange between East and West.

**JD:** It was quite interesting to work with you all. Thank you.

**JV:** Thank you so much.



Dr. Uyanga Delger, attorney-at-law

ARTICLE

## TAKING AN “INVENTIVE STEP” TOWARD INTERNATIONAL STANDARDS

*The Draft Law on Patents*, part of proposed reforms to the current Patent Law put forth by the Justice Ministry, suggests many progressive changes towards the worldwide common standards set by the Patent Cooperation Treaty (PCT), a multilateral treaty of 152 countries including Mongolia. It is still doubtful whether the Draft Law provides for a definitive answer to the question of “inventive step”, one of the substantial requirements for issuing a patent.

### Traditional interpretation of patentability

In Mongolia, the state has been rewarding inventors for improvements in manufacturing processes and technical functions since 1944. The ministerial regulations of 1960 and 1970 included a definition of invention, as well as requirements for monetary rewards to the inventor. The idea of a patent—that is, the private property right to exclude others from making, using, selling, or importing said invention—was introduced by the Civil Law of 1963. Back then, the socialist state owned and operated giant factories. In this system, the state economy struggled with issues of efficiency, productivity, quality, and revenue. Consequently, the state encouraged and rewarded inventors for solving these challenges. An inventor was rewarded for devising an invention that was novel and advantageous to the needs of the state factories through the increase in efficiency, or productivity, or what have you. However, the “inventive step” concept that is today one of the main substantial requirements for patentability of an invention according to PCT was unknown and inapplicable.

### Patent laws since 1990s

The patent examination praxis of the Intellectual Property Office (IPO) of Mongolia started allowing double standards on patentability of inventions when Mongolia joined the PCT in 1991. On the one hand, the IPO would accept the International Preliminary Search Report and the International Preliminary Examination Report under the PCT as foundations for issuing a patent in the national

phase of the PCT application procedure. But the IPO also followed the traditional interpretation of patentability when it came to national patent applications that were filed directly to the IPO (which were mostly applications of Mongolian citizens).

### The Draft Patent Law

Article 5.4 of the Draft Law states that an invention shall be considered as “containing the level of invention” if it possesses a “distinctively advantageous quality” when compared to the prior art “within the appropriate knowledge” of a person skilled in that art. The term “containing the level of invention” should therefore correspond to the term “inventive step” according to PCT as it is the case in the current law. New is the part of the text that mentions “compared with the prior art within the appropriate knowledge of a person skilled in the art.” This formulation is a bit closer to the PCT than the current Patent Law. “Distinctively advantageous quality”<sup>1</sup> could, however, be interpreted either according to PCT or to the traditional notion that does not require an “inventive step”, as defined in the PCT.

### Outlook

The application of high PCT standards is not easy to implement in the Mongolian day-to-day patent examination praxis. But this does not mean that the patentability requirements should be lowered according to the “old” notion. Striving to overcome the aforementioned double standards would create legal certainty and justification for patents issued by the IPO that are essential to patent enforcement. Consequently, it would be best if Art. 5.4 of the Draft Law is formulated in a way that the word “advantageous quality” does not appear in the legal definition. Moreover, integrating the term “not obvious to the skilled person (“илэрхий бус”)” as defined in Art. 33 (3) of PCT into the text of Art. 5.4 of the Draft Law is recommended<sup>2</sup>.

September 2019

<sup>1</sup> «илэрхий ялгарах давуу шинж чанартай»

<sup>2</sup> «Шинэ бүтээлийн шийдлийг патентын мэдүүлгийн анхдагч огноо, эсхүл давамгайлах огнооноос өмнөх техникийн түвшинтэй харьцуулахад холбогдох мэргэжлийн хүний зохих мэдлэгийн хүрээнд илэрхий бус байвал»



## DeFacto **REVIEW**

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**Host:**  
Namsrai Tsend

**Commentator:**  
Jargal Dambadarjaa

### WHAT SHOULD POLITICAL PARTIES BE REGISTERED AS IN THE CONSTITUTION

Discussions on amendments to the constitution began last week with those governing political parties some of the most contested. There is no agreement on principal definition of a political party within the working group with proposals put forward by the parliament and President. A political party is a group of individuals united through a common belief operating with the aim of taking political power in the country. Given that parties are the only non-governmental organization which can enter into parliament, their organizational structure, leadership and views have to be as transparent as possible.

The group is discussing the minimum membership required to be registered as a political party which is currently at 800 but the President is suggesting that this number should be set at over 50,000. After significant debate, an agreement that it shall be set at 1% of the suffrage was reached. Another issue currently being discussed is whether there is a need for political parties to conduct their operations across the country. The discussion of whether parties should operate across the nation is also irrelevant as people shall provide an answer to this question through elections.

There is substantial fear among legal professionals that the parliament proposal in particular would not be able to guarantee judicial independence. This is despite the fact that this is an area that it regarded as the primary driver for constitutional reform. This is because judicial powers are so limited that no one is held accountable for corruption or mismanagement of public property. The first suggestion being discussed regarding the

judiciary is that there is no need to have courts in every administrative district and that courts encompassing larger populations shall work more effectively. The proposal also seeks to establish a 10-man judiciary consisting of 5 leading legal minds and 5 individuals nominated by parliament and approved by the President. The legal experts would be chosen by the bar association, the parliament standing committee and the Prime Minister. The proposal also encompasses a judicial disciplinary committee that shall operate under its own rules and procedures.

Should these proposals not get approved, there would be no significant changes in the Mongolian justice system and the proposals seem to be supported by a large section of society. I wrote an article a couple of weeks ago on the current state of discussions on the amendments to the constitution. Discussions are moving forward in a tit for tat manner where policymakers are agreeing to certain aspects in one proposal provided that they receive support for certain aspects on their own proposal. Given the likelihood that the ensuing document to result in being the lowest common denominator, it is not recommended that this course of action be pursued in such an important issue.

The single-issue permeating discussions that the amendments would address is whether Mongolia is a parliamentary or semi-presidential state. As the ruling party enjoys 64 seats in a 76-seat parliament, amendments to the constitution would most likely pass.

### IS THE GOVERNMENT IMPROVING THE BUSINESS ENVIRONMENT IN MONGOLIA?

Last week, the Prime Minister of Mongolia and parliament members met with business leaders in the Mongolian National Chamber of Commerce and Industry where they presented the current prospects of the economy and society and policies undertaken to improve them. The meeting is one of six to be held by Prime Minister Khurelsukh on the issue and was conducted under the auspices of the new leadership of the Chamber of Commerce which consists of approximately 250 companies which employ 70,000 individuals and the combined output of which is equivalent to 45% of Mongolia's GDP and 35% of tax revenue.

To start the meeting, the Prime Minister stated that the situation wasn't abysmal, for example pointing to the 7.3% growth in GDP in 2018 and also the budget deficit of 18% in 2016 had been completely wiped out. He also reflected on the increase in trade and the currency reserves reaching 4 billion USD leading to a relative stabilization of the exchange rate. The credit situation also improved with the government no longer issuing high interest bonds and interest rates dropping to 18-19%. With this said, the Prime Minister also acknowledged that there were a multitude of issues that needed to be addressed.

With all cabinet members present and the audience able to pose question, this was an opportunity for genuine, frank dialogue and is one of the attempts to engage businesses on those most pertinent issues. Mongolia failed to receive a prominent ranking in the Doing Business in the World Index with cross-border trade being ranked 117th out of 190 countries and resolving insolvency being ranked 152th. For example, the current bankruptcy legislation leads to lengthy, complicated processes.

Moreover, there needs to be a better business environment which can only be established when policymakers are no longer involved in business. Moreover, money appropriated to politicians through the Small and Medium Enterprise fund with a 3% interest rate when the market interest rate was hovering around 25% needs to be returned. Other issues that need to be addressed are setting job qualifications for members of parliament, transparent political party financing, and transferring state-owned enterprises to the public.

## PREPARATIONS FOR PUTIN'S VISIT

Russian President Vladimir Putin shall visit Mongolia for the 80th anniversary of the battle of Khalkhin Gol with the sides agreeing to sign a comprehensive strategic partnership agreement during the visit. A performance by Russian fighter jets clearly demonstrated the capacity of their air force. As the Khalkhin Gol battle was a significant engagement where many Mongolian and Russian soldiers died, it is something that should never be forgotten and we should respect those that died fighting for the freedom of their country.

During their celebrations, we should also ask whether we are worthy of their sacrifice. If the answer is affirmative, then why do a third of Mongolians live under the poverty line? Why does half of the country live in unacceptable sanitary conditions? Can our leaders demonstrate the same bravery as the soldiers that died in this battle?

While the performance by jets was impeccable, it raises the question of how Mongolia would deal with incidents taking place during such performances that damage property or people. With the visit of President Putin being declared a public holiday, it has an abrupt impact on the private sector who would not necessarily have the time to change plans that are set. Public holidays need to be announced a year prior to the event. This also raises the question of whether public holidays would be declared every time a Head of State visits Mongolia. Moreover, a significant number of roads will be closed for the visit which makes little sense as our President travels in motorcades without closing the roads.



As for the comprehensive strategic partnership agreement, it is only a piece of paper unless it is implemented. Take for example the joint venture railroad agreement signed 70 years ago. The railroad is currently one of the most dangerous in the world due to outdated wooden pillars which lead to sporadic incidents. There have been agreements to renew the railroad but no action has been taken to date. Given that it is state-run; it is one of the most inefficient railways in the world. The railroad consists of 1,100 km of tracks and employs 16,000 people while Canada, whose railroad is 5 times larger only employs 10,000 people. It is evident we can't compare ourselves to Canada but the question remains as to why the company does not become a private or public one. Therefore, Mongolians are seeking concrete results from this agreement.

An article that I wrote discusses our President proposing that President Putin celebrate the 80th anniversary of Khalkhin Gol during a meeting in Vladivostok last year. As part of the celebrations, RosNeft pledged 8 million euro to help rebuild the soum where the battle took place with social infrastructure being restored and built as a result of this donation. The three conditions attached to this support are: kerosene supply concessions for the new and old airport, to place RosNeft gas stations along Mongolia's highway and that supplying crude oil to Mongolia's refinery is infeasible due to the small size of the operation. The fact that help is coming with conditions attached seems extremely manipulative.

*This review has been edited here for space and clarity. You can watch the full 30-minute review on the Defacto website [\[HERE\]](#).*

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