

[recovered from the vector store — section19.html p.1]

Section 19 DPDPA

Composition and qualifications for appointment of Chairperson and Members.

19.(1) The Board shall consist of a Chairperson and such number of other Members as the Central Government may notify.

(2) The Chairperson and other Members shall be appointed by the Central Government in such manner as may be prescribed.

(3) The Chairperson and other Members shall be a person of ability, integrity and standing who possesses special knowledge or practical experience in the fields of data governance, administration or implementation of laws related to social or consumer protection, dispute resolution, information and communication technology, digital economy, law, regulation or techno-regulation, or in any other field which in the opinion of the Central Government may be useful to the Board, and at least one among them shall be an expert in the field of law.

Applicable DPDP Rule 2025

Rule 17: Appointment of Chairperson and Other Members

← Section 18 DPDPA

Section 20 DPDPA →

DPDPA

Table of contents

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Legal Interpretation of the

Section 19 of the Digital Personal Data Protection Act, 2023 (DPDPA)

Statutory Provision and Purpose

Provision: Section 19 of the Digital Personal Data Protection Act, 2023 states:

"Composition and qualifications for appointment of Chairperson and Members."

While the section title is concise, its implications are significant within the framework of the DPDPA 2023. This provision outlines the structural composition of the Data Protection Board (hereinafter referred to as "the Board") and specifies the qualifications required for the appointment of its Chairperson and Members. Establishing clear criteria ensures that the Board is staffed with individuals p

[recovered from the vector store — section19.html p.2]

assessing the requisite expertise, integrity, and impartiality to effectively oversee and enforce data protection regulations.

Purpose:

The primary objective of Section 19 is to define the foundational structure of the Board, ensuring that it is composed of qualified individuals capable of performing its duties with competence and impartiality. By delineating the composition and qualifications, the Act aims to:

Ensure Expertise: Guarantee that Board members possess specialized knowledge in data protection, law, technology, and related fields.

Promote Impartiality: Select members who can operate without bias, maintaining the integrity of the Board's decisions.

Foster Accountability: Establish clear standards for appointments to hold members accountable to high professional and ethical standards.

Enhance Credibility: Build public trust in the Board by ensuring that its composition reflects diverse and qualified perspectives.

Legal Interpretation

1. Composition of the Board

****Section 19**** delineates the structural makeup of the Board, specifying the number of Chairpersons and Members, as well as their areas of expertise. The composition typically includes:

Chairperson: The head of the Board, responsible for leading meetings, representing the Board externally, and ensuring the effective functioning of the Board.

Members: Individuals appointed to assist the Chairperson in executing the Board's functions. Members may come from various professional backgrounds relevant to data protection.

Key Considerations:

Diversity of Expertise: The Board should encompass a range of expertise, including legal, technical, and industry-specific knowledge, to address the multifaceted nature of data protection issues.

Balanced Representation: Ensuring that different sectors and stakeholder groups are represented can enhance the Board's decision-making processes and policy formulations.

2. Qualifications for Appointment

****Section 19**** specif

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ies the qualifications required for the Chairperson and Members to ensure that the Board is staffed with competent and credible individuals. General Qualifications:

Educational Background: Advanced degrees in law, information technology, data science, or related fields. Professional Experience: Significant experience in data protection, cybersecurity, privacy law, or regulatory compliance. Ethical Standards: Demonstrated integrity, impartiality, and adherence to ethical practices. Leadership Skills: Proven ability to lead, manage teams, and navigate complex regulatory environments (especially for the Chairperson). Specific Qualifications for Chairperson:

Leadership Experience: Extensive experience in a leadership role within a regulatory body, government agency, or private sector organization. Reputation: Recognized for professionalism and expertise in data protection and privacy matters. Communication Skills: Ability to effectively communicate complex data protection issues to diverse audiences, including policymakers, industry stakeholders, and the public. Specific Qualifications for Members:

Technical Expertise: Proficiency in data security, encryption, data analytics, or other technical aspects of data protection. Legal Acumen: Strong understanding of privacy laws, regulatory frameworks, and compliance requirements. Industry Knowledge: Familiarity with industry-specific data protection challenges and best practices. Analytical Skills: Capability to analyze data protection issues critically and formulate evidence-based recommendations.

3. Appointment Process

The appointment of the Chairperson and Members is governed by a transparent and merit-based process to ensure the selection of qualified individuals.

Steps in the Appointment Process:

Nomination:

Candidates may be nominated by a designated nominating committee, existing Board members, or other authorized bodies as specified by the Act.

Evaluation:

A thorough evaluation o

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f candidates' qualifications, experience, and suitability for the role is conducted. This may involve background checks, interviews, and reference verifications.

Selection:

Based on the evaluation, candidates are selected to serve as Chairperson and Members. The selection aims to balance expertise, diversity, and representation.

Official Appointment:

Appointments are formalized through official notifications or orders issued by the appointing authority, typically the Central Government or a designated minister.

Term of Office:

The Act specifies the tenure for the Chairperson and Members, including provisions for reappointment, retirement, and removal to ensure continuity and accountability.

4. Tenure and Removal

Tenure:

Fixed Term: The Act may specify a fixed term for the Chairperson and Members, typically ranging from three to five years.

Renewal: Provisions for renewal or reappointment are included to maintain continuity while allowing for fresh perspectives.

Removal:

Grounds for Removal: Members may be removed from their positions for reasons such as misconduct, inability to perform duties, conflict of interest, or other specified grounds.

Procedure for Removal: A clear and fair procedure is outlined to ensure that removal is justified and conducted impartially, often involving a majority vote or decision by a designated authority.

5. Roles and Responsibilities

Chairperson:

Leadership: Leading Board meetings, setting agendas, and ensuring that discussions are focused and productive.

Representation: Acting as the public face of the Board, representing it in official capacities and external engagements.

Oversight: Supervising the overall functioning of the Board and ensuring that its objectives are met.

Members:

Specialized Functions: Handling specific areas of data protection based on their expertise, such as cybersecurity, legal compliance, or policy development.

Advisory Role: Providing informed advice and recommendations to the Board on com

[recovered from the vector store — section19.html p.5]

plex data protection issues.

Participation: Actively participating in meetings, discussions, and decision-making processes.

6. Checks and Balances

Conflict of Interest Policies: Members must declare any potential conflicts of interest and recuse themselves from related decisions.

Performance Evaluations: Regular assessments of the Board's performance and individual contributions ensure accountability.

Transparency Measures: Publishing the composition of the Board and qualifications of its members fosters transparency and public trust.

7. Policy Considerations and Safeguards

- Inclusivity: Ensuring that the Board's composition reflects the diversity of the data ecosystem, including representation from various industries and sectors. - Adaptability: Designing appointment criteria and processes that allow the Board to adapt to emerging data protection challenges and technological advancements. - Ethical Standards: Upholding high ethical standards to prevent corruption, favoritism, and undue influence in the appointment process. Illustrations

Illustration 1: Appointment of a Qualified Chairperson

Scenario: Dr. Meera Sharma, a renowned cybersecurity expert with over 20 years of experience in data protection and privacy law, is nominated for the position of Chairperson of the Data Protection Board. Application of Section 19:

Nomination:

Dr. Sharma is nominated by a nominating committee composed of previous Board members and industry experts. Evaluation:

Her extensive background in cybersecurity, combined with her legal expertise and leadership roles in previous regulatory bodies, make her an ideal candidate.

Selection:

The selection panel reviews her credentials, conducts interviews, and verifies her professional history, ultimately selecting her as the Chairperson. Official Appointment:

The Central Government issues an official appointment order, formalizing Dr. Sharma's role as Chairperson for a term of five years.

[recovered from the vector store — section19.html p.6]

ars, with the possibility of one renewal.

As Chairperson, Dr. Sharma leads Board meetings, represents the Board in national and international forums, and oversees the implementation of data protection policies.

Illustration 2: Diverse Composition of Board Members

Scenario: The Data Protection Board aims to ensure a balanced representation of expertise by appointing members from various professional backgrounds.

Mr. Arjun Verma, a legal expert specializing in privacy law.

Ms. Kavita Rao, a data scientist with experience in big data analytics.

Mr. Rakesh Gupta, an IT professional with a background in cybersecurity.

Dr. Leena Kapoor, a representative from the healthcare sector familiar with patient data protection.

Each candidate's qualifications are assessed based on their expertise, experience, and ability to contribute to the Board's objectives.

The Central Government appoints these individuals as Members of the Board, ensuring that the Board benefits from a diverse range of perspectives and skills.

Mr. Verma focuses on legal compliance and policy formulation.

Ms. Rao advises on data analytics and ethical data usage.

Mr. Gupta handles cybersecurity protocols and breach investigations.

Dr. Kapoor ensures that healthcare data protection standards are upheld.

Illustration 3: Removal of a Board Member for Conflict of Interest

Scenario: Mr. Suresh Menon, a Board member with significant investments in a data analytics firm, is found to have a conflict of interest in cases involving data analytics services.

An internal audit reveals Mr. Menon's financial ties to the firm, which could influence his impartiality in related Board decisions.

Mr. Menon is required to declare his conflict of interest and recuse himself from any Board pro

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ceedings related to data analytics. Removal Process:

Given the severity of the conflict, the Board initiates the removal process as stipulated in Section 19.

A formal review is conducted, and based on the findings, Mr. Menon is removed from the Board to maintain its integrity. Replacement:

A new member with expertise in data ethics is nominated and appointed to fill the vacancy, ensuring the Board remains fully functional and unbiased. Illustration 4: Enhancing Public Trust Through Transparent Appointments

Scenario: To build public confidence, the Board ensures that all appointments are made transparently and based solely on merit. Application of Section 19:

Public Announcement:

The Board publicly announces the criteria for appointments, the nomination process, and the qualifications required for Chairperson and Members. Open Evaluation:

A transparent evaluation process is conducted, where candidates are assessed based on their qualifications without undue influence from external entities.

Publication of Credentials:

Upon appointment, the Board publishes the qualifications, professional backgrounds, and roles of the Chairperson and Members, allowing the public to assess their suitability. Continuous Monitoring:

The Board regularly reviews its composition and the performance of its members, making necessary adjustments to uphold high standards of governance and accountability. Conclusion

Section 19 of the Digital Personal Data Protection Act, 2023 is a cornerstone in establishing a competent, credible, and impartial Data Protection Board. By clearly outlining the composition and qualifications for the appointment of the Chairperson and Members, this provision ensures that the Board is equipped with the necessary expertise and ethical grounding to effectively oversee and enforce data protection regulations.

Key Highlights:

Expertise and Diversity: The provision mandates that the Board comprises individuals with diverse backgrounds and speciali

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zed knowledge in data protection, law, technology, and relevant industries, enhancing its ability to address complex data privacy challenges.

Impartiality and Integrity: By setting stringent qualifications and establishing conflict of interest policies, Section 19 safeguards the Board's impartiality, ensuring that its decisions are fair and unbiased.

Transparent Appointment Process: A clear and merit-based appointment procedure fosters public trust, demonstrating that Board members are selected based on their qualifications and commitment to data protection principles.

Accountability Mechanisms: Provisions for removal and regular performance evaluations hold Board members accountable, maintaining the Board's effectiveness and credibility.

Enhanced Trust: Transparent operations and a well-composed Board reinforce public confidence in the data protection regime, encouraging data fiduciaries to comply willingly with data protection norms. Through the meticulous implementation of the composition and qualification criteria outlined in Section 19, the Data Protection Board can uphold the principles and objectives of the DPDPA 2023, ensuring robust protection of personal data and fostering a secure digital ecosystem.