

---

**Welcome**

## Legal Issues and interpretation of BERC Act

---

At present, only 30% of the population can enjoy the benefit of power (electricity) and much less in gas.

For the betterment of standard of life, energy singularly can play a key role. It has direct impact in economy both at Micro and Macro level.

To have increased rate of production and supply of energy, gas and electricity at a reasonable price necessitates more investment and efficient management in the sector.

Liberalization of the sector may pave the way for more investment but proper regulatory framework is a precondition of such liberalization.

---

Against this backdrop, there was a consensus among the development partners and the government of Bangladesh to establish an independent and impartial regulatory body in the energy sector, and a legislative policy incorporating the different aspects for the establishment of such a body was developed after consultation with major stakeholders. Finally, Bangladesh Energy Regulatory Commission Act, 2003 (Act # 13 of 2003) was passed by the parliament on 13th March 2003.

## Salient features of Act

---

- a. The Commission shall have a Chairman and four Members and they are to be appointed by the President.
- b. To ensure continuity and consistency in functioning of the Commission the appointment of Members and Chairman has been designed in staggered manner and they shall be selected from different discipline.
- c. Members and Chairman shall be appointed for a period of three years and during this period they ordinarily cannot be removed and their pay and allowances shall be separate.
- d. Commission shall have its own fund to be managed by it.
- e. Operator ship License in the Energy business to be issued, renewed and may also be varied, cancelled by the Commission.
- f. Tariff, all sorts of operational standards including safety and environmental standards to be determined and all other functions appropriate for the fulfillment of the objectives of the Act to be carried out by the Commission.

*Continued...*

## Salient features of Act

---

- g. Disobedience and violation of the provisions of this Act and other Acts related with energy business can be prevented by the Commission.
- h. Protection of consumer rights and creation of congenial atmosphere of doing energy business have been vested with the Commission.
- i. Details regulations to be framed by the Commission for achieving objectives of the Act.
- j. Commission in discharging its duties is independent and entities engaged in energy business is entitled to get equal treatment according to law irrespective of their identity.
- k. Commission shall act collectively and decide each case on its merit. Members and Chairman cannot decide any case individually so that collective wisdom is reflected in decision.
- l. The decision of the Commission is final.

## Impacts of the establishment of Commission

---

Some of the consequential changes or necessary amendments are yet to be done in line with provisions of the Act. Does it stand on the way to implement different provisions of this Act specially those which are conflicting with other laws? Definitely not, as section 3 provides overriding effect of this Act. For example License for electricity operator ship is issued by the inspector exercising authority under Electricity Act, 1910. No amendment has taken place in the Electricity Act but by virtue of the section 3 of the BERC Act it stands amended, and as a result electricity License is to be issued by the Commission.

---

The ministry of power, energy and mineral resources is responsible to take initiative to bring changes in different laws in line with the provisions of BERC Act. Sooner the conflicting provisions in various laws are detected, and cured accordingly be making consequential changes, the Commission will be in better position to consolidate its authority in discharging its functions.

Government may do the needful or the Commission may also place the list of laws to the Government with mentioning areas where amendments are necessary. Initially it requires a careful scrutiny of laws applied in the energy sector.

---

Transparency in the energy sector and in the functioning of the Commission is a precondition to attract further investment. Transparency in decision making process will help in establishing predictability. Investor wants predictability of their investment. Agencies associated with the implementation of the BEREC Act to be sensitized so that Commission gets better shape and look. Good law does not guarantee by itself good result unless the provisions are properly appreciated and implemented in its right perspective.

---

Thanks