



B-BBEE Commission APP 2023/2024

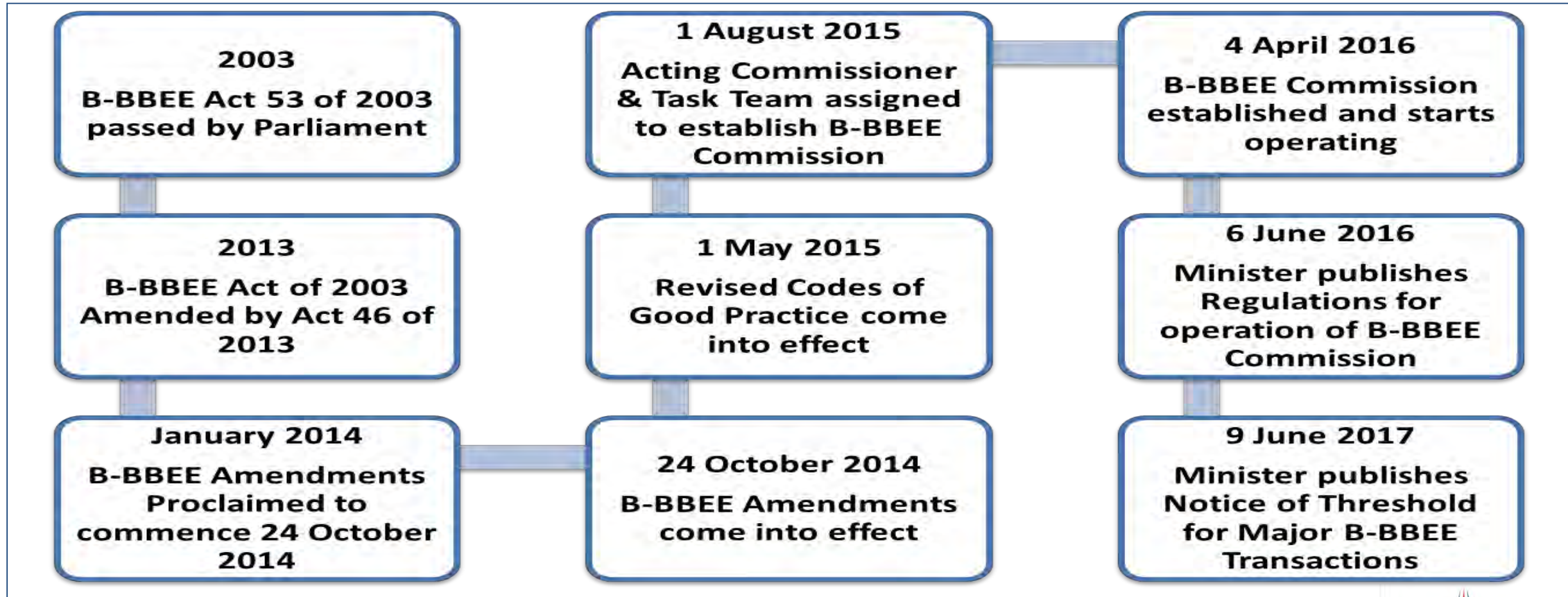
**Portfolio Committee on Trade, Industry and
Competition**

9 May 2023

Outline

- ❑ Background
- ❑ Objectives of B-BBEE Act & Measurement
- ❑ Mandate & Work of B-BBEE Commission
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- ❑ Outputs supporting **the dtic** Outputs/Targets 2023/2024
- ❑ Cross-cutting Focus
- ❑ Risk, Assumptions and Partnerships
- ❑ Financial Overview
- ❑ Implementation

Background



Objectives of B-BBEE Act

B-BBEE

Increasing
number of black
people that own,
manage, control

Facilitating
management and
ownership by
communities,
workers,
cooperatives &
others

Human resource
and skills
development

Achieving
equitable
representation in
all occupational
workforce levels
and categories

Preferential
procurement from
black owned or
managed

Investment in
enterprises that
are black owned
or managed

Section 2 of the B-BBEE Act

B-BBEE Commission Mandate

Functions (s1F)

Monitor, supervise and promote adherence in the interest of the public

Strengthen collaboration between private and public sectors to safeguard the objectives

Receive complaints or initiate investigations

Promote advocacy, access to opportunities and educational programmes

Maintain register of major B-BBEE transactions (>R25 million)

Receive and analyse prescribed reports (JSE listed entities, SETA, Public Entities, Organs of State)

Promote good corporate governance and accountability

Increase knowledge and public awareness (guiding, declaratory order, researching)

Work of B-BBEE Commission

Compliance Promotion

- Advisory opinions & Clarifications
- Compliance Reports
- Major B-BBEE transactions
- Explanatory Notices
- Practice Guides/Brochures
- Advisory Letters
- Education & Awareness sessions
- Advisory Stakeholder meetings
- Site visits for tip-offs/reports

Corrective Enforcement

- Complaints
- Non-Investigations
- Investigations
- Site visits for investigations
- Alternative dispute resolution
- Findings
- Remedial recommendations
- Referral to other regulators
- Referral for criminal prosecution

Core Processes and Timelines



Complaints

B-BBEE7 Form
Alternative Dispute Resolution
Findings and Recommendations
Up to 12 months to investigate



Advisory Opinions

Explanatory Note on Procedure issued
Non-binding and based on set of facts
Provide within 30 days



Registration of Major B-BBEE transactions

Based on Threshold
Certificate of Registration within 10 days
Feedback on merit within 90 days



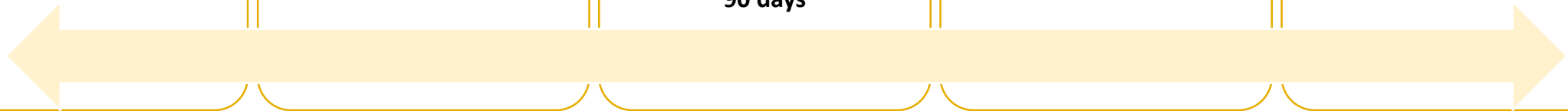
Compliance Reports

JSE Listed, SETA, Organs of State, public entity
Sector Council
Consider report within 90 days



Written Clarifications

General interpretation or application of B-BBEE
Issued within 5 days



- *All timelines achieved/exceeded, except on some investigations*

B-BBEE Measurement

- ❑ B-BBEE implementation and measurement is guided by **Codes of Good Practice** (generic codes and 10 approved sector codes) as regards **Ownership** (100), **Management Control** (200), **Skills Development** (300), **Enterprise and Supplier Development** (400) and **Socio-Economic Development** (500).
- ❑ The **Private Sector** applies the normal scorecard, while **Organs of State & Public Entities** are measured using specialised scorecard (004) which excludes ownership element, but must comply requirements on procurement, licences, sale of state assets, public-private partnerships and incentive scheme.
- ❑ Multinationals may apply for **Equity Equivalent Investment Programme** (EEIP) (Statement 103) at **the dtic**, which if approved entails a financial contribution instead of equity/shareholding transaction to meet the ownership target.
- ❑ Ownership can also be achieved through **sale of assets or business** to black people, subject to the business or asset sold being viable and vesting in the hands of black people.

Skills Development & Socio-Economic Development Support Black People

Skills Development

- **Investments** in **skills development** of black people.
- Measured entities must set aside **6% of payroll** towards skills training of both employees and non-employees.
- Introduced a **15% cap** for non-core training costs such as accommodation, catering etc.
- Introduced a **15% cap** on informal training.
- The compliance targets are based on **EAP** targets.

Socio-Economic Development (SED)

- Contributions to improving **socio-economic conditions** of black people
- Targeting **rural and under-developed areas**
- Measured entities to **use 1% NPAT** on annual basis towards SED.
- **75% of beneficiaries** must be **black people**.

Enterprise & Supplier Development Support Black People

- ❑ Promotion of procurement from B-BBEE compliant suppliers and increase financial support towards black entities.
- ❑ Aim is to enhance local procurement and strengthen local suppliers
- ❑ Measures preferential procurement, supplier development, and enterprise development.
- ❑ Beneficiaries of enterprise and supplier development are EMEs or QSEs which are at least 51% black owned or at least 51% black women-owned.
- ❑ Commission's research on ESD shows only 46.46% of allocated budget for ESD by measured entities was spent in 2021, which translated to R26 billion. Effective spending of all allocated ESD funds (3% NPAT) could have major transformative impact on the SMME sector's and catalyse inclusive long-term growth and alleviate the current high levels of unemployment

Major B-BBEE Transactions

- ❑ **50 transactions** were received in 2022/23, 41 were registered and 9 rejected
- ❑ Total value for registered transactions gross in 2022/23 was **R35.870 billion**, compared to R28.989 billion for 57 registered transactions in 2021/22. (Cumulative gross total value from 608 registered transactions since 2017/18 amounts R637 billion)
- ❑ **Trusts, Employee Share Ownership Schemes (ESOPs) and Broad-based Black Ownership Schemes (BBOS)** were present in 12 of the 41 Major Transactions, and amounted to **R24.437 billion**, which is 68% of the total transactional value
- ❑ Trusts, ESOPs and BBOS are often part of major transactions, but as the transactions are funded by loans the black beneficiaries will realise value in the future
- ❑ Transactions are funded by a combination of cash, vendor financing, bank loans, loan accounts, share swaps, asset exchanges and the selling of debt. No transactions were funded by Government Funding since the 2019/20

Complaints Handling and Compliance Promotion in 2022/23 FY

❑ **114 complaints (1 246)** received, 84% relating to fronting practices found in the following, for e.g.:

- ✓ Creation of 51% black owned entities and black ownership with no economic benefits/participation;
- ✓ Patterns identified in structures involving Trusts, BBOs and ESOPS;
- ✓ Misrepresentation of B-BBEE credentials

❑ **68** complaints closed through **non-investigation**, 1 **Alternative Dispute Resolution** agreements, 94 findings, and 2 referrals (**913 complaints closed**).

❑ Mining, transport, engineering, and construction sectors account for highest number of fronting cases.

❑ **1 433 clarifications (8 975)** issued on interpretation of B-BBEE Act.

❑ **27 advisory opinions (245)** provided on B-BBEE initiatives, which most related to ownership structures.

❑ **64 (401)** awareness sessions conducted (47 Gauteng, 7 KZN, 4 North West, 2 Northern Cape, 1 Western Cape, 2 Mpumalanga, 1 Eastern Cape, with a total of 357 people reached).

❑ **9 (212)** B-BBEE certificates and sworn affidavits declared invalid.

Complaints Handling and Compliance Promotion: **Penalties**

- ❑ B-BBEE Act section 13O prohibits **fronting, misrepresentation of status**, providing false information to verification agents, verification agent failing to report contravention.
- ❑ **Penalties** – natural person can be a fined or imprisoned for up to 10 years. Fine for juristic person is up to 10% of annual turnover for juristic person.
- ❑ **Cancellation of contract or award** in terms of section 13A on account of false information.
- ❑ **Exclusion** from doing business with the state (section 13P) for up to 10 years – could be limited to the directors, members or shareholders.
- ❑ Register on **National Treasury's tender defaulters register**.

Role of APP

- ❑ Annual Performance Plan (APP) sets out activities, outputs and outcomes that the B-BBEE Commission seeks to achieve with specified timeframes and available resources
- ❑ The B-BBEE Commission's APP is aligned to government and **the dtic** overarching priorities (e.g. ERRP), in particular promoting the participation of black people in the economy and compliance with e.g enterprise, supplier, skills development and socio-economic development requirements of the B-BBEE Act and Codes
- ❑ The B-BBEE Commission's are regulatory outputs more directly contribute to **the dtic's** Transformation outcomes, outputs and targets.
- ❑ Furthermore, the Commission provides advice on B-BBEE-related matters in **the dtic's** programmes, such as investment promotion, Equity Equivalent Investment Programme, Black Industrialists, incentive administration, and contributes to **the dtic's** stakeholder engagements and commitments to efficiency and red-tape reduction
- ❑ Progress on the implementation of Commission's set targets will be reported on quarterly basis.

APP Core Outputs and Targets 2023/24 FY

Programme	Outcome	Output	Output Indicator	2023/24 FY
Compliance	Improved Compliance	Guide implementation of the B-BBE Act	Average number of days taken to provide advice to clients	30 days
			Average of number of days taken to issue clarifications to clients	5 days
			Number of days taken to provide requested advice on B-BBEE-related matters in New Developed Masterplan	1
			Average number of days taken to provide requested advice on B-BBEE-related matters in expedited regulatory amendments and flexibility to promote energy efficiency	20 days
			Average number of days taken to provide requested advice on B-BBEE-related matters in Schemes for: Black Industrialists; SMMEs, Workers Empowerment (ESOPs); and women and youth-owned businesses support	20 days
			Average number of days taken to provide requested advice on B-BBEE-related matters in incentive adjudication processes	20 days
			Number of days taken to provide requested advice on B-BBEE-related matters in priority legislation amendments	20 days

APP Core Outputs and Targets 2023/24 FY

Programme	Outcome	Output	Output Indicator	2023/24 FY
Compliance	Capable State	Educate Stakeholders on B-BBEE	Guidelines / Brochures translated in different languages	2 annually
			Number of education and awareness sessions conducted	10 annually
			Number of community outreach programmes of the dtic group supported on request	1
			Number of conferences, summits and international forums supported on request	1
	Measurable empowerment benefits in major transactions (i.e. of > R25m in value)	Assessment of B-BBEE major transactions (i.e. of > R25m in value)	number of days taken to register transactions and issue registration certificates	10 days
			Enhanced quality of empowerment Transactions	90 days taken to assess transactions and issue remedial instruction
	Measurable empowerment benefits of ESD, SD & SED investments	Assessment of compliance with ESD, SD & SED elements by reporting entities	Value invested for Supplier Development, Enterprise Development, Socio-Economic Development and Skills Development elements	90 days taken to assess compliance reports

APP Core Outputs and Targets 2023/24 FY

Programme	Outcome	Output	Output Indicator	2023/24 FY
Compliance	Measurable empowerment benefits of ESD, SD & SED investments	Assessment of compliance with ESD, SD & SED elements by reporting entities	Value invested for Supplier Development, Enterprise Development, Socio-Economic Development and Skills Development elements	90 days taken to assess compliance reports

Programme	Outcome	Output	Output Indicator	2023/24 FY
Investigation & Enforcement	Improved Compliance	Conduct both proactive and reactive investigations.	Average percentage of reports produced on investigations conducted within 12 months	On average 50% investigation findings produced on investigations conducted within 12 months upon receipt of complaint / initiation
		Encourage and guide resolution of disputes through ADR when necessary.	Average percentage of identified cases analysed & investigated for possible ADR process, if any. [r15 (11)]	80% of the identified cases for ADR finalised within 6 months, if any [r15 (11)]

APP Core Outputs and Targets 2023/24 FY

Programme	Outcome	Output	Output Indicator	2023/24 FY
Investigation & Enforcement	Improved Compliance	Referral to other regulatory entities when necessary.	Percentage of cases referred to other Regulatory entities on average within 30 days, if any. [s13J (6)]	100% of identified cases referred on average within 30 days, if any.

Programme	Outcome	Output	Output Indicator	2023/24 FY
Research, analysis and reporting	Improved Compliance	Report on B-BBEE National Status and Transformation Trends	Number of 'National Status' Annual Report produced	100% of identified cases referred on average within 30 days, if any.
		Report on Major Transactions	Number of major B-BBEE Transaction Report produced	1 Major B-BBEE Transaction report produced

APP Core Outputs and Targets 2023/24 FY

Programme	Outcome	Output	Output Indicator	2023/24 FY
Relationship Building/Stakeholder Relations	Improved Compliance	Build mutual relationships with selected partners.	Monitor, maintain and evaluate relationships and produce stakeholder report	Annual Stakeholder Report
	Improved public awareness about BBEE	Increased reach of audiences	Media Monitoring report	Implement Corporate Identity Manual
		Reviewed B-BBEE Brand Philosophy for Alignment to current organisational strategy	Reviewed Corporate Identity Manual	Implement Corporate Identity Manual

APP Core Outputs and Targets 2023/24 FY

Programme	Outcome	Output	Output Indicator	2023/24 FY
Administration	Effective and Efficient Organisation	Develop and Implement ICT strategy and infrastructure	Develop Integrated data base (data warehouse) for the B-BBEE Commission.	Implement Integrated data base
		Implement and maintain support systems	Number of systems developed, implemented, maintained, enhanced and monitored.	Implement and maintain 3 Systems (One stop portal, Events Management System and B-BBEE certificate & reports portal
		Multi- Skilled workforce/ staff	Average percentage of officials trained on internal policies and B-BBEE	60% officials trained
	State capacity to promote transformation	Black Women Trained on Corporate Governance	Number of Black women trained on Corporate Governance	434 Black Women Trained on Corporate Governance
		Support to the dtic red tape and state	Number of days taken to process supplier invoices in support of the dtic red tape reduction targets and improved turnaround times	5 days taken from date of receipt to process supplier invoice and

Outputs supporting **the dtic** Outputs/Targets 2023/24 FY

Industrial Support

the dtic outputs	Output	Pillar	Outcome
Output 8	Provide requested advice on B-BBEE-related matters in supporting SMMEs, women and youth-owned businesses support	1 (to continue growth with transformation)	2 (transformation to build an inclusive economy)
Output 43	Provide requested advice on B-BBEE-related matters in incentive adjudication processes	1 (to continue growth with transformation)	2 (transformation to build an inclusive economy)

Industrial Production

the dtic outputs	Output	Pillar	Outcome
Output 11	Provide requested advice on B-BBEE-related matters for Black Industrialists	1 (to continue growth with transformation)	2 (transformation to build an inclusive economy) and industrialization

Outputs supporting **the dtic** Outputs/Targets 2023/24 FY

Transformation

the dtic outputs	Output	Pillar	Outcome
Output 15	Provide requested advice on B-BBEE-related matters in Schemes for Workers Empowerment (ESOPs)	1 (to continue growth with transformation)	2 (transformation to build an inclusive economy)

Energy

the dtic outputs	Output	Pillar	Outcome
Output 22	Provide requested advice on B-BBEE-related matters in expedited regulatory amendments and flexibility to promote energy efficiency	1 (to continue growth with transformation)	2 (transformation to build an inclusive economy)

Outputs supporting **the dtic** Outputs/Targets 2023/24 FY

Stakeholder Engagements and Impacts

the dtic outputs	Output	Pillar	Outcome
Output 26	Community outreach programmes of the dtic group supported on request	1 (to continue growth with transformation)	2 (transformation to build an inclusive economy)
Output 37	Conferences, summits and international forums supported on request	1 (to continue growth with transformation)	2 (transformation to build an inclusive economy)

Red Tape and State Capability Targets

the dtic outputs	Output	Pillar	Outcome
Output 40	Timely process supplier invoices in support of the dtic red tape reduction targets and improved turnaround times	1 (to continue growth with transformation)	2 (transformation to build an inclusive economy) 3 (a capable state to ensure improved impact on public policies)

Outputs supporting **the dtic** Outputs/Targets 2023/24 FY

Improving the capacity and responsiveness of the state and social partnership

the dtic outputs	Output	Pillar	Outcome
Output 33	Provide requested advice on B-BBEE-related matters in priority legislation amendments	1 (to continue growth with transformation)	2 (transformation to build an inclusive economy)
Output 34	Provide requested advice on B-BBEE-related matters in Newly Developed Masterplan	1 (to continue growth with transformation)	2 (transformation to build an inclusive economy)

Cross-Cutting Focus

1: Gender Mainstreaming

The B-BBEE Commission focus on women empowerment and gender mainstreaming, through:

- ❑ Promoting for the inclusion of women and youth empowerment in B-BBEE initiatives as guided by the B-BBEE Act;
- ❑ Roll-out corporate governance training to black people which includes women across 8 provinces (training has already been conducted in Limpopo province); and
- ❑ Host a webinar to educate women on the B-BBEE legislation in commemoration of the women's month celebration.

2: District Development Model

- ❑ Support other spheres of government through education and awareness sessions on B-BBEE.
- ❑ Support **the dtic** group on identified community outreach programmes.
- ❑ Conduct corporate governance training to black people in 8 provinces.

Risks, Assumptions and Partnerships

Risk Description	Mitigation Action Required
Non – compliance with corrective action and recommendations to stakeholders	1. Enforcement and Publication
Litigation against B-BBEE Commission	1. Maintain high quality of investigation and maintain strong defence of B-BBEE Commission decision
	2. Appropriate legal advice

Assumptions:

- ☐ Required resources (financial and human resources) will be allocated.
- ☐ Vacated positions will be filled on time.
- ☐ Required enabling systems developed and implemented.

Partnerships:

- ☐ Continue working with 11 strategic partners to advance transformation.

Financial Overview

Below is the budget of the B-BBEE Commission and the projection for a three-year period:

Economic Classification	2023/24 R'000	2024/25 R'000	2025/26 R'000
Compensation of Employees	11 800	12 390	13 009
Goods and Services	9 200	9 660	10 143
Payment for capital assets	570	598	627
Total expenditure	21 570	22 648	23 779

Implementation

- ❑ Operational plan will be finalised and divisional heads will train official's and monitor implementation.
- ❑ Divisional heads will report on progress in implementing the APP to the Accounting Authority on a monthly basis.
- ❑ Overall progress on the implementation of the set targets will be reported on quarterly basis.

Thank You!

“An Inclusive and Growing Economy”