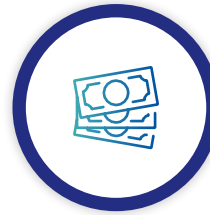




STOKVELS AND THE NATIONAL CREDIT REGULATOR



What is a stokvel and why do people start them?

A stokvel is a member-owned association in which a group of people enter into an agreement to contribute a certain amount of money, either monthly, fortnightly or weekly, as a way to pool their resources together for a common financial goal, such as saving for a large purchase, investments, providing support for funerals, groceries at the end of the year, etc.

Some stokvels are even structured as a general savings tool where members pay an agreed amount of money to a central fund on a monthly basis and from which each of them receives a lump sum payment in rotation. Stokvels are often formed among friends, family or community members who trust each other and have a shared financial goal as a way of saving within their communities and to reach their financial goals or to be in a position to provide some financial support in a time of need.

They provide a simple and accessible way for people to save and can be an important source of financial support for those who might not have access to formal banking services.



Some stokvels allow their members to borrow money from the pool of funds without interest, provided that member pays back the money before the next person in line due to receive payment is paid.



What are the financial and credit benefits of a stokvel?

There are several financial and credit benefits to being a member of a stokvel:

Access to larger sums of money:

By pooling their resources, stokvel members can access larger sums of money, which they may not be able to save or access otherwise.

Improved savings discipline:

Stokvels often require members to make regular contributions, which can help to develop good savings habits and increase financial discipline.

Potential for higher returns:

Stokvels may invest their pooled funds in a variety of financial products, with a potential to earn better returns.

Banking costs:

These may be lower for stokvel account offerings and, in some cases, free, depending on the amount of money held in the account, the account type and the bank offering the account.

Lower interest rates:

Some stokvels allow their members to borrow money from the pool of funds without interest, provided that member pays back the money before the next person in line due to receive payment is paid (if the goal is rotational savings). This is different to a loan from a bank or other financial institution which requires the principal amount borrowed to be repaid with interest.

Community support:

Being a part of a stokvel can also provide members with a sense of community and social support, which can help to promote financial literacy and provide a supportive environment for financial decision-making.



What are the requirements to set up a stokvel?

For example, does it need to have a constitution? What must the constitution contain? How can disputes in a stokvel be resolved? If we contribute monthly and I fail to continue with the contributions, am I entitled to receive my contribution back?

To set up a stokvel, you will typically need the following:

Step 1: A group of interested individuals with the same goal

A stokvel requires a group of people who are committed to saving and investing together. The group can be made up of friends, family members, co-workers or even members of a community.

Step 2: Constitution

The group should create a written constitution that outlines the rules and objectives of the stokvel, such as the amount and frequency of contributions, membership (including new members), the purpose and benefits of the savings, how the funds will be managed and invested or paid out, under what circumstances withdrawals can be made, etc. The stokvel constitution is an important document to be drafted when the stokvel is started. Although it is not a requirement that a stokvel must have a constitution, it is recommended that they have one.

Step 3: Bank account

The group should open a bank account in the name of the stokvel to hold the funds. This can be a savings account or a special type of account offered by some banks specifically for stokvels.

Step 4: An elected leadership

The group should elect a leadership or management committee to oversee the operations of the stokvel, including collecting contributions, managing the funds and, in some instances, making investment decisions.

Step 5: Record keeping

The group should keep accurate records of the contributions made by each member, as well as any expenses or withdrawals from the stokvel.



What happens if there is a dispute?

The disputes in a stokvel are resolved in accordance with the set rules agreed by members of the stokvel. For example, the constitution may contain a code of conduct for members or regulations outlining what happens when a member does not make the required contributions. The elected leadership of the stokvel may also be tasked with the function in certain circumstances.

It is also important for stokvels to have clear rules and guidelines in place, as well as a system for resolving disputes, in order to minimise the risk of disagreements and ensure the smooth functioning of the stokvel.



What if I fail to contribute?

It will depend on the rules and regulations of the stokvel, but generally if someone fails to make the required contributions, penalties or fines may be levied against that member, and in severe cases, a member may even be expelled from the stokvel. Some stokvels allow members to receive their contributions back in full when that member is expelled from the stokvel, but others may have a no-refund policy where the relevant member would lose all their contributions as a result of their failure to make the monthly contributions.



What is the National Credit Regulator?

The National Credit Regulator (NCR) is a regulatory government agency that regulates the credit industry in South Africa. The NCR is tasked with promoting and advancing a fair and non-discriminatory marketplace for access to consumer credit, while also protecting the rights of consumers and promoting responsible credit granting and use.





Must it be registered with the NCR?

If an individual or firm lends money and charges interest or fees on that amount, the person or body providing credit must register with the NCR. A transaction between a stokvel and a member of that stokvel does not constitute a credit agreement in terms of section 8(2)(c) of the National Credit Act 34 of 2005 (NCA) if concluded in accordance with the rules of that stokvel. It is important that the transaction is not with someone outside of the stokvel, because if a stokvel lends money to a person who is not a member and charges them interest on that amount, the stokvel would be required to register as a credit provider and comply with the NCA.



What are the registration requirements for a stokvel?

In terms of the Banks Act 94 of 1990 (Banks Act), stokvels are designated as an activity not falling within the meaning of “*the business of a bank*”, meaning that they do not have to comply with the Banks Act when establishing the stokvel and pooling their funds. The designation is, however, subject to certain conditions, which include, amongst others, requiring stokvels holding contributions from members amounting in aggregate to more than R100,000 to register with a self-regulatory body approved by the Registrar of Banks. The National Stokvel Association of South Africa has been approved by the Registrar of Banks for this purpose and it represents over 800,000 stokvel groups. Stokvels that do not at any time hold contributions from members amounting in the aggregate to more than R100,000 need not register with such bodies.



What liability is attached to membership? Can the members be held personally liable? Who can sue?

The liability attached to a stokvel member depends on the specific rules and regulations agreed on by the members of that particular stokvel. A stokvel does not have rights, duties and capacities and it cannot exist without its members. In general, a stokvel’s debt will be shared equally amongst its members.

The members of a stokvel collectively have the right to sue on behalf of the group. This may involve taking legal action to recover any amounts owed or to enforce the rules and regulations of the stokvel. The rules and regulations of the stokvel may also allow for authorised members of the stokvel to sue in their own names on behalf of the stokvel.



What are the banking requirements for a stokvel? For example, how many signatories are needed to open a bank account? Must the money be in an interest-bearing account?

It is not a legal requirement for a stokvel to have a bank account, but there is value in holding member contributions in a bank account, for example, the money is kept secure while earning interest (assuming the funds are held in an interest-bearing account).

The banking requirements for a stokvel will depend on the bank with which the members of the stokvel want to open an account. The banking requirements that apply to most of the banks are:

- the stokvel must have a constitution;
- a list of at least five members;
- a valid South African identity document or card for each member;

- proof of residence which is not more than three months old;
- at least three and a maximum of five signatories, each of whom must comply with any additional requirements under the Financial Intelligence Centre Act 38 of 2001; and
- all signatories to the account need to be over 18.

There is no requirement that the money in a stokvel must be in an interest-bearing account. Whether a stokvel chooses to keep its funds in an interest-bearing account or not is up to the members of the group to decide. Most, if not all, of the major banks offer an option where a stokvel can invest money in an interest-bearing account. A bank will open an account in the name of the stokvel, but any interest paid or accrued to the stokvel's account will have been received by the members in their own names for tax purposes.



Where can mismanagement or theft of stokvel funds be reported?

There is currently no government interference in the affairs of a stokvel and there are no regulations on how and where mismanagement of stokvel funds is to be reported. It will largely depend on the rules of the stokvel as to how mismanagement of funds is dealt with. Theft of stokvel funds or fraud involving a stokvel is a crime that may be reported to the South African Police Service for investigation. The members of the stokvel may also choose to report the issue to the National Stokvel Association of South Africa, which may provide assistance in resolving the issue.

MARKET RECOGNITION

Our Pro Bono & Human Rights team is externally praised for its depth of resources, capabilities and experience.

Chambers Global 2021–2024 ranked our Administrative & Public Law team in Band 3.

In 2020 and 2021 the Practice won Best Large Firm Award at the annual *ProBono.Org awards*.

In 2017, our Pro Bono & Human Rights Practice won the Refugee Law Award at the annual *ProBono.Org awards*. The Practice also received a certificate in recognition of its contribution to the production of a Judicial Review Guide for Refugees as part of ProBono.Org's launch of its Practitioners Guides to Refugee Law Project.

In 2017, CDH won a Law Society Award for its outstanding pro bono contribution.

In 2015, our Pro Bono & Human Rights Practice was shortlisted for the award for the most impactful case at the 2015 ProBono.Org awards for its contribution to the SAHA/R2K National Key Points matter.

In 2012, CDH was awarded the Endangered Wildlife Trust (EWT) Cheetah Award in recognition of its special contribution to achieving the vision of EWT.

Jacquie Cassette is the Practice Head of our Pro Bono & Human Rights team. *Chambers Global 2021–2024* ranked her in Band 3 for administrative & public law.



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OUR TEAM

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BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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