

**ASHLEY SLAMAT**

— ATTORNEYS AT LAW —

*Success. Understood.*

**DRUGS AND DRUG TRAFFICKING ACT 140 OF 1992**

The purpose of the Act is to, inter alia, provide for the prohibition of:

- the use; or
- possession; or
- dealing in of drugs
- and of certain acts relating to the
  - manufacture, or
  - supply of certain substances,
  - or the acquisition or conversion of the proceeds of certain crimes.

The Act also creates an obligation to report certain information to the police and provides further for the exercise of the powers of:

- entry,
- search, seizure
- and detention of persons in specified circumstances

and for the recovery of the proceeds of drug trafficking.

The Act consists of seven chapters and schedules.

Chapter 1 of the Act deals with certain important definitions as well as the application of the Act.

In terms of s2, the Act applies in addition to and not in substitution for the provisions of the Medicines Act or any regulation made thereunder (Medicines and Related Substances Control Act 101 of 1965).

It is imperative to possess knowledge of the exact meaning assigned to terms such as drug, drug offence, manufacture, plant, possess, sell, deal in.

It is also pertinent to understand the meanings of the following terms:

- “drug(s)”;

- “a scheduled substance”;
- “dependence-producing substances”;
- “dangerous dependence-producing substances”;
- “undesirable dependence-producing substances”.

It is also pertinent to note that where the Act deals with property, the Act applies to property which is located inside or outside the Republic. Furthermore, that any reference to a person practicing any health services or cognate profession shall be construed as a reference to a person practicing any health service or cognate profession in terms of the Medicine’s Act.

In regard to the manufacture and supply of scheduled substances no person shall manufacture any scheduled substance or supply any scheduled substance to any other person while knowing or suspecting that any such scheduled substance will be used in or for the unlawful manufacture of any drug.

A “scheduled substance” is defined to mean “any substance included in Part 1 or Part 2 of Schedule 1” of the Act.

A “drug” means “any dependence producing substance, any dangerous dependence producing substance or any undesirable dependence producing substance” in terms of the Act.

A “dependence-producing substance” means “any substance or any plant from which a substance can be manufactured which is listed in Part 1 of Schedule 2 to the Act”.

A “dangerous dependence-producing substance” means “any substance or any plant from which a substance can be manufactured included in Part 2 of Schedule 2” to the Act.

An “undesirable dependence-producing substance” means “any substance or any plant from which a substance can be manufactured included in Part 3 of Schedule 2” of the Act.

A “substance” is not defined in the Act and therefore bears its ordinary grammatical meaning.

Chapter 2 of the Act sets out the “illegal acts in terms of the Act”. These illegal Acts include the manufacture and supply of scheduled substances, use and possession of drugs, dealing in drugs and acts related to proceeds of defined crimes.

Chapter 3 of the Act deals with the reporting of information and investigations which may be done in terms of the Act.

S10 creates an obligation to report certain information to the police in relation to drugs or scheduled substances. S11 of the Act sets out powers of police officials in regard to entry, search and seizure, and searching of any container or other thing in which any such substance, drug or property is suspected to be found. S12 of the Act deals with the interrogation of persons under a warrant of apprehension in terms of the Act.

Chapter 4 of the Act deals with the offences, penalties, presumptions and forfeitures which may take place in terms of s13 to 17 of the Act. In terms of the Act substantive periods of imprisonments are prescribed in relation to the various drug related offences as set out in the Act.

The Act also creates a number of presumptions relating to inter alia “samples of substances, health matters, possession of drugs, dealing in drugs, reporting of information”.

S24 of the Act provides for the liability of employers and principles in drug related offences. S25 of the Act deals with declarations of forfeiture which a court may order in relation to property which has been used in the offences created by the Act. S64 of the Act provides that a Magistrate’s Court shall have jurisdiction to impose any penalty in terms of the Act even though that penalty may exceed the punitive jurisdiction of a Magistrate’s Court.

## **Schedule 1 - SCHEDULED SUBSTANCES**

*Substances useful for the manufacture of drugs*

### **PART 1**

1. The following substances, namely-

Ephedrine.  
Ergometrine  
Ergotamine.  
Lysergic acid.  
l-phenyl-2-propanone.  
Pseudoephedrine.

2. The salts of all substances included in this Part, where the existence of such salts is possible.

### **PART II**

1. The following substances, namely-

Acetic anhydride.  
Acetone.  
Anthranilic acid.  
Ethyl ether.  
Phenylacetic acid.  
Piperidine.

2. The salts of all substances included in this Part where the existence of such salts is possible.

## **Schedule 2**

### **PART 1 *Dependence-Producing Substances***

1. The following substances, namely-

Amobarbital cyclobarbitol and pentobarbital, except preparations and mixtures containing not more than 30 milligrams per minimum recommended or prescribed dose

when intended for continued use in asthma or containing not more than 50 milligrams per minimum recommended or prescribed dose when intended for continued use in epilepsy.

Buprenorphine.

Chlorphentermine.

Diethylpropion (amfepramone).

Gluthethimide.

Meptazinol.

Pentazocine.

Tiletamine.

2. Unless expressly excluded, all substances included in this Part include the following

(a) The salts and esters of the specified substances, where the existence of such salts and esters is possible: and

(b) all preparations and mixtures of the specified substances.

#### *PART II Dangerous Dependence-Producing Substances*

1. The following substances or plants, namely-

Acetorphine.

Acetyldihydrocodeine. except preparations and mixtures containing not more than 20 milligrams of acetyldihydrocodeine per recommended or prescribed dose.

Acetylmethadol.

Alfentanil.

Allylprodine.

Alphacetylmethadol.

Alphameprodine.

Alphamethadol.

Alphaprodine.

Anileridine.

Benzethidine.

Benzphetamine.

Benzylmorphine.

Betacetylmethadol.

Betameprodine.

Betamethadol.

Betaprodine.

Bezitramide.

Chlorodyne (Chloroform and Morphine Tincture BP 1980) or any preparation or mixture thereof described as chlorodyne, except preparations and mixtures containing not more than 5.0 per cent of chlorodyne in combination with other active medicinal substances.

Clonitazene.

Coca leaf and any salt compound, derivative or preparation of coca leaf, and any salt, compound, derivative or preparation thereof that is chemically equivalent or identical to any of these substances, whether obtained directly or indirectly by extraction from material or substances obtained from plants, or obtained independently by chemical synthesis, or by a combination of extraction and chemical synthesis, except decocainized coca leaf and extractions of coca leaf where such extractions contain no cocaine or ecgonine.

Codeine (methymorphine), except preparations and mixtures containing not more than 20 milligrams of codeine per recommended or prescribed dose.

Codoxime.

Desomorphine.

Dextromoramide.

Dextropropoxyphene, except preparations and mixtures for oral use containing not more than 135 milligrams dextropropoxyphene, calculated as the base, per dosage unit, or with a concentration of not more than 2.5 per cent in undivided preparations

Diampromide.

Diethylthiambutene.

Difenoxin (or diphenoxyllic acid), except mixtures containing, per dosage unit, not more than 0.5 milligrams of difenoxin, calculated as the base, and a quantity of atropine sulphate equal to at least 5.0 per cent of the quantity of difenoxin, calculated as the base, which is present in the mixture.

Dihydrocodeine, except preparations and mixtures containing not more than 20 milligrams of dihydrocodeine per recommended or prescribed dose.

Dihydromorphine.

Dimenoxadol.

Dimepheptanol.

Dimethylthiambutene.

Dioxaphetylbutyrate.

Diphenoxylate, except preparations containing not more than 2.5 milligrams of diphenoxylate, calculated as the base, and not less than 25 micrograms of atropine sulphate per dosage unit.

Dipipanone.

Dronabinol [(-)-transdelta-9-tetrahydrocannabinol].

Drotebanol.

Ecgonine and the esters and derivatives thereof which are convertible to ecgonine and cocaine.

Ethylmethylthiambutene.

Ethylmorphine, except preparations and mixtures containing not more than 20 milligrams of ethylmorphine per recommended or prescribed dose.

Etonitazene.

Etorphine.

Etoxadine.

Fenproporex.

Fentanyl.

Furethidine.

Hydrocodone (dihydrocodeinone).

Hydromorphanol (14-hydroxydihydromorphine).

Hydromorphone (dihydromorphinone).

Hydroxypethidine.

Isomethadone.

Ketobemidone.

Levomoramide.

Levophenacymorphan.

Levorphanol.

Mecloqualone.

Mefenorex.

Metazocine.

Methadone.

Methadone-intermediate.

Methorphan, including levomethorphan and racemethorphan, but excluding dextromethorphan.

Methyldesorphine.

Methyldihydromorphine.

Methylphenidate and the derivatives thereof.

Metopon.

Moramide-intermediate.

Morpheridine.

Morphine, except preparations and mixtures of morphine containing not more than 0.2 per cent of morphine, calculated as anhydrous morphine.

Morphine methobromide and other pentavalent nitrogen morphine derivatives.

Morphine-N-oxide and the derivatives thereof.

Myrophine (myristylbenzylmorphine).

Nicocodine.

Nicodicodine.

Nicomorphine.

Noracymethadol.

Norcodeine, except preparations and mixtures containing not more than 20 milligrams norcodeine per recommended or prescribed dose.



Norlevorphanol.

Normethadone.

Normorphine (demethylmorphine or N-demethylated morphine).

Norpipanone.

Opium and opiates and any salt, compound, derivative or preparation of opium or opiates, whether obtained directly or indirectly by extraction from material or substances obtained from plants, or obtained independently by chemical synthesis, or by a combination of extraction and chemical synthesis, except mixtures containing not more than 0.2 per cent of morphine, calculated as anhydrous morphine.

Opium-poppy and poppy straw, whether obtained directly or indirectly by extraction from material or substances obtained from plants, or whether obtained independently by chemical synthesis, or by a combination of extraction and chemical synthesis.

Oxycodone (14-hydroxydihydrocodeinone or dihydrohydroxycodeinone).

Oxymorphone (14-hydroxydihydromorphinone or dihydrohydroxymorphinone).

Pethidine. pethidine-intermediate A, pethidine-intermediate B and pethidineintermediate C. Phenadoxone.

Phanampromide.

Phenazocine.

Phendimetrazine.

Phenomorphin.

Phenoperidine.

Pholcodine. except preparations and mixtures containing not more than 20 milligrams of pholcodine per recommended or prescribed dose.

Piminodine.

Piritramide.

Proheptazine.

Properidine.

Propiram.

Racemoramide.

Racemorphan.

Secobarbital.

Sufentanil

Thebacon.

Thebaine.

Tilidine.

Trimeperidine.

## 2. Unless expressly excluded, all substances or plants included in this Part

include the following:

(a)

The isomers of the specified substances or plants, where the existence of such isomers possible;

(b)

the esters and ethers of the specified substances or plants and of the isomers referred to in subparagraph ( a), as well as the isomers of such esters and ethers, where the existence of such esters, ethers and isomers is possible;

(c)

the salts of the specified substances or plants, of the isomers referred to in subparagraph ( a) and of the esters, ethers and isomers referred to in subparagraph ( b), as well as the isomers of such salts, where the existence of such salts and isomers is possible; and

d)

all preparations and mixtures of the specified substances or plants and of the isomers, esters, ethers and salts referred to in this paragraph.

### *PART III Undesirable Dependence-Producing Substances*

1. The following substances or plants, namely-

Amphetamine.

Brolamfetamine.

Bufotenine (N,N-dimethylserotonin).

Cannibis (dagga), the whole plant or any portion thereof, except dronabinol [(*-*)-transdelta-9-tetrahydrocannabinol].

Cathinone.

Dexamphetamine.

Diethyltryptamine [3-(2-(diethylamino)-ethyl)-indole].

2,5-dimethoxyamphetamine (DMA).

2,5-dimethoxy-4-ethylamphetamine (DOET).

3-(1,2-dimethylheptyl)-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo [b, d] pyran-1-01 (DMHP).

Dimethyltryptamine [3-(2-(dimethylamino)-ethyl)-indole].

Fenetylline.

Fentanyl-analogues:

acetyl-alpha-methyl-fentanyl;

alpha-methyl-fentanyl;

alpha-methyl-fentanyl-acetanilide;

alpha-methyl-thio-fentanyl;

benzyl-fentanyl;

beta-hydroxy-fentanyl;  
beta-hydroxy-3-methyl-fentanyl;  
3-methyl-fentanyl and the two isomeric forms thereof, namely,  
cis-N-(3-methyl-1-(2-phenethyl)-4-piperidyl)propionanilide and trans-N-(3-  
methyl-1-(2-phen-ethyl)-4-piperidyl)propionanilide;  
3-methyl-thio-fentanyl;  
para-fluoro-fentanyl; and  
thiofentanyl.  
Harmaline (3,4-dihydrobarmine).  
Harmine [7-methoxy-1-methyl-9H-pyrido (3,4-b)-indole].  
Herion (diacetylmorphine). Levamphetamine. Levomethamphetamine.  
Lysergide (lysergic acid diethylamide).  
Mescaline (3,4,5-trimethoxyphenethylamine).  
Methamphetamine and methamphetamine racemate.  
Methaqualone, including Mandrax. Isonox. Quaalude, or any other  
preparation containing metha-qualone and known by any other trade name.  
2-methoxy-4,5-methylenedioxyamphetamine (MMDA).  
4-methylaminorex.  
4-methyl-2,5-dimethoxyamphetamine (DOM) and the derivatives thereof.  
Methylenedioxyamphetamine (MDA):  
N-ethyl-methylenedioxyamphetamine; and  
N-hydroxy-methylenedioxyamphetamine.  
Nabilone.  
Parahexyl.  
Paramethoxyamphetamine (PMA).  
Phencyclidine and the congeners thereof, namely, N-ethyl-1-  
phenylcyclohexylamine (PCE), 1-(1-phenylcyclohexyl) pyrrolidine (PHP or  
PCPY) and 1-[1-(2-thienyl) cycohexyl] piperidine (TCP).

Pethidine-analogues:  
1-methyl-4-phenyl-4-propionoxy-piperidine (MPPP);  
1-methyl-4-phenyl-1,2,5,6-tetrahydropiperidine (MPTP); and  
1-phenylethyl-4-phenyl-4-acetyloxy-piperidine (PEPAP).  
Phenmetrazine.  
Psilocin (4-hydroxydimethyltryptamine).  
Psilocybin (4-phosphoryloxy-N,N-dimethyltryptamine).  
Tetrahydrocannabinol  
3,4,5-trimethoxy amphetamine (TMA).

2. Unless expressly excluded, all substances or plants included in this Part include the following:

(a)

The isomers of the specified substances or plants, where the existence of such isomers is possible;

(b)

the esters and ethers of the specified substances or plants and of the isomers referred to in subparagraph ( a ) as well as the isomers of such esters and ethers, where the existence of such esters, ethers and isomers is possible;

(c)

the salts of the specified substances or plants, of the isomers referred to in subparagraph ( a ) and of the esters, ethers and isomers referred to in subparagraph ( b ), as well as the isomers of such salts, where the existence of such salts and isomers is possible; and

(d)

all preparations and mixtures of the specified substances or plants and of the isomers, esters, ethers and salts referred to in this paragraph.