

MEDIA RELEASE – FOR IMMEDIATE RELEASE

TO: ALL NEWS EDITORS

SUBJECT: TRIPLE JACKPOT! OR AS IT IS BETTER KNOWN “JA, WELL, NOT FINES!”

ISSUED BY: JUSTICE PROJECT SOUTH AFRICA

DATE OF ISSUE: SUNDAY 25 JULY 2010

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Many employees who drive company cars have recently been subjected to the shock prospect of horrifically high deductions being made from their salaries as a result of AARTO traffic fines which have been issued to juristic persons by the Johannesburg Metropolitan Police Department, JMPD's *electronic enforcement division*.

The AARTO implementation moved out of its “pilot phase” on 1 April 2010 in the JMPD and TMPD (Pretoria) operational areas and shortly thereafter, the JMPD started issuing AARTO 03 infringement notices to juristic persons (companies and organisations) in whose names vehicles are registered – at **three times the fine value** stipulated for the particular infringement in the AARTO charge book. This means that fines which were previously R250 became R750 etc. up to the maximum of R1500 becoming R4500.

When Justice Project South Africa became aware of this anomaly in early June 2010, it started investigating and found that regulation 10 (3) of the AARTO regulations was being applied by the JMPD. The provision allows for the tripling of fine values for infringement notices issued to juristic persons, seemingly because the AARTO Act is aimed primarily at natural persons who have drivers licenses' that be suspended when sufficient demerit points have been accumulated.

This regulation is inextricably linked to and only enforceable with regulation 24 (10) of the regulations which falls under section 24 – entitled **demerit points**. Whilst it has been claimed that the aim behind this provision is to force fleet owners to nominate the driver in control at the time of the infringement, there is no evidence of this in the Act.

Due to the fact that besides a website and a few corny radio adverts; close to nothing has been done by the RTMC, who have been tasked with the rollout and management of the AARTO system to educate the public and businesses at large about AARTO most people remain ignorant of what AARTO is all about and how it affects them.

JPSA's standpoint and that of their legal counsel is that this provision could not be legally applied at this point in time since it has been announced over and over again that **the points-demerit system is not in force yet and will not be until 1 April 2011** or at some time later if/when it once again gets postponed by the Department of Transport. This view was reportedly shared by Alta Swanepoel according to an article entitled “Joburg Traffic Fine Shock”, which appeared on Sake24 on 18 June 2010.

This article stated “*Sake24 has seen correspondence with the Road Traffic Management Corporation (RTMC), which administers the Aarto system, in which Alta Swanepoel, an Aarto consultant involved in drawing up the legislation, confirmed that the increased payment for companies only comes into force once the demerit system is in place.*”

But apparently the JMPD disagrees. An internal memo dealing with the tripling of fine values by the JMPD comes out in strong support of their making use of this particular provision and concludes that is completely justifiable and legal for the JMPD to apply this provision prior to the introduction of the points-demerit system. They also hold that it is an offence for a juristic person not to nominate the driver of the vehicle and that an additional charge can be brought against that identity for failing to nominate the driver. All of this was revealed in a meeting between JPSA and JMPD top brass on Wednesday 14 July.

However, whilst section 17 of the AARTO Act states that it is an offence to not obtain the full particulars of a person exercising control over a motor vehicle registered to the juristic person, it makes no mention whatsoever of the failure to nominate the driver of a vehicle for which they have indeed obtained particulars beforehand to be an

infringement of the law. The AARTO charge book similarly only reflects the charge for **failing to obtain** the full particulars of the driver, **not** failing to nominate him/her when an infringement notice arrives.

It therefore stands to reason that there is nothing whatsoever in the Act that compels a juristic person to nominate the driver, and if they choose to simply pay the fine at three times the face value of the particular charge, then there is nothing to prevent them from doing so and no charge that can be brought against them, provided that they have **obtained the driver's details** prior to letting them use the vehicle.

This presents a huge problem for those who drive company vehicles because the policy of most companies is to deduct the value of traffic fines incurred by the driver directly off their salary at the end of each month in accordance with their contract of employment. Many people who have contacted JPSA recently with respect to this particular issue fall into the category of being the driver/employee and it is quite understandable that they are very worried that these excessively high amounts will be deducted off their salaries when they receive their pay if they haven't already, in some cases leaving them indebted to their employer as opposed to being paid by them.

But companies doing so, argues legal counsel for JPSA, will most certainly find themselves out of pocket because it is in fact the company's responsibility to offer the employee the option of being nominated as the driver or to simply do so themselves, in which case filing by the appropriate AARTO 07 driver nomination form would cause the infringement notice to be withdrawn against the company and reissued to the driver who actually committed the offence. The net result of this action would be that the fine would be reduced to the correct fine value for the charge to which it applies, thus reducing the fine to one third of the face value of the fine issued to the company.

Depriving the employee of this option and the associated "saving", simply because the company itself is also ignorant about how the AARTO system works would not wash as an excuse and the company would be liable to refund the employee two thirds of what they deducted from their salaries.

This is how it should work under the AARTO system when, if ever it is implemented properly and JPSA was initially prepared to facilitate the completion of AARTO 07 driver nominations as part of a public education drive after meeting with the JMPD. However it has also come to our attention that aside from incorrectly and prematurely applying the triple value regulation, the JMPD and seemingly the RTMC have also **decided that it is okay for them to discard provisions of the Act which apply to the service of AARTO 03 infringement notices.**

Not only do infringement notices issued as far back as April 2010 **not bear any date of issue** in the prescribed area of the AARTO 03 infringement notice which is supposed to say "date of posting", but for some time now these notices have been sent out via **ordinary surface mail** where the Act is very clear and specific in stating that all AARTO 03 infringement notices must be sent out via **registered post** if they are not served in person.

No legislative amendments whatsoever have been proclaimed or even tabled, stating that infringement notices may be sent out via ordinary post and whilst JPSA has let the fact that few notices have ever been sent out via registered post since the inception of AARTO, but by the "secure mail" which is a similar to registered mail, it will not let slide the fact that the Act has now been completely discarded with respect to service.

Even if the tripling of fines to juristic persons were legal at this stage, the mere fact that there is no date of issue on these infringement notices and if they have been sent via ordinary surface mail completely invalidates them and makes them illegal and unenforceable documents. Additionally, the lack of a date of issue (posting) effectively means that even if the method of service were legal, the 50% discount period would be effective indefinitely since an infringer has **32 days from the date of issue** to take advantage of the *discount*.

Who is to blame for the fact that these notices went out contrary to the Act is entirely irrelevant to members of the public and it is ludicrous and unreasonable that anyone should expect the public to comply with the AARTO Act with respect to having these infringement notices withdrawn when the authorities themselves are not complying with the Act.

Whilst we most certainly understand the argument put forward in justification for this action by the individual who claimed responsibility for the decision, the fact remains that no individual or traffic authority has the right to choose or decree to ignore the provisions of the law and selectively apply it. Acts can only be amended in parliament and have to be proclaimed by the President of the Republic of South Africa and/or the relevant minister.

For this reason, JPSA invites all members of the public, including juristic persons (businesses etc.) to contact them to have their AARTO 03 infringement notices issued from 1 April, 2010 to present and a date yet to be announced withdrawn without the obstructive and time consuming process of filling in AARTO forms when it is not necessary to do so.

JPSA will be charging an administration fee of R150 for each and every infringement notice that it has withdrawn to cover expenses that will be generated by this service. It will also manage process of making application/demand for the immediate refund of any and all fines relating to AARTO 03 infringement notices issued by the JMPD from 1 April, 2010 which do not meet legislative requirements and to ensure that those who have paid these fines are refunded in a timeous fashion, unlike the 2008 refunds debacle that in many cases have not yet been effected. This in itself is a mammoth task but one that has to be undertaken if the public are to stand any chance of actually getting their money back in a timely fashion.

Because we expect a high volume of claims, we have instituted several methods to help members of the public to gain access to the relevant services.

- For **AARTO 03** notices issue notices **issued by the JMPD since 1 April 2010** you may send a blank email to [03@jp-sa.org](mailto:03@jp-sa.org) or go to [www.aartofacts.co.za](http://www.aartofacts.co.za).
- If you email [03@jp-sa.org](mailto:03@jp-sa.org), the relevant form will be emailed automatically and directly to you immediately on receipt of your email.
- If you visit [www.aartofacts.co.za](http://www.aartofacts.co.za) you will be able to download the forms or lodge your claim immediately online which will be the fastest method of lodging a claim as well as learn more about AARTO and how it really affects you.
- JPSA will not be providing any telephonic support for these services but unattended voice instructions detailing the options will be available on 087 809 0399.
- Claimants will be notified of the status of their claim via email and/or SMS as soon as JPSA becomes aware of any status change.

←ENDS→

Supporting documentation and images are available for editors and reporters at [www.aartofacts.co.za/3times.asp](http://www.aartofacts.co.za/3times.asp) and you will also find more simplified tell-tale information on how to identify an invalid infringement notice at [www.aartofacts.co.za/20100726-illegal.asp](http://www.aartofacts.co.za/20100726-illegal.asp).

You may contact Howard Dembovsky, National Chairman of Justice Project South Africa on 082 418 6210 or via email at [howard@jp.sa.org](mailto:howard@jp.sa.org) with any queries or interview requests.

Other contacts at JPSA for this media release include Bessie van Antwerp on 082 465 4784 or [bessie@jp-sa.org](mailto:bessie@jp-sa.org) and Dennis Jackson on 083 497 6770 or [dennis@jp-sa.org](mailto:dennis@jp-sa.org).

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