

Amendment to the Mandatory Retirement Age of Aircraft for Commercial Air Transport Activities in Indonesia

In order to ensure the continuing airworthiness of aircraft, the Minister of Transportation (“**MOT**”) has enacted MOT Decree No. KM 115 of 2020 concerning the Age Limit of Aircraft Used for Commercial Air Transport Activities (“**MOT Decree 115/2020**”) to limit the age of (i) Aircraft of Transport Category, i.e. an aircraft with a maximum take off weight of 5,700 kilograms or more (“**Transport Aircraft**”), and (ii) Aircraft other than Transport Aircraft, i.e. an aircraft under the categories of normal, utility, aerobatic, and commuter (“**Other Aircraft**”).



MOT Decree 115/2020 has replaced the previous regulation on mandatory retirement age of aircraft as provided under MOT Regulation No. PM 155 of 2016 concerning the Age Limit of Aircraft Used for Commercial Air Transport Activities (“**MOT Reg. 155/2016**”), which has been revoked by MOT Regulation No. 27 of 2020 concerning the Revocation of MOT Reg. 155/2016, the comparison of which can be found elaborated in the table below:

No.	Aircraft	Age Limit Prior to Amendment (MOT Reg. 155/2016)	Age Limit Subsequent to Amendment (MOT Decree 115/2020)
For Aircraft First Registered and Operated in Indonesia			
1.	Transport Aircraft for passengers	up to 15 years	up to 20 years
2.	Other Aircraft for passengers	up to 20 years	up to 25 years
3.	Transport Aircraft and Other Aircraft specifically for cargo (freighters)	up to 30 years	In accordance with the flight hour and/or flight cycle according to the manufacturer’s terms
4.	Helicopters	up to 20 years	up to 25 years
For Aircraft Operating in Indonesia			
1.	Transport Aircraft for passengers	up to 35 years	In accordance with the flight hour and/or flight cycle according to the manufacturer’s terms
2.	Other Aircraft for passengers	up to 45 years	
3.	Transport Aircraft and Other Aircraft specifically for cargo (freighters)	up to 45 years	
4.	Helicopters	up to 45 years	

Essentially, the age limit of an aircraft is difficult to define as it depends on various factors including the chronological age, the number of flight cycles, and flight hours. Further complication arises in the age determination of an aircraft as individual aircraft components age differently depending on these aforementioned factors. Moreover, the relevancy of the factors necessarily vary depending on who determines the retirement age of an aircraft, as government objectives are not purely in conformity with the objectives of the aviation industry. From the perspective of the government, it is paramount to assure that aging aircraft remains airworthy and safe to operate, while the aviation industry will invariably focus more attention on the cost and longevity factor.

Pursuant to the table above, MOT Reg. 155/2016 only determines the age limit of an aircraft based on its chronological age, as opposed to MOT Decree 115/2020 which also includes other factors in its determination, namely the number of flight hours and flight cycles of an aircraft according to the manufacturer's terms, especially for aircraft operating in Indonesia (which are not first registered and operated in Indonesia) and freighters. MOT Decree 115/2020 stipulates that a manufacturer's terms constitutes the following:

- a. a direct manufacturer terms of aircraft, aircraft engines, and aircraft propellers as the holder of Type Certificates;
- b. manufacturer terms that can modify aircraft, aircraft engines, and aircraft propellers as the holder of Supplemental Type Certificates; and
- c. manufacturer terms of aircraft components.

As a growing industry, air transport has always been a constant demand. The increase of competition and the high cost of replacing older aircraft with newer ones encourage airlines to cut costs by continuing to use aging aircraft, the use of which must be maintained by an adequate maintenance procedure to meet the safety and airworthiness regulations.

MOT Decree 115/2020 stipulates a mandatory age limit of certain aircraft as a directive from MOT for safety reasons, as there are higher risks with aging aircraft (especially with aircraft for passenger transport), no matter how well maintained. Also, it is worth noting that some of the aircraft's age limits are set higher in MOT Decree 115/2020. Although MOT Decree 115/2020 still stipulates the chronological age limit for aircraft that are first registered and operated in Indonesia, there is leeway for the age limit of aircraft operating in Indonesia (which are not first registered and operated in Indonesia) and freighters.

The enactment of MOT Decree 115/2020 benefits the aviation industry as it accommodates the airlines' business by helping aircraft that are operated in Indonesia to achieve the economic design goal of the manufacturer, namely to provide airworthy and safe air transport activities within the aircraft's intended lifespan. Although safety must be of primary concern, economics and business necessarily enters the equation as well by taking into account several factors including the market of used aircraft, availability of financing, maintenance costs as opposed to replacing older aircraft with newer ones, and so forth.

The Director of Airworthiness and Aircraft Operations shall conduct inspections in accordance with the laws to ensure the flight safety of aircraft under MOT Decree 115/2020, the results of which shall be reported to the Director General of Civil Aviation. Although silent in the sanctions for the operation of aircraft that exceeds the age limit stipulated under MOT Decree 115/2020, implications for such operation shall cause the aircraft to not be able to (i) be registered and operated for the first time in Indonesia and/or (ii) be operated in Indonesia (as applicable).

Therefore, the directive of the MOT by enacting MOT Decree 115/2020 establishes a basic regulatory age limit, while still providing the manufacturer room of latitude in determining the retirement age of an aircraft, which also serves an important surveillance function that not only ensures safety of an aircraft, but also the longevity and lifespan of an aircraft, both by the MOT and the manufacturer.

*The article above was prepared by **Hendra Ong (Partner) & Inaya Safa Nadira (Associate)**.*

This publication is not intended to be a comprehensive review of all developments in the law and practice, or to cover all aspects of those referred to. Readers should take legal advice before applying the information contained in this publication to specific issues or transactions or matters. For more information, please contact us at dentons.hprp@dentons.com.

No part of this publication may be reproduced by any process whatsoever without prior written permission from Hanafiah Pongawa & Partners (Dentons HPRP).