

Futures and Derivatives Law of the PRC

Dan Young Business Consultancy — www.danyoungcpa.com

Unofficial English translation prepared for reference only. The official Chinese text prevails.

Contents

Table of Contents	1
Chapter I — General Provisions	2
Chapter II — Futures Trading and Derivatives Trading	2
Chapter III — Futures Clearing and Settlement	3
Chapter IV — Futures Business Institutions	4
Chapter V — Futures Trading Venues	4
Chapter VI — Futures Clearing Institutions	5
Chapter VII — Futures Industry Association	6
Chapter VIII — Supervision and Administration	6
Chapter IX — Legal Liability	6
Chapter X — Supplementary Provisions	7

Adopted at the Thirty-Fourth Session of the Standing Committee of the Thirteenth National People's Congress on April 20, 2022
Effective: August 1, 2022

Table of Contents

- Chapter I — General Provisions
- Chapter II — Futures Trading and Derivatives Trading
- Chapter III — Futures Clearing and Settlement
- Chapter IV — Futures Business Institutions
- Chapter V — Futures Trading Venues
- Chapter VI — Futures Clearing Institutions
- Chapter VII — Futures Industry Association
- Chapter VIII — Supervision and Administration
- Chapter IX — Legal Liability
- Chapter X — Supplementary Provisions

Chapter I — General Provisions

Article 1 — This Law is enacted for the purpose of regulating futures trading and derivatives trading, safeguarding the lawful rights and interests of all participants in the futures market, maintaining market order and public interests, preventing and mitigating financial risks, and promoting the sound development of the socialist market economy.

Article 2 — This Law applies to futures trading and derivatives trading and related activities conducted within the territory of the People's Republic of China. The term "futures trading" as used in this Law refers to trading activities conducted on futures exchanges through open centralized trading or other methods approved by the futures regulatory authority under the State Council, involving standardized forward contracts with delivery at a future time as the subject matter. The term "derivatives trading" as used in this Law refers to trading activities other than futures trading, including swaps, forwards, and other non-standardized financial derivatives.

Article 3 — Futures trading and derivatives trading shall be conducted in accordance with the principles of openness, fairness, and justice. Fraud, insider trading, market manipulation, and other illegal trading activities are prohibited.

Article 4 — The state encourages the use of futures markets and derivatives markets in production and business activities such as agriculture, energy, and industry for risk management purposes.

Article 5 — The futures regulatory authority under the State Council shall exercise centralized and unified supervision and administration over the national futures market in accordance with the law. The self-regulatory management of futures industry associations and futures trading venues shall be carried out in accordance with the law.

Chapter II — Futures Trading and Derivatives Trading

Article 6 — Futures trading shall be conducted on futures exchanges or on other futures trading venues approved by the futures regulatory authority under the State Council. Over-the-counter derivatives trading shall be conducted in accordance with the regulations prescribed by the futures regulatory authority under the State Council.

Article 7 — Futures contracts and standardized option contracts listed for trading shall be subject to the approval of the futures regulatory authority under the State Council. The futures regulatory authority under the State Council may authorize futures trading venues to approve the listing of futures contracts and standardized option contracts.

Article 8 — Participants in futures trading include futures traders, futures business institutions, futures clearing institutions, and futures trading venues. A participant in futures trading shall comply with laws, administrative regulations, and the relevant rules of futures trading venues.

Article 9 — A futures trader refers to an entity or individual who, in accordance with the provisions of this Law, engages in futures trading and assumes the results of such trading. Futures traders shall open accounts with real names. No entity or individual may violate regulations by lending its or his or her futures account to another person, or by using another person's futures account.

Article 10 — Where a futures trader entrusts a futures business institution to conduct futures trading, the trader shall open a real-name account with the futures business institution. The futures business institution shall mark the identity information of the trader and the relevant trading information in the trader's account.

Article 11 — Futures business institutions shall establish and improve risk management and internal control systems, and shall strictly implement the segregation of customer assets. A futures business institution shall, in accordance with the regulations, open a separate special account for each customer to deposit and manage customer assets such as customer deposits, and shall not misappropriate such assets.

Article 12 — Market manipulation is prohibited. No entity or individual may manipulate the futures market by any of the following means:

- (1) conducting related-party transactions between accounts actually controlled by the same person, either alone or in collusion with others, to influence the price or volume of futures trading;
- (2) trading frequently or placing and then canceling orders in large volumes at prices that do not reflect the true intent of the transaction, to influence the price or volume of futures trading;
- (3) using the advantage of a large position to influence trading prices through concentrated trading, continuous trading, or other means;
- (4) using false or uncertain material information to induce investors to conduct futures trading;
- (5) making public evaluations, predictions, or investment recommendations on a futures contract or the subject matter thereof while engaging in or covertly engaging in reverse trading of the relevant futures contract; or
- (6) any other means of manipulating the futures market.

Article 13 — Insider trading is prohibited. Persons with knowledge of inside information about futures trading or persons who have illegally obtained inside information shall not use such inside information to engage in futures trading, or disclose such information, or advise others to engage in futures trading, before the information is made public.

Article 14 — The term "inside information" as used in this Law refers to information that may have a significant impact on the price of futures trading and that has not yet been made public during the course of futures trading activities. Inside information includes, but is not limited to, major decisions of futures regulatory authorities and futures trading venues, material changes in the operation or financial status of the subject matter of a futures contract, and changes in major policies.

Article 15 — Fraud in futures trading is prohibited. The following acts constitute fraud in futures trading:

- (1) fabricating or disseminating false or misleading information about futures trading;
- (2) concealing, falsifying, or destroying transaction records, financial accounting information, or other relevant information;
- (3) using the name of a futures trading venue, futures clearing institution, or futures business institution without authorization; or
- (4) any other fraudulent act.

Chapter III — Futures Clearing and Settlement

Article 16 — Futures clearing shall be conducted uniformly by futures clearing institutions. Futures trading venues may conduct futures clearing on their own, or may entrust an independent futures clearing institution to conduct futures clearing. Other futures clearing institutions shall be established with the approval of the futures regulatory authority under the State Council.

Article 17 — A futures clearing institution shall perform the following functions:

- (1) organizing futures clearing and settlement;
- (2) managing and operating the clearing risk reserve; and
- (3) other functions prescribed by the futures regulatory authority under the State Council.

Article 18 — A futures clearing institution shall establish and implement a central counterparty clearing system. A futures clearing institution that assumes the obligations of both parties to a transaction as the

central counterparty shall manage clearing risks in accordance with the law.

Article 19 — Futures clearing and settlement shall be conducted through a hierarchical clearing system. A futures clearing institution shall open clearing accounts for clearing members, and clearing members shall open clearing accounts for futures traders who are not clearing members and for customers. The funds deposited by customers shall be segregated from the funds of the futures business institution and shall not be used for any purpose other than clearing and settlement.

Article 20 — A futures clearing institution shall establish a risk management system, including a margin system, a mark-to-market system, a position limit system, a large position reporting system, and a risk reserve fund system. The standards for margin shall be determined by the futures clearing institution and reported to the futures regulatory authority under the State Council for filing.

Chapter IV — Futures Business Institutions

Article 21 — The establishment of a futures business institution shall be subject to the approval of the futures regulatory authority under the State Council. No entity or individual may engage in futures brokerage business without the approval of the futures regulatory authority under the State Council.

Article 22 — The establishment of a futures business institution shall meet the following conditions:

- (1) having articles of association that comply with the provisions of laws and administrative regulations;
- (2) having shareholders whose qualifications comply with the requirements;
- (3) having a registered capital that meets the minimum amount prescribed by the futures regulatory authority under the State Council;
- (4) having directors, supervisors, and senior management personnel who are qualified for their positions and have relevant experience;
- (5) having a sound risk management and internal control system;
- (6) having a qualified business site and business facilities; and
- (7) other conditions prescribed by laws, administrative regulations, and the futures regulatory authority under the State Council.

Article 23 — A futures business institution shall not accept full authorization from a customer to conduct futures trading on behalf of the customer. When conducting brokerage business, a futures business institution shall not accept a customer's entrustment by promising profits, sharing profits, or sharing risks.

Article 24 — A futures business institution shall not engage in any of the following activities:

- (1) providing financing or guarantee for a customer in futures trading;
- (2) conducting futures trading on its own account in violation of regulations;
- (3) misappropriating customer funds;
- (4) deceiving customers or misleading them into opening accounts, trading, or conducting other activities; or
- (5) other activities prohibited by the futures regulatory authority under the State Council.

Article 25 — Where a futures business institution is unable to continue operations due to reasons such as dissolution, being ordered to close down, or having its business license revoked, the futures regulatory authority under the State Council shall administer the transfer of customer assets.

Chapter V — Futures Trading Venues

Article 26 — Futures trading venues include futures exchanges and other futures trading venues approved by the State Council or the futures regulatory authority under the State Council. Futures trading venues shall provide the premises and facilities for futures trading, organize and supervise futures trading, implement self-regulatory management, and perform other functions in accordance with the provisions of this Law and the requirements of the futures regulatory authority under the State Council.

Article 27 — The establishment, alteration, and dissolution of a futures exchange shall be subject to the approval of the futures regulatory authority under the State Council. A futures exchange shall have articles of association. The formulation and amendment of the articles of association of a futures exchange shall be subject to the approval of the futures regulatory authority under the State Council.

Article 28 — A futures exchange shall perform the following functions:

- (1) providing the premises and facilities for futures trading;
- (2) designing futures contracts and arranging for the listing of such contracts;
- (3) organizing and supervising futures trading, clearing, and settlement, and delivery;
- (4) implementing self-regulatory management over its members and futures traders;
- (5) providing other services stipulated in its articles of association; and
- (6) other functions prescribed by the futures regulatory authority under the State Council.

Article 29 — A futures exchange shall establish a real-time monitoring system for futures trading and shall promptly report to the futures regulatory authority under the State Council if it discovers any abnormal trading conditions. A futures exchange may take the following emergency measures when abnormal trading conditions occur:

- (1) raising margin requirements;
- (2) adjusting position limits;
- (3) restricting the opening of new positions;
- (4) ordering liquidation of positions;
- (5) temporarily suspending trading; or
- (6) other emergency measures.

Chapter VI — Futures Clearing Institutions

Article 30 — A futures clearing institution refers to a legal entity established in accordance with the law to provide centralized and unified clearing services for futures trading. Futures exchanges may establish their own clearing departments to provide clearing services, or an independent futures clearing institution may be established with the approval of the futures regulatory authority under the State Council.

Article 31 — A futures clearing institution shall establish a default risk management and disposal mechanism. Where a clearing member defaults, the futures clearing institution shall dispose of the default in accordance with the business rules and shall first use the defaulting clearing member's margin and the clearing reserve to cover the loss. Where the loss cannot be fully covered, the futures clearing institution may use the risk reserve fund and its own funds. After the disposal of the default, the futures clearing institution shall have the right of recourse against the defaulting clearing member.

Article 32 — The risk reserve fund of a futures clearing institution shall be set aside from the business revenue in accordance with the relevant provisions. The method for setting aside and managing the risk reserve fund shall be prescribed by the futures regulatory authority under the State Council in conjunction with the finance department under the State Council.

Chapter VII — Futures Industry Association

Article 33 — A futures industry association is a self-regulatory organization of the futures industry and is a social organization legal person. Futures business institutions, futures trading venues, futures clearing institutions, and other relevant institutions shall join the futures industry association. The power organ of the futures industry association is the general meeting of all members.

Article 34 — The futures industry association shall perform the following functions:

- (1) educating and organizing its members to comply with futures laws, regulations, and rules;
- (2) safeguarding the lawful rights and interests of its members in accordance with the law, and reflecting the suggestions and requests of its members to the futures regulatory authority under the State Council;
- (3) formulating self-regulatory rules and professional standards for the futures industry, and supervising and inspecting the compliance of its members;
- (4) mediating disputes relating to futures business among its members and between its members and their customers;
- (5) imposing disciplinary sanctions on its members for violations of self-regulatory rules; and
- (6) other functions prescribed by the futures regulatory authority under the State Council.

Chapter VIII — Supervision and Administration

Article 35 — The futures regulatory authority under the State Council shall exercise supervision and administration over the futures market in accordance with the law, and shall safeguard the lawful rights and interests of futures traders and other market participants. The futures regulatory authority under the State Council shall establish a sound regulatory system covering futures trading venues, futures clearing institutions, futures business institutions, and other market participants.

Article 36 — The futures regulatory authority under the State Council may take the following measures in the performance of its duties:

- (1) conducting on-site inspections of futures trading venues, futures clearing institutions, and futures business institutions;
- (2) conducting inquiries with the relevant entities and individuals, and requiring them to provide explanations on the matters under inspection;
- (3) consulting and duplicating the registration materials, financial and accounting materials, and other relevant documents and materials of the entities under inspection;
- (4) sealing up documents and materials that may be transferred, concealed, or destroyed;
- (5) inquiring into the bank accounts and securities and futures accounts of the entities under inspection; and
- (6) restricting trading by the parties involved when necessary.

Article 37 — The futures regulatory authority under the State Council shall establish a supervision and administration information-sharing mechanism with relevant departments such as the central bank, financial regulatory authorities, and market regulation authorities, to strengthen coordinated supervision.

Article 38 — The futures regulatory authority under the State Council shall, in accordance with the law, cooperate and conduct mutual exchanges with the futures regulatory authorities of other countries and regions in the area of futures market supervision and administration.

Chapter IX — Legal Liability

Article 39 — Where an entity or individual engages in futures brokerage business without approval, the futures regulatory authority under the State Council shall ban such business, confiscate the illegal proceeds, and impose a fine of not less than one time but not more than five times the illegal proceeds. Where there are no illegal proceeds or the illegal proceeds are less than RMB 300,000, a fine of not less than RMB 300,000 and not more than RMB 1,500,000 shall be imposed. Where the circumstances are serious, the relevant authorities shall impose penalties in accordance with the law.

Article 40 — Where a futures business institution violates the provisions of this Law by misappropriating customer funds, the futures regulatory authority under the State Council shall order it to rectify the situation and shall confiscate the illegal proceeds and impose a fine. The directly responsible person in charge and other directly responsible persons shall be given a warning and a fine.

Article 41 — Where an entity or individual commits market manipulation in violation of the provisions of this Law, the futures regulatory authority under the State Council shall order it or him or her to dispose of the illegally held futures positions in accordance with the law, confiscate the illegal proceeds, and impose a fine of not less than one time but not more than five times the illegal proceeds. Where there are no illegal proceeds or the illegal proceeds are less than RMB 500,000, a fine of not less than RMB 500,000 and not more than RMB 2,500,000 shall be imposed. Where the circumstances are serious, criminal liability shall be pursued in accordance with the law.

Article 42 — Where an entity or individual engages in insider trading in violation of the provisions of this Law, the futures regulatory authority under the State Council shall order it or him or her to dispose of the illegally held futures positions in accordance with the law, confiscate the illegal proceeds, and impose a fine of not less than one time but not more than five times the illegal proceeds. Where there are no illegal proceeds or the illegal proceeds are less than RMB 200,000, a fine of not less than RMB 200,000 and not more than RMB 1,000,000 shall be imposed. Where the circumstances are serious, criminal liability shall be pursued in accordance with the law.

Article 43 — Where a futures clearing institution, futures trading venue, or futures business institution violates the provisions of this Law, the futures regulatory authority under the State Council shall order it to rectify the situation and may take regulatory measures such as issuing a warning, imposing a fine, or ordering a suspension of business for rectification. Where the circumstances are serious, its business license or permit may be revoked.

Chapter X — Supplementary Provisions

Article 44 — The provisions of this Law do not apply to the trading of financial instruments such as currencies, bonds, and funds as determined by the financial regulatory authority under the State Council.

Article 45 — The State Council shall, in accordance with the principles of this Law, separately formulate regulations on the administration of derivatives trading other than futures.

Article 46 — The specific measures for the administration of overseas futures trading conducted by domestic entities and individuals shall be separately prescribed by the State Council.

Article 47 — This Law shall come into effect on August 1, 2022.

Disclaimer: This is an unofficial English translation of the Futures and Derivatives Law of the People's Republic of China, prepared for reference and informational purposes only. It is not an official translation and has no legal effect. While every effort has been made to ensure accuracy, the Chinese original text shall prevail in the event of any discrepancy. This translation is provided without warranty of any kind, express or implied. Users should consult qualified legal professionals in China for advice on specific matters. This translation does not constitute legal advice.