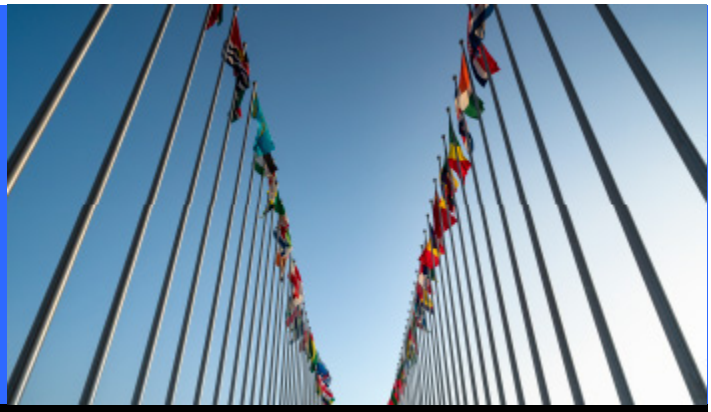
View on our website.

GIBSON DUNN



Transnational Litigation Update November 3, 2026

No Self-Help Rescission for Innocent Misrepresentation: The Hong Kong Court of Final Appeal's Decision in *ANZ v Excellence*

The CFA's decision is helpful guidance for any commercial parties who wish to get out of a contract that has been procured by an innocent misrepresentation made by the other side.

Where a party seeks to rescind a contract governed by Hong Kong law for innocent misrepresentation, "the question of whether relief should be granted is necessarily a matter for the court". In that context, merely electing to rescind the contract is "not itself effective", for "rescission for innocent misrepresentation is effected by an order of the court".

So decided the Hong Kong Court of Final Appeal (the CFA) in **ANZ Commodity Trading Pty Ltd v Excellence Raise Overseas Limited & Ors** [2026] HKCFA 32, dispelling any notion that a party has automatic entitlement to revoke a contract after discovering that it was procured by an innocent misrepresentation.

That is the case despite section 3(2) of the Misrepresentation Ordinance (Cap. 284) stating that:

> "Where a person has entered into a contract after a misrepresentation has been made to him otherwise than fraudulently, and he would be entitled, by reason of the misrepresentation, to rescind the contract, then, if it is claimed […] that the

> contract ought to be or has been rescinded the court or arbitrator may declare the contract subsisting and award damages in lieu of rescission […]".

The CFA held that this provision cannot be construed as allowing a party to rescind a contract for innocent misrepresentation simply by election. The provision only provides the courts with an additional discretion to award damages in lieu of rescission in the case of a non-fraudulent misrepresentation. Whether rescission or damages should be granted in such a case remains a matter for the court.

The CFA's decision is helpful guidance for any commercial parties who wish to get out of a contract that has been procured by an innocent misrepresentation made by the other side. In such a case, commercial plans should be made knowing that rescission only happens upon an order of court, and that it ultimately may be refused in favour of other relief (e.g., damages), potentially resulting in parties being required to continue performing the rest of the agreement.

Where there is a risk of dissipation of monies paid under a contract whilst a recission order is awaited, as Keane NPJ observed, parties may apply for interim freezing orders without notice to the other side, which "are likely to provide more effective protection for a party seeking to recover money than upholding the theory of rescission by self-help".

The CFA reaffirmed that the position is different if the misrepresentation is fraudulent. At common law, an innocent party can elect to rescind a contract induced by fraudulent misrepresentation, and the election for rescission generally will be effective unless the innocent party is no longer in a position to effectively restore his contractual counterparty to the *status quo* that existed before the contract was entered into.

A copy of the CFA's judgment, which reviews a number of leading authorities on the nature of the legal and equitable claims that might arise in cases of misrepresentation, is available here.

The following Gibson Dunn lawyers prepared this update: Elaine Chen, Andrew Cheng, and Peter Chau.

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding these developments. Please contact the Gibson Dunn lawyer with whom you usually work or any leader or member of the firm's Litigation or Transnational Litigation team, including the following members in Hong Kong:

Elaine Chen (+852 2214 3821, echen@gibsondunn.com)

Andrew Cheng (+852 2214 3826, aocheng@gibsondunn.com)

Peter Chau (+852 2214 3717, pchau@gibsondunn.com)

Attorney Advertising: These materials were prepared for general informational purposes only based on information available at the time of publication and are not intended as, do not constitute, and should not be relied upon as, legal advice or a legal opinion on any specific facts or circumstances. Gibson Dunn (and its affiliates, attorneys, and employees) shall not have any liability in connection with any use of these materials. The sharing of these materials does not establish an attorney-client relationship with the recipient and should not be relied upon as an alternative for advice from qualified counsel. Please note that facts and circumstances may vary, and prior results do not guarantee a similar outcome.

If you would prefer NOT to receive future emailings such as this from the firm,
please reply to this email with "Unsubscribe" in the subject line.

If you would prefer to be removed from ALL of our email lists,
please reply to this email with "Unsubscribe All" in the subject line. Thank you.

© 2026 Gibson, Dunn & Crutcher LLP. All rights reserved. For contact and other information, please visit our website.