

The Role of Legal Mechanisms in Supporting Israeli Investment in Africa

By Daniel Winner, Adv.



In memory of Olga Meshoe Washington—a daughter of Africa and lion of Zion—whose spirit and vision will forever be a guiding light in the pursuit of stronger ties between Israel and Africa.

Israel has a strong legal foundation for international trade, but its engagement with Africa remains underdeveloped. To capitalize on Africa's economic growth, Israel must adopt a more proactive approach—one that mirrors its successful strategies in other global markets.

A. Introduction

International trade and investment are primarily driven by the private sector, where businesses and entrepreneurs seek opportunities to generate profit—what Adam Smith famously described as the “invisible hand.” However, these economic activities do not exist in isolation; they are shaped, influenced, and regulated by legal frameworks established by legislators, who must balance economic growth with broader national interests.

For Israeli investment in Africa to grow, two key conditions must be met: (i) more Israeli entrepreneurs and companies must recognize and pursue profitable opportunities on the continent, and (ii) legislators must establish clear, practical, and effective legal frameworks that facilitate and promote such cross-border economic collaboration.

This paper will examine the common legal frameworks that countries can implement to promote international trade. Thereafter, it will provide a brief overview of the current landscape in Israel, assessing its progress in adopting such measures, specifically in relation to investment and commercial engagement in Africa.

B. Common Legal Frameworks for Facilitating International Trade

For international trade to succeed, legal frameworks must create an environment where businesses can operate with clarity, confidence, and stability. I propose three broad categories of legislation that serve as the foundation for facilitating international trade:

1. Aligning Domestic Laws with Global Standards

For international trade to thrive, legal frameworks must not only provide clear and predictable regulations on ownership rights, intellectual property, contracts, imports, licensing, taxation, visas, currency controls, and the free movement of capital, people, goods, and services, but also align generally with internationally recognized legal norms.

While it is evident that laws directly impacting commerce must provide a stable and predictable environment for international businesses, countries should also recognize that seemingly unrelated legislation can influence trade dynamics. Policies that significantly deviate from global standards—whether in human rights, governance, or regulatory compliance—can deter foreign investment and hinder economic growth.

A striking example is Uganda’s aggressive anti-LGBTQ+ laws, which have drawn widespread international criticism and have also led to reduced foreign investment, and economic consequences. Such legislation can create reputational risks, limit access to global markets, and discourage multinational corporations from engaging with the country.

2. Bilateral Trade Agreements

Beyond general trade regulations, countries can establish specific agreements with other nations to promote targeted economic growth. These agreements provide special terms and conditions that foster trade and investment between two nations, either by reducing regulatory barriers or offering financial incentives such as tax benefits, subsidies, or tariff reductions.

One important legal mechanism within this category is Bilateral Investment Treaties (“BITs”), which are agreements between two countries designed to encourage and protect foreign investment. BITs typically provide assurances to investors by including provisions on fair treatment, protection against expropriation without compensation, free transfer of capital, and access to impartial dispute resolution mechanisms.

These treaties create a stable and predictable legal environment, giving investors greater confidence to engage in foreign markets without fear of arbitrary government actions.

Such agreements demonstrate how governments can actively shape economic opportunities, not just by creating a predictable trade environment but by directing investment into strategic sectors. By aligning legal frameworks with economic priorities, these agreements encourage entrepreneurship, strengthen bilateral relations, and drive long-term growth.

Legislators involved in trade and investment agreements must adopt an entrepreneurial mindset, recognizing future economic opportunities and proactively shaping legal frameworks to direct investment into high-potential sectors. However, this is precisely where many policymakers—particularly Israeli legislators regarding Africa—fall short. They often lack the long-term business vision needed to create profitable and strategic trade relationships.

This challenge is driven by a classic "chicken-and-egg" dilemma, whereby legislators see little reason to prioritize legal frameworks for African markets due to low current trade with the continent, while entrepreneurs hesitate to explore opportunities in Africa due to the lack of necessary legal frameworks and economic incentives. Breaking this cycle requires a proactive approach, where governments recognize Africa's long-term economic potential and create forward-thinking trade policies that encourage private-sector engagement.

3. Legal Protections and Dispute Resolution

For legal protections to be truly effective, judicial systems must not only be fair, objective, and transparent in handling disputes involving foreign parties but also align with international standards and procedures for cross-border dispute resolution. This ensures that foreign investors and businesses can operate with confidence, knowing that their rights will be upheld under a predictable and enforceable legal framework.

One of the most effective ways to achieve this is by committing to internationally recognized treaties that provide mechanisms for dispute resolution. These include, *inter alia*: (1) the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention")—ensuring that arbitration awards issued in one member state are recognized and enforced in another, and (2) the United Nations Convention on International Settlement Agreements Resulting from Mediation (the "Singapore Convention")—establishing a framework for the enforcement of mediated settlement agreements in international commercial disputes.

Additionally, Investor-State Dispute Settlement ("ISDS") mechanisms play a crucial role in safeguarding foreign investments. BITs typically include ISDS provisions, allowing foreign investors to bring claims directly against host states in cases of unfair treatment, expropriation, or violations of investment protections. By enabling disputes to be resolved

in neutral international forums, these mechanisms mitigate legal uncertainty, shield investors from political interference, and promote cross-border economic stability.

However, having strong legal frameworks on paper is not enough! They must also be consistently implemented and enforced. A legal system can only foster trust if judicial decisions are respected and upheld by the government. A stark example of failure in enforcement, though not in the commercial realm, was South Africa's refusal to arrest Sudanese President Omar al-Bashir, despite a legal obligation to do so under international law. Although South Africa's judiciary ruled in favor of his arrest under the Rome Statute of the International Criminal Court ("ICC"), the executive branch disregarded the ruling and allowed him to leave the country due to political considerations.¹

While this case is not related to international trade, it illustrates a critical point: when governments fail to uphold judicial decisions, they undermine the credibility of their entire legal system, creating uncertainty that can deter foreign investment and trade.

C. The Israeli Legal Landscape: Progress and Gaps in African Trade Engagement

Israel has taken commendable steps to promote international trade and investment, aligning itself with global legal frameworks that support cross-border economic activity. However, while Israel has successfully integrated international best practices in many areas, its approach to fostering investment in Africa remains lacking. This section assesses Israel's legal landscape in relation to the three key categories discussed earlier.

1. Aligning Domestic Laws with Global Standards

Israeli commercial laws largely align with international best practices, ensuring that businesses operating in Israel and abroad can do so within a predictable and stable legal environment. The regulatory frameworks do not present significant deviations in that would pose barriers to trade, making Israel an attractive partner for international investment.

The only potential exceptions stem from Israel's unique legal framework in family law, which is mostly governed by religious courts, and the country's lack of a formal, fully codified constitution. However, these aspects have no material impact on Israel's commercial or regulatory landscape for trade and investment.

2. Bilateral Trade Agreements

Israel has generally been proactive in establishing strategic trade agreements and bilateral investment treaties to support its businesses abroad. This has led to strong investment partnerships across Europe, North America, and parts of Asia. However, when it comes to Africa, Israel has not prioritized the development of similar legal frameworks.

¹ www.saflii.org/za/cases/ZASCA/2016/17.pdf

An analysis of Israel's treaty database shows a notable absence of BITs and trade agreements with African nations.² While some agreements exist, they are mostly outdated and lack the depth of treaties Israel has established in other regions.

This lack of structured legal incentives discourages Israeli entrepreneurs from investing in Africa, as they face greater regulatory uncertainty and fewer commercial incentives compared to those investing in other parts of the world. The absence of investment protection mechanisms, tax incentives, and reduced trade barriers means that Africa remains an underutilized economic partner for Israeli businesses.

A forward-thinking approach could see Israel reimagining its role in African trade by leveraging its unique geographic position. As one of the few countries with a land border into Africa, Israel has an untapped opportunity to integrate more deeply into Africa's continental legal frameworks. One creative avenue would be to establish streamlined trade routes through Egypt, allowing Israeli businesses to access African markets more efficiently and distribute goods seamlessly under the African Continental Free Trade Area ("AfCFTA") framework. This strategy could unlock new economic opportunities, strengthen trade relations, and position Israel as a key channel between global markets and Africa's rapidly growing economy.

3. Legal Protection and Dispute Resolution

Israel has made significant strides in ensuring a stable and predictable dispute resolution system for international trade and investment. As a signatory to the New York Convention and, more recently, the Singapore Convention, Israel has committed to internationally recognized mechanisms for resolving cross-border commercial disputes.

Furthermore, Israel has recently adopted the United Nations Commission on International Trade Law ("UNCITRAL") Model Law on Alternative Dispute Resolution, which enhances the country's arbitration and mediation frameworks. These developments reinforce investor confidence by ensuring that Israeli businesses operating abroad—and foreign companies investing in Israel—have access to efficient, neutral dispute resolution mechanisms.

Moreover, Israel has a strong and well-respected judiciary, which has historically upheld commercial legal frameworks in line with international standards. Despite recent concerns about judicial independence, Israel's courts remain highly regarded in global legal and business circles.

² <https://www.gov.il/en/departments/dynamiccollectors/mfa-accords?skip=0>

D. Conclusion: The Need for a Proactive Approach in Africa

While Israel has built a strong legal foundation for international trade, its engagement with Africa remains underdeveloped. The lack of bilateral trade agreements, investment treaties, and strategic trade incentives means that Israeli businesses have little motivation when considering opportunities on the continent.

To capitalize on Africa's economic growth and emerging trade frameworks like AfCFTA, Israel must adopt a more proactive approach—one that mirrors its successful strategies in other global markets. By fostering stronger legal and economic ties with African nations, Israel can unlock new investment opportunities, strengthen diplomatic relations, and position itself as a key player in Africa's economic transformation.

About the author:

Mr. Daniel Winer is a distinguished legal expert specializing in the Middle East and Africa (MEA). He is one of the few professionals worldwide to hold two LL.B. degrees, from both South Africa and Israel. Currently, he serves as the Head of Legal for Innovation: Africa. Previously, he spent over five years as the Executive Director of the Israel-South Africa Chamber of Commerce. Daniel also led a landmark initiative in Nigeria, enabling law students from the Universities of Nigeria, Benin, and Ilorin to compete in international law competition in Paris, strengthening Africa's presence in the global ADR arena.

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