



Business in Africa: investment and intellectual property

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Introduction

Exponential economic development across Africa has resulted in a greater necessity for increased protection of intellectual property (“IP”) assets on the continent. Below, we consider the potential for investment in Africa, as well as the opportunities for IP activity on the continent.

Doing business in Africa

The market

Africa's growth momentum is expected to slow from 3.9% in 2018 to 4.1% in 2019. However, many African countries are forecast to grow above this average between 2018 and 2023, with 11 growing above 6%. Ethiopia is forecast to be the fastest-growing economy in Africa, averaging 8.2% for the next six years. Egypt, Nigeria and South Africa were the three largest markets in Africa in 2018, making up almost half of Africa's almost USD7-trillion market size¹.

There are unique opportunities among the challenges in Africa, which contains about 10 of the 20 fastest growing economies in the world. The high rate of population growth and increase in spending power over the next 15 to 20 years makes Africa the continent from which global markets, customers and employees of the future are emerging.

Foreign direct investment inflows for Africa

Foreign direct investment (“FDI”) flows into Africa have weakened in 2017 to USD42-billion, a 21% decline from the previous year. This fall was partially due to a 22% decrease in the value of cross-border M&A². Although it seems that Africa's rapid economic expansion that was predicted three to five years ago has not fully materialised due to various factors (including the contracted global economy, weak oil prices and severe droughts in many African countries), Africa is still primed for growth but at a slower rate of expansion than previously predicted, as countries around the world reconsider their long-term development strategies in light of the present global economic climate. Investment opportunities in Africa are plentiful but should be approached with careful planning and require resilience and determination on the part of the investor³.

¹ Rand Merchant Bank's *Where to invest in Africa — A Guide to Corporate Investment* 2019 edition

² UNCTAD, *World Investment Report: investment and new industrial policies* 2018

³ Rand Merchant Bank's *Where to invest in Africa — A Guide to Corporate Investment* 2016 | 2017 edition

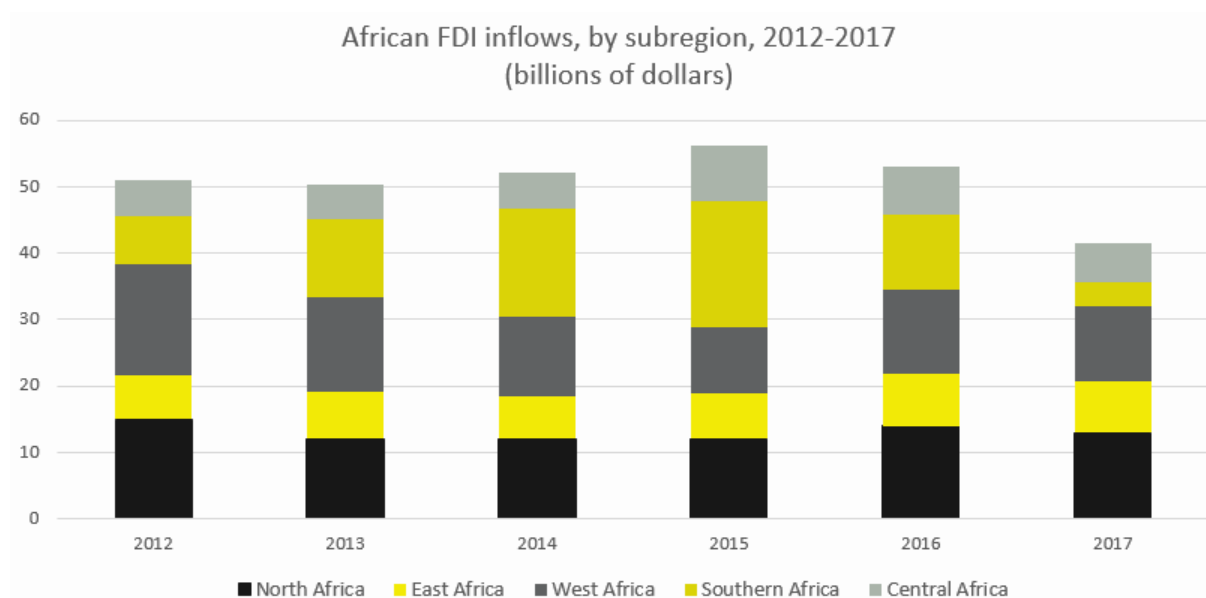




A survey carried out in June 2016⁴ provides evidence of investor confidence in the continent with 75% of respondents saying that they were already invested in Africa and plan to invest even further, and an additional 6% saying that while they weren't invested in Africa yet, they planned to in future.

The bulk of FDI into Africa comes from multinational enterprises in developed economies and developing-economy investors from China, Singapore, India and Hong Kong. There is also significant inter-African investment, mostly from South African investors into other African countries.

Total FDI inflows to Africa decreased in 2016 compared to 2015, from USD61.5-million to USD59.4-million, whereas FDI outflows from Africa increased marginally in 2016 compared to 2015, from USD18-million to about USD18.2-million⁵. However, Chinese FDI to Africa has grown by 40% annually over the past ten years with Angola, Côte d'Ivoire, Ethiopia, Kenya, Nigeria, South Africa, Tanzania and Zambia making up around 50% of Chinese investment⁶.



Source: UNCTAD, World Investment Report: investment and new industrial policies 2018.

⁴ Rand Merchant Bank's *Where to invest in Africa — A Guide to Corporate Investment* 2016 | 2017 edition

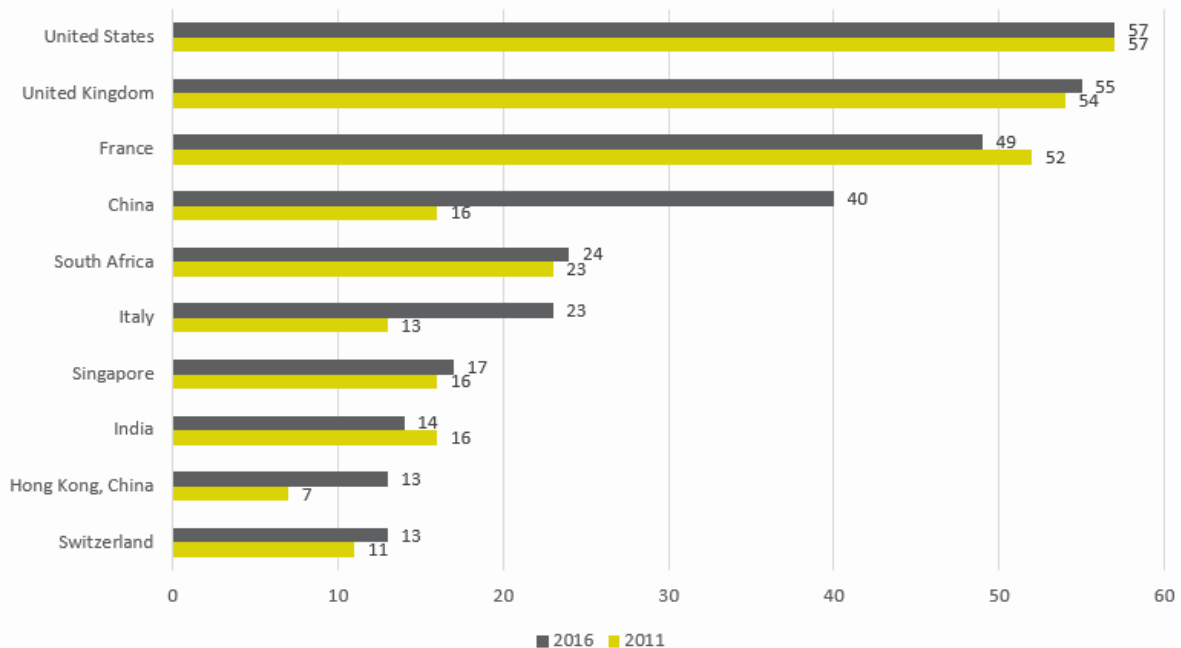
⁵ UNCTAD, World Investment Report: investment and new industrial policies 2018.

⁶ UNCTAD, World Investment Report: investment and new industrial policies 2018.





The top investor countries in Africa, 2011 and 2016 (billions of dollars)



Source: UNCTAD, World Investment Report: investment and new industrial policies 2018.

Renewed international interest in investment in Africa

There is clearly a renewed interest in Africa with a number of heads of state visits to Africa in 2018, including by the UK's Theresa May, Germany's Angela Merkel, and China's Xi Jinping. The 2018 Forum on China Africa Cooperation (FOCAC) held in September 2018 in Beijing was attended by almost all African nations and President Xi Jinping pledged to invest USD60-billion in the African continent.

It will also be interesting to see what the impact of the G20 Marshall Plan for Africa that is being driven under Germany's chairmanship will have on African investment and economic growth. Some of the planned interventions include:

- support for small and medium-sized enterprises that provide around 80% of employment in Africa by development of financial services that are better tailored to their needs, including loans, local currency loans and risk management by the German Federal Ministry for Economic Cooperation and Development ("BMZ"), the African Development Bank, local banks, KfW Entwicklungsbank and the World Bank;
- promotion of agricultural and food industries in African countries through 14 green innovation centres, where experts from private industry and academic institutions work with African farmers to





improve procedures for cultivation, reduce harvest losses, improve marketing, promote self-organisation among farmers, enhance quality standards and enhance trade;

- an initiative by BMZ to support the development of quality assurance infrastructure in African partner countries to ensure that African goods meet the standards of their target markets, including environmental, health, and labour protection standards, as well as to strengthen customs systems to provide greater security for companies involved in cross-border trade.
- Under the Economic Partnership Agreement, products from Botswana, Lesotho, Mozambique, Namibia and eSwatini (formerly Swaziland) will permanently be guaranteed tariff- and quota-free access to European markets and European market access to South Africa will also be significantly increased. In return, these African countries will open their markets over time to around 80% of the EU's products; and
- the development of digital technologies that can and have already been seen to provide significant advantages and opportunities in Africa will also be facilitated in African partner countries. For example, digital systems for recording data and managing farming and small businesses can provide more efficient business management as well as provide proof of income, giving small business owners, farmers and fishers access to loans and investments.

The most attractive investment destinations in Africa

RMB's Investment Attractiveness Index⁷ is a useful measure of the most appealing African territories for investment. The methodology combines macroeconomic fundamentals with the practicalities of doing business in Africa and includes elements that are considered by RMB to be most important for investment: economic activity (expressed as a weighted average of market size and forecasted levels of GDP growth) and the operating environment.

The top five most appealing African territories for investment in 2018 are, in order, Egypt, South Africa, Morocco, Ethiopia and Kenya. Egypt tops the rankings largely because of its economic activity score.

However, it is interesting to note from RMB's in-house survey⁸ that the operating environment for a country is often a greater determinant for determining investment in that country by a firm than the credit rating of a country. In order the factors considered, from most to least important were:

⁷ Rand Merchant Bank's *Where to invest in Africa — A Guide to Corporate Investment* 2019 edition

⁸ Rand Merchant Bank's *Where to invest in Africa — A Guide to Corporate Investment* 2016 | 2017 edition





- macroeconomic and political stability
- economic growth
- ease of doing business
- size of the economy (in USD terms)
- sovereign credit rating

When weighting for operating environment, Mauritius is Africa's most attractive business environment, followed by Rwanda, Botswana, and South Africa. Mauritius has a well-developed infrastructure, a healthy and educated workforce, the most efficient goods market and strong institutions. However, South Africa still leads the continent in the vital areas of financial markets, transport infrastructure and strong institutions.

Commodity versus investment-led growth

There is a clear dichotomy between growth through commodities versus investment-led growth. As commodity prices fell, there was a significant pressure exerted on the economic growth of countries in which growth is predominantly commodity-led, such as Zambia, Nigeria and Angola. However, more diversified economies like Kenya, Côte d'Ivoire and Senegal have continued to grow at a steady pace. It is expected that as the resource prices recover, the commodity-led economies will rebound and lift economic output. Countries such as Nigeria, Angola and Gabon that are oil-producing nations, will recover as oil prices recover⁹.

Sectors for investment

Collectively, technology, media and telecommunications, consumer products and retail and financial services make up around 45% of total FDI projects¹⁰. However, it appears that investors are looking to the "next wave" of sectors beyond consumer-facing ones and this has stimulated FDI into sectors such as transport and logistics, real-estate, hospitality and construction and the automotive sectors¹¹.

Sub-Saharan Africa remains at the forefront of the mobile money revolution (ie, monetary transactions through use of mobile phones).

Looking at the key trends shaping Africa, the predominant role of digital technology, particularly in the financial sector, is highlighted¹².

⁹ Rand Merchant Bank's *Where to invest in Africa — A Guide to Corporate Investment* 2018 edition

¹⁰ FDi Markets: *FDI Report 2017*

¹¹ Ernest and Young 2017 *Attractiveness Program Africa*

¹² Rand Merchant Bank's *Where to invest in Africa — A Guide to Corporate Investment* 2016 | 2017 edition





The reason for the phenomenal growth in the mobile money sector is simple: more than 50% of Africans over the age of 15 have mobile phones with internet connectivity and these offer a cost-effective, user-friendly and secure method of transacting in a rapidly growing population. In addition, the mobile money sector is expected to grow: it is predicted that the number of mobile phone subscribers will soar to 400-million, and if even only 1/3 of these adults have traditional bank accounts, then mobile financial services could be extended to more than 250-million people over the next three years.

Retail and consumer goods

In the retail sector, there are effectively three stages in the retail value proposition in Africa:

1. **basic** (such as Gambia, Zambia, Ethiopia, Tanzania and Angola) where there is no formal shopping culture and price is the key driver of purchases;
2. **developing** (such as Nigeria, Ghana and Mozambique) where there is an emerging shopping culture and a widening of assortments of dry and fresh basic goods and speciality goods and where price, service and quality are important to the buyer; and
3. **mature** (such as South Africa, Botswana and Namibia), where there is a formal shopping culture with international exposure and private label exposure, significant innovation, stable and transparent pricing and where convenience and quality are the key drivers for purchases¹³.

It is recommended that in the retail sector, it is most useful for an international investor to establish a joint venture with a local partner, thereby benefitting from local firms' expertise and knowledge of local consumers, and understanding and developing an appropriate pricing strategy for local consumers. In addition, local partners can provide invaluable local connections for distribution and can provide an edge over other local competitors in the market¹⁴.

¹³ AT Kearney: The 2015 African Retail Development Index

¹⁴ Rand Merchant Bank's *Where to invest in Africa — A Guide to Corporate Investment* 2016 | 2017 edition





IP on the African continent

Drivers of growth

The main drivers of growth in IP activity in Africa include:

- substantial investment in health care across the continent
- discovery of oil and gas reserves along the African east and west coasts has created an investment boom in “mega projects”
- the fastest growing middle class in the world:
 - Africa's middle class has tripled over the last 30 years
 - 7 of the 10 fastest growing middle classes in the world are from African countries
 - the current trajectory suggests that the African middle class will grow to 1.1-billion (42%) by 2060
- technology and rising productivity provide opportunities for “leapfrogging” of old technologies and many African countries are becoming early adopters of new technologies, avoiding investment in older technologies
- substantial investment in clean technology infrastructure projects, with solar power projects leading the way in Egypt, Kenya and South Africa

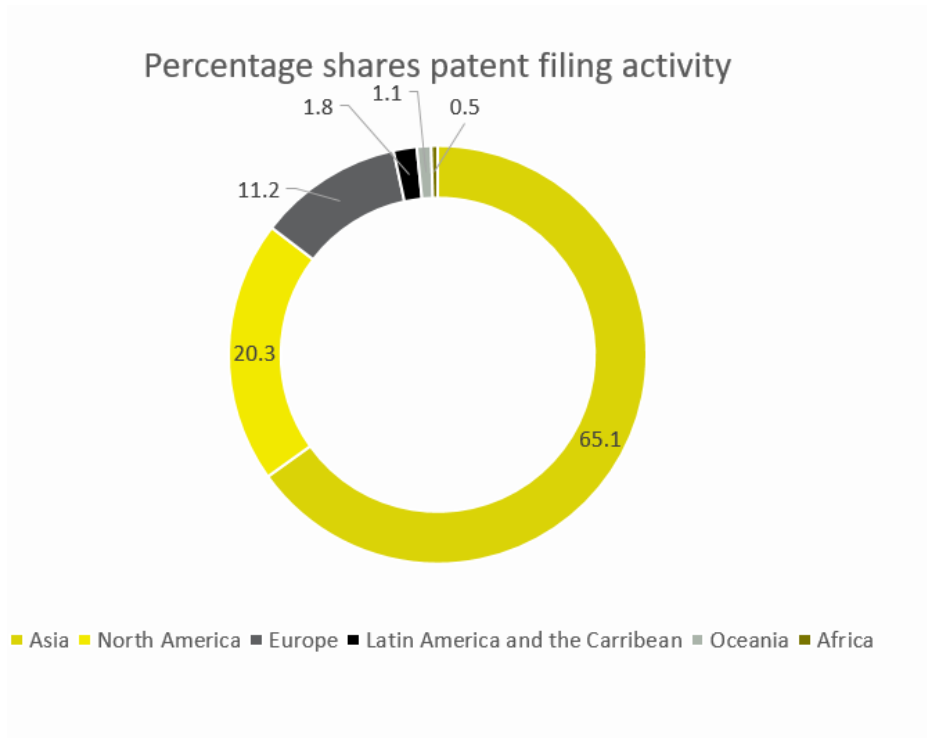




IP filing statistics for Africa (2017)

Patents

In 2017, 0.5% of all patent filings globally were in Africa.



Source: WIPO Statistics Database, September 2018.





| IP office ^(a) | Applications | | | |
|---|------------------|------------------|---------------------------------------|--|
| | Patent | Utility model | Trade mark class count ^(b) | Industrial design count ^(c) |
| African Intellectual Property Organization | 519 | .. | 12 233 | 933 |
| African Regional Intellectual Property Organization | 747 | 17 | 782 | 90 |
| Botswana | 7 | 5 | 3,134 | .. |
| Burundi | .. | .. | 534 | .. |
| Egypt | .. | .. | .. | 3 317 |
| Gambia | 4 | 1 | 1 782 | .. |
| Ghana | 26 | 7 | 5 041 | 963 |
| Kenya | 178 | 153 | 12 043 | 148 |
| Madagascar | 51 | .. | 5 396 | 186 |
| Mauritius | 19 | .. | 2 092 | .. |
| Morocco | 2 224 | .. | 30 031 | 5 374 |
| Namibia | 25 | .. | 7 135 | .. |
| Rwanda | 456 | 9 | 2 536 | .. |
| South Africa | 7 544 | .. | 26 251 | 2 126 |
| Sudan | 293 | .. | 5 004 | 545 |
| Uganda | .. | .. | 1 474 | .. |
| Zambia | 22 | .. | 4 474 | 30 |
| World total (2017 estimate) | 3 168 900 | 1 761 200 | 12 387 600 | 1 242 100 |

a. Only offices with at least one application filed are presented.

b. Application class count is the sum of classes specified in applications received directly by an office plus, where applicable, those specified in designations received by the office via the Madrid System.

c. Application design count is the sum of designs contained in applications received directly by an office plus, where applicable, those contained in designations received by the office via the Hague System.

.. indicates either zero, not available or not applicable.

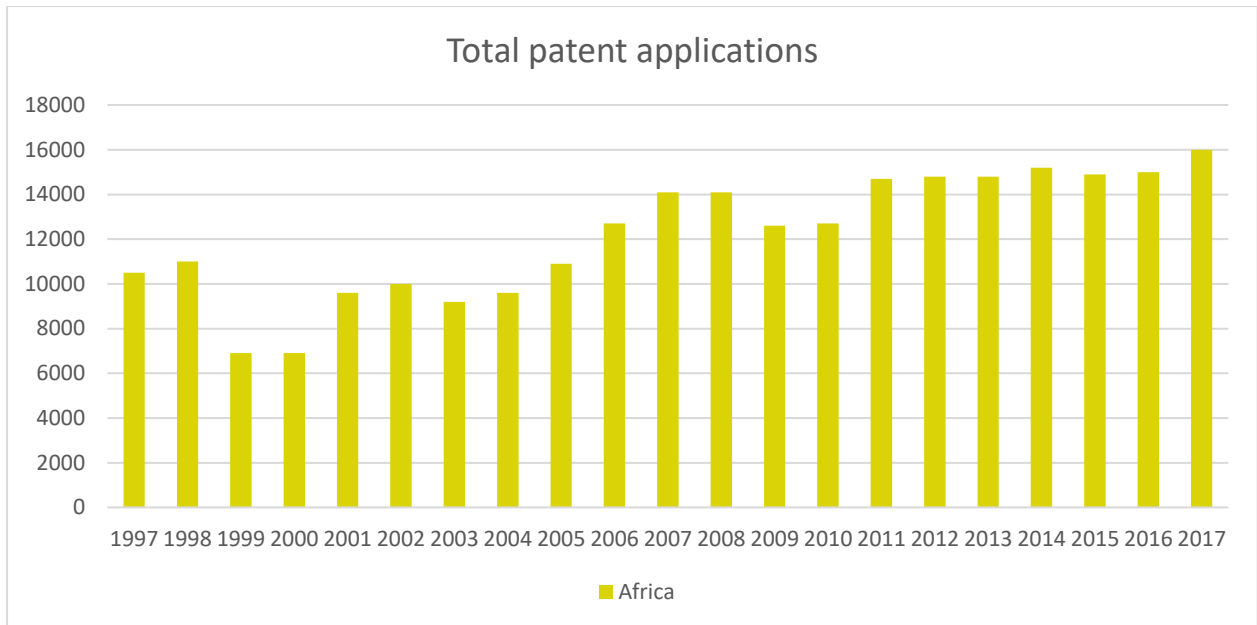
Source: WIPO IP Facts And Figures, 2018.

Interestingly, 2017 saw a further increase in the number of African patent applications filed compared to previous years. Patent filings at the South African patent office increased by 29.5% in 2016 compared to





2015, to just over 9 300 patent filings¹⁵, but have decreased slightly in 2017 to 8 720¹⁶. In addition, the number of patent applications filed at the African Regional Intellectual Property Organization (ARIPO) grew by 7.2% compared with 2016 while the African Intellectual Property Organization (OAPI) patent filings increased by 2.6%¹⁷. This trend will be interesting to follow.



Source: WIPO (2018). World Intellectual Property Indicators 2018. Geneva: World Intellectual Property Organization

Trade marks

In 2017, 1.9% of all trade mark class applications globally were filed in Africa¹⁸.

¹⁵ WIPO (2017). World Intellectual Property Indicators 2017. Geneva: World Intellectual Property Organization

¹⁶ Companies and Intellectual Property Commission, 2017/2018 Annual Report

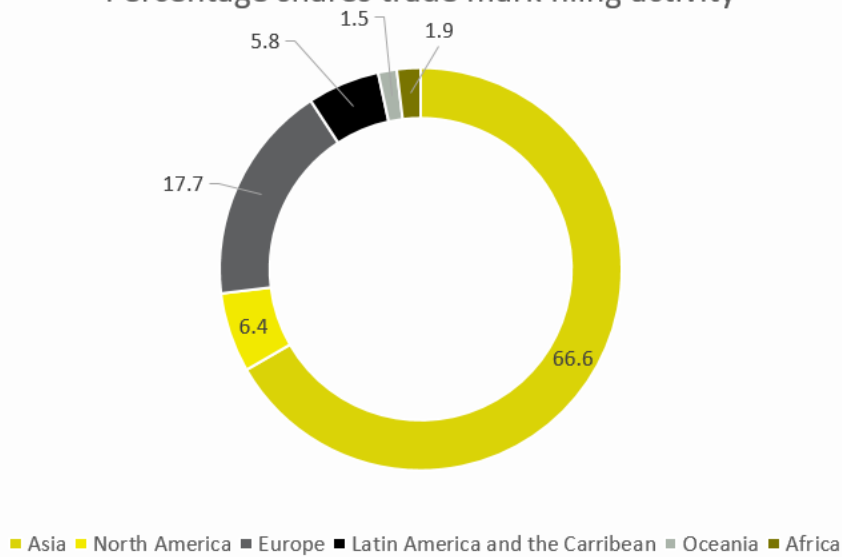
¹⁷ WIPO IP Facts And Figures, 2018; WIPO Statistics Database, September 2018

¹⁸ WIPO IP Facts And Figures, 2018; WIPO Statistics Database, September 2018





Percentage shares trade mark filing activity



Source: WIPO (2017). World Intellectual Property Indicators 2017. Geneva: World Intellectual Property Organization.

The total number of trade mark applications filed in Africa in 2017 declined compared to 2016, prior to which the filing numbers had been fairly static¹⁹. As in the case of patent filings, the majority of the trade mark application filings in 2017/2018 occurred in South Africa, with a total of 37 748 applications filed, a small decrease from 38 578 in 2016/2017²⁰.

¹⁹ WIPO IP Facts And Figures, 2018; WIPO Statistics Database, September 2018

²⁰ Companies and Intellectual Property Commission, 2017/2018 Annual Report





Source: WIPO (2018). World Intellectual Property Indicators 2018. Geneva: World Intellectual Property Organization.

Summary

Africa still has quite some way to go in comparison to the rest of the world in respect of IP filings.

However this could well be considered an opportunity for investors looking at the possibility of using patented technologies that have not been protected in Africa. For example, investors may find it useful to consider performing patent landscaping searches in order to consider whether a particular technology might present a “white space” for development and commercialisation in African territories.





Choosing ENSafrica for legal services in Africa

ENSafrica is an independent law firm with over **200 years of experience**. The firm has over **600 practitioners** in 14 offices on the continent, in Ghana, Mauritius, Namibia, Rwanda, South Africa, Tanzania and Uganda.

ENSafrica's intellectual property department incorporates dedicated patent, trade mark and IP commercial teams comprising patent and trade mark attorneys, many of whom are recognised as leaders in their field, both in Africa and internationally. The intellectual property department does not operate in a silo, but draws in expertise from the other legal departments within ENSafrica where necessary, whether this be in relation to a tax, corporate commercial, regulatory or other fields.

Recent patent awards and rankings

ENSafrica's Intellectual Property Department and its individual patent attorneys have been awarded numerous international awards and rankings, including:

- IAM Patent 1000
- IP Stars
- World Trademark Review 1000
- Euromoney Expert Guides: World's Leading Patent and Trade Mark Attorneys
- Chambers and Partners' Global Guide
- The Legal 500
- The African Legal Awards (IP team of the year 2018).





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