



CONSULTATION PAPER

September 2018

Review of the International Framework for Court Excellence (2nd Edition, March 2013)



CONTENTS

I.	PREFACE	2
II.	GUIDING PRINCIPLES BEHIND THE IFCE REVIEW	4
III.	IFCE REVIEW: INCLUSION OF NEW TOPICS.....	4
IV.	IFCE REVIEW: THE STRUCTURE AND FORMAT OF THE IFCE	7
A.	SELF-ASSESSMENT QUESTIONNAIRE VS SELF-ASSESSMENT CHECKLIST	7
B.	MEASURING EFFECTIVENESS UNDER THE IFCE	8
C.	ADOPTION OF A TIERED APPROACH.....	10
D.	THE IMPLEMENTATION GUIDE	10
V.	IFCE REVIEW: EXTERNAL INDEPENDENT ASSESSMENT.....	11
VI.	IFCE REVIEW: KNOWLEDGE SHARING.....	12

I. Preface

1 The International Framework for Court Excellence (“IFCE”) is a resource for assessing the performance of a court against seven detailed areas of excellence and provides guidance to courts intending to improve their performance. The IFCE uses the term “court” for all bodies that are part of a country’s formal judicial systems including courts and tribunals of general, limited or specialised jurisdiction, as well as secular or religious courts. The term “court” as it appears in this Consultation Paper shall adopt the same meaning.

2 The IFCE was developed by the International Consortium for Court Excellence (“ICCE”), which was founded in 2007 by the Australasian Institute of Judicial Administration, the Federal Judicial Center, the National Center for State Courts, and the State Courts of Singapore. The European Commission for the Efficiency of Justice, SPRING Singapore¹, and the World Bank were resource organisations which provided expertise in developing the IFCE. The ICCE regularly reviews the IFCE to reflect new developments for improving how courts and justice-system partners deliver services.

3 Since its development in 2008, the IFCE has been implemented by numerous courts around the world. The current version of the IFCE is a second edition that was released in March 2013, which incorporated changes based on feedback received on the first edition.

4 In the five years after the release of the second edition, the ICCE Executive Committee (“EXCO”) has observed the emergence of new developments in the legal landscape, including the increasing use of technology and the greater adoption of alternative dispute resolution (“ADR”). The EXCO is also aware of various modifications that have been made to the IFCE to better reflect the needs and context of individual courts that had conducted the self-assessment. In addition, the EXCO has also received feedback on existing and past editions of the IFCE. This Consultation Paper draws on the research done by Dr Liz Richardson, in the paper titled “The Use, Modification, and Impact of the International Framework for Court Excellence: A Research Paper” (June 2017)².

¹ Since 1 April 2018, SPRING Singapore has been renamed Enterprise Singapore

² E Richardson, “The Use, Modification and Impact of the International Framework for Court Excellence: A Research Paper” (International Consortium for Court Excellence, June 2017 (v 2))

5 The EXCO is committed to ensuring that the IFCE is as beneficial and relevant as possible for ICCE members and users of the IFCE. Accordingly, and in light of the matters raised at paragraph 4 above, the EXCO considers it timely to undertake a review of the IFCE with a view to developing a third edition. In particular, the EXCO invites comments in relation to various features of the IFCE, namely:

- (a) The inclusion of new topics in the IFCE;
- (b) The structure and format of the IFCE;
- (c) The possibility of an external assessment by an independent assessor in addition to the current self-assessment model; and
- (d) Knowledge sharing.

6 Please note that the EXCO retains the discretion to publish (or not publish) all submissions received. In the event that the EXCO decides to publish any submission, the published submission will be attributed to the respective respondents unless they expressly request the EXCO not to do so. As such, if respondents would like (a) their whole submission or part of it, or (b) their identity, or both, to be kept confidential, please expressly state so in the submission to the EXCO.

7 Please submit written comments by **12 October 2018 (Friday)** to —

ICCE Secretariat
Australasian Institute of Judicial Administration
Ground Floor, 555 Lonsdale St
Melbourne VIC 3000
ICCE Officer Liz Richardson
Email: Liz.Richardson@monash.edu

8 Electronic submission is encouraged. The EXCO would appreciate that you use this suggested format (click here: ) for your submission to ease our collation efforts.

II. Guiding Principles Behind the IFCE Review

9 To guide respondents in answering the questions that follow in this Consultation Paper, the EXCO has distilled several principles that will inform the present review of the IFCE:

- (a) To develop a simple and user-friendly framework;
- (b) To develop clear and unambiguous criteria statements;
- (c) To refresh topics, whilst maintaining a balance in the overall IFCE;
- (d) To have criteria statements that are principles-based and non-prescriptive; and
- (e) To develop core criteria statements which will be the fundamental aspects of the IFCE and will be applied without the need for any further modification by courts.

10 Respondents are encouraged to consider their responses to the questions against the overarching guiding principles.

III. IFCE Review: Inclusion of New Topics

11 The IFCE is a “living” document that must be timeously refreshed alongside global legal developments. The current version of the IFCE was published in March 2013. More than five years have passed since then, and in this time, court performance concepts which had been developing then have had the chance to become more entrenched and established in various court systems around the world.

12 Various courts have therefore made the necessary modifications to the IFCE by including new concepts and topics to their IFCE self-assessment. This reflects the emphasis placed on the new concepts, and is also a measure of how courts view these new concepts as being crucial to optimising court performance in their journey to become excellent judicial bodies.

13 The adoption of ADR and the use of therapeutic jurisprudence are examples of new judicial concepts that have gained traction over the past few years. The significance of both concepts have been captured in the IFCE State Courts of Singapore Model, which include

criteria statements relating to the use of ADR services in courts³ and the introduction of problem-solving courts to the judicial system⁴. There have also been calls to incorporate principles of therapeutic jurisprudence to the IFCE as they are common in their aims to improve legal systems, laws and legal processes⁵.

14 The advantageous use of technology is another new concept that is central to many courts. The EXCO has observed that courts are eager to advance their technological capabilities, and have placed much focus on the same. For example, the High Performance Court Framework (“HPCF”) developed by the National Center for State Courts (“NCSC”), which is similar to the IFCE, includes a section on the use of technology in courts and related issues (such as data security, data management *etc*). A related topic to technology is the use of data to manage court operations, and increasingly, the use of data analytics. In contrast, the current IFCE questionnaire and checklist only provide for a few broad statements that relate to technology⁶. Respondents can therefore take this opportunity to consider the use of technology in their courts, and the role of technology in their path to court excellence.

15 Judicial ethics and judicial well-being are also two relatively new areas which have received more attention in courts’ implementation of the IFCE. For example, both the Federal Circuit Court of Australia and the District Courts of New Zealand have included an additional area to the IFCE assessment which was specifically aimed at judges. These sections contained questions which concerned awareness of the ethics and standards expected of judges⁷, as well as questions relating to the health and well-being of judges⁸. The IFCE State Courts of Singapore Model incorporated such topics in a different manner — questions relating to staff

³ See Area 6 S/N 9 of the IFCE State Courts of Singapore Model

⁴ See Area 6 S/N 8 of the IFCE State Courts of Singapore Model

⁵ See generally E Richardson, P Spencer and D Wexler, “The International Framework for Court Excellence and therapeutic jurisprudence: Creating excellent courts and enhancing wellbeing” (2016) 25 *Journal of Judicial Administration* 148

⁶ See questions 5.5 and 6.9 of Appendix A (Self-Assessment Questionnaire) to the IFCE, and Area 5 S/N 10 and Area 6 S/N 11 and 12 of Appendix E (Self-Assessment Checklist) to the IFCE

⁷ See questions 8.1 and 8.2 of the Federal Circuit Court of Australia Court Excellence Self-Assessment Questionnaire; see also question 9.1.1 of the IFCE as applied to the District Courts of New Zealand

⁸ See questions 8.13 of the Federal Circuit Court of Australia Court Excellence Self-Assessment Questionnaire

ethics and staff well-being (which would include judicial ethics and judicial well-being) were included as questions to be answered by both judges and court administrators⁹.

16 Related to judicial ethics is the issue of judicial integrity, and the extent to which it should feature in the IFCE. As a recognition of the utility and effectiveness of the IFCE as a court excellence tool, the United Nations Development Programme (“UNDP”) has considered in detail the IFCE at the recent Inception Meeting of the Regional Project titled “Judicial Integrity Champions in APEC”¹⁰. In particular, ways on how the IFCE could further strengthen and measure judicial integrity were explored at the Inception Meeting¹¹. Respondents may therefore wish to provide comments on the topic of judicial integrity and its role in the IFCE.

17 Other additional business excellence topics which have been included by courts in their implementation of the IFCE include service excellence¹², business continuity plans¹³ and corporate social responsibility efforts¹⁴. Given that the foundation of the IFCE is built upon recognised organisational improvement methodologies¹⁵, respondents may wish to consider and include in the IFCE refreshed and updated business excellence topics (in addition to new legal developments).

Question 1. The EXCO seeks comments on additional new topic(s) that could be included in the IFCE. Please provide a brief elaboration on the rationale for the proposed topic(s).

⁹ See Area 1 S/N 6 and 7 of the IFCE State Courts of Singapore Model (ethics) and Area 3 S/N 6 of the IFCE State Courts of Singapore Model (well-being)

¹⁰ Held from 8-9 March 2018 in Bangkok, Thailand. Available from: http://www.asia-pacific.undp.org/content/rbap/en/home/presscenter/events/2018/judicial-integrity-champions-in-apec-inception-meeting0.html?cq_ck=1520581039339

¹¹ See the UNDP Inception Meeting Report “Judicial Integrity Champions in APEC” (2018) at pp 8-9

¹² See E Richardson, “The Use, Modification and Impact of the International Framework for Court Excellence: A Research Paper” (International Consortium for Court Excellence, June 2017 (v 2)) at p 17 (Court summary of the Dubai International Financial Centre Court)

¹³ See Area 1 S/N 9 of the IFCE State Courts of Singapore Model

¹⁴ See Area 1 S/N 11 of the IFCE State Courts of Singapore Model

¹⁵ See IFCE (2nd Edition, March 2013) at p 1

IV. IFCE Review: The Structure and Format of the IFCE

18 This section contains several questions which relate to the structure and format of the IFCE, and how the IFCE may be more useful and user-friendly for its users.

A. Self-Assessment Questionnaire vs Self-Assessment Checklist

19 The ICCE has, in the current version of the IFCE, developed two ways for a court to undertake the self-assessment process. The first reflects the traditional quality management methodology and is a Self-Assessment Questionnaire (Appendix A of the IFCE). The second is a simplified Self-Assessment Checklist (Appendix E of the IFCE) based on the Questionnaire but with a detailed list of actions an excellent court would be expected to undertake and a simplified scoring system.

20 The ICCE had envisaged that courts which were used to quality management methodology will find the Self-Assessment Questionnaire familiar and a strong aid to in-depth analysis of areas of court performance. On the other hand, courts that are not familiar with quality management methodology may prefer to use the Self-Assessment Checklist as it provides greater guidance on expectations of court performance under each area for court excellence.

21 While the Checklist is easier to use as it allows a simple tick and score approach, the Questionnaire involves a more in-depth and thorough assessment process. The Questionnaire requires the court to consider each of the activities listed under the seven areas of court excellence and assess whether it has addressed the issue and, if so, the extent to which its approach has been successful and effectively delivered results. Built into the Questionnaire is therefore an assessment of the effectiveness of the court's approach to the IFCE key performance areas.

22 Notwithstanding the above, the EXCO has observed that the majority of courts tend to, in implementing the IFCE, adopt the simpler Checklist over the more comprehensive Questionnaire. This may be due to the fact that the Checklist is the more user-friendly option of the two.

Question 2. The EXCO seeks comments on whether to retain both the Questionnaire and the Checklist as alternative methods of undertaking a self-assessment, or whether it would be sufficient to have only a Checklist.

B. Measuring Effectiveness under the IFCE

23 Following from the preceding sub-section, which compares the Questionnaire and the Checklist, a related consideration is how effectiveness may be assessed for each of the areas of court excellence under the IFCE. As mentioned in paragraph 21 above, while the Questionnaire approach incorporates an assessment of the effectiveness of the court's approaches (*ie*, whether the approaches taken have achieved their desired effects), a separate evaluation of the results is not present in the simpler Checklist.

24 The mere existence of court policies and procedures by itself does not guarantee excellence in court performance. What is important is how effective those policies and procedures are in meeting the court's core values and the needs of the community and court users. In line with this approach, the EXCO recommends that the Checklist should similarly have statements to allow courts to evaluate the effectiveness of the court's approaches.

25 The IFCE State Courts of Singapore Model suggests one possible approach that can be considered. In the last criteria statement under each area of court excellence, the respondents are required to provide an objective evaluation of the court's performance under the respective areas, and this will form part of the overall score when assessing the overall performance of the courts. In addition, a list of suggested key performance indicators and sample surveys for court users and employees are enclosed in the annexes to allow respondent courts to assess their court effectiveness more objectively¹⁶.

26 To this end, the IFCE also provides court performance measurement indicators and tools (in Appendix C of the IFCE) which assist in the quantitative and qualitative assessment of the functioning of courts. These indicators and tools capture both internal and external

¹⁶ IFCE State Courts of Singapore Model at p 15

aspects of a court's performance with surveys being a good example of direct user feedback on performance.

27 In addition, the IFCE has a supporting tool known as the Global Measures of Court Performance ("Global Measures")¹⁷. The Global Measures describes 11 focused, clear and actionable core court performance measures that are aligned with the values and performance areas of court excellence of the IFCE. These 11 core court measures are:

- (a) Court user satisfaction;
- (b) Access fees;
- (c) Case clearance rates;
- (d) On-time case processing;
- (e) Duration of pre-trial custody;
- (f) Court file integrity;
- (g) Case backlog;
- (h) Trial date certainty;
- (i) Employee engagement;
- (j) Compliance with court orders; and
- (k) Cost per case.

28 The purpose of the Global Measures is to provide individual courts, justice systems, and countries with a practical guide of good practices for successful performance measurement and management and to encourage comparative analysis and benchmarking within and across different jurisdictions. The EXCO proposes that the Global Measures may be a good starting point for respondents when considering how effectiveness may be measured in the IFCE Checklist.

Question 3. The EXCO seeks comments on ways in which the effectiveness of a court's approaches may be measured.

Question 4. The EXCO seeks comments on ways in which the Checklist may be enhanced to include statements that measure the effectiveness of a court's approaches.

¹⁷ The first edition was published in November 2012. An advance reading copy of the second edition is published on the ICCE website

C. Adoption of a Tiered Approach

29 The IFCE Self-Assessment Checklist (Appendix E) consists of 80 questions. While the IFCE Self-Assessment Questionnaire (Appendix A) consists of only 45 questions, each question contains two parts – (a) approach and deployment; and (b) results. The EXCO has therefore received feedback that the implementation of the IFCE, while a constructive experience, can be rather time-consuming and this may be difficult where time is scarce in a busy court¹⁸.

30 It may therefore be worthwhile to consider a tiered approach for the implementation of the IFCE. This could comprise of a smaller core set of questions which are regarded as the fundamental aspects of the IFCE, and a wider and more complete suite of questions. Courts will therefore have a choice between the two, and may select the one which best fits their needs and resource capacities at the time of assessment.

31 For example, courts could review the criteria statements in phases, starting with a first phase of core statements. Once courts are familiar with the criteria statements, they can extend the review to the full Framework. It is envisaged that this approach can help courts to better prioritise their resources in achieving court excellence¹⁹.

Question 5. The EXCO seeks comments on a tiered approach in the IFCE Questionnaire and/or Checklist.

D. The Implementation Guide

32 One of the supporting tools developed by the ICCE to aid in the courts' implementation of the IFCE is the guide titled "Thinking of Implementing the International Framework for Court Excellence" (the "Implementation Guide"). The Implementation Guide is currently in its second edition, which was published in March 2013. The ICCE had developed the Implementation Guide as an introductory version to enable courts to begin the court excellence

¹⁸ E Richardson, "The Use, Modification and Impact of the International Framework for Court Excellence: A Research Paper" (International Consortium for Court Excellence, June 2017 (v 2)) at p 20

¹⁹ IFCE State Courts of Singapore Model at p 56

journey. It is a significantly simplified version of the IFCE but it retains the fundamental aspects of quality management methodology²⁰.

33 The EXCO has received differing views on the continued relevance of the Implementation Guide. While some are of the view that it is still useful as a simple “how to do it” guide, others feel that the Implementation Guide is being underutilised in favour of the IFCE itself. Courts appeared to have referred to and adopted the IFCE itself instead of referring to the Implementation Guide. In addition, the potential adoption of a tiered approach (see subsection IV(C) above) may also lead to the same outcome as that intended by Implementation Guide, *ie*, to provide a more manageable version to courts who are just embarking on their court excellence journey.

Question 6. The EXCO seeks comments on the utility of the Implementation Guide, and any experiences in using the same.

Question 7. The EXCO seeks comments on whether there ought to be one holistic IFCE document, or whether both the IFCE and the Implementation Guide should remain.
--

V. IFCE Review: External Independent Assessment

34 The IFCE was initially designed as a self-administered process by way of courts answering either the Self-Assessment Questionnaire or Self-Assessment Checklist. The results of the self-assessment will be used to identify gaps and/or areas of weakness in the court, which the court will then make efforts to address. Such efforts will be monitored through a process of review and refinement. The IFCE is therefore a continuous improvement methodology dependent on the court’s self-assessment and self-improvement.

35 While the self-assessment design is undoubtedly a key feature of the IFCE as a self-driven improvement cycle, it naturally leads to questions of impartiality and objectivity. Common concerns relate to whether respondents of the self-assessment are able to answer the questions in an objective manner, whether their perceptions of the court are accurate and factually justifiable, which may lead to scores that are either under or overestimated, *etc*.

²⁰ Implementation Guide at p 1

36 To address these concerns, a possible solution could be for an independent assessor to conduct an external assessment of the courts' implementation of the IFCE, in addition to the current self-assessment model. This approach has been adopted by other business excellence frameworks²¹ and inter-governmental bodies²². There are various ways from which the independent assessors may be sourced, *eg* from a panel of assessors agreed to by ICCE members, assessors from an independent third party body, mutual assessment by ICCE members *etc*.

37 Having in place an external independent assessment lends legitimacy to the IFCE process, and to the courts' implementation of the same. This communicates to external parties that the results of the court's IFCE assessment are justifiable, supported by facts and evidence, and verified by independent assessors.

<p>Question 8. Will your court support an external independent assessment of your court's implementation of the IFCE in addition to the self-assessment? Please provide reasons.</p>

<p>Question 9. The EXCO seeks comments on possible candidates for independent assessors who can conduct the external independent assessments.</p>
--

VI. IFCE Review: Knowledge Sharing

38 The EXCO recognises that each ICCE member and/or user of the IFCE has a unique set of experiences in their implementation of the IFCE and journey towards court excellence. Each of these experiences provide different and varied learning points for fellow ICCE members and IFCE users in their respective court excellence journeys. In addition, they also serve as good starting points for courts who are looking to implement the IFCE, being concrete examples of how the IFCE may be successfully implemented.

39 To this end, the EXCO is of the view that it would be useful for ICCE members and IFCE users to share their country reports either publicly or internally to fellow ICCE members.

²¹ See, for example, the Singapore Quality Award awarded by Enterprise Singapore ("ES"), where independent assessors from the ES panel conduct on-site interviews with staff of the organisation as part of the assessment process

²² See, for example, peer review mechanisms implemented by the Financial Action Task Force ("FATF") on Money Laundering, the OECD Global Forum on Exchange of Information for Tax Purposes, and the United Nations Convention Against Corruption Implementation Review Mechanism

Presently, some ICCE members have been sharing their country reports to varying degrees. For example, the Family Court of Australia and Federal Circuit Court of Australia share publicly on the ICCE website their reports on implementation. The IFCE State Courts of Singapore Model is also published on the website of the State Courts of Singapore. These consist of the respective courts' IFCE survey questions, as well as their experience in implementing the IFCE. The District Court of Batulicin, South Kalimantan, Indonesia also shares its court excellence report publicly on the ICCE website.

40 Some of these reports also contain resources which provide practical guidance on how a court may satisfactorily execute the criteria statements found in the IFCE. Examples of such resources include sample court user surveys, sample employee engagement surveys, sample improvement plans *etc.* The sharing of such resources would undoubtedly be useful learning tools across courts.

<p>Question 10. Will your court be willing to share country reports of its IFCE implementation experience? If so, (a) what is the extent of information which your court is willing to share, and (b) to whom will your court be willing to share such information with?</p>

<p>Question 11. In addition to country reports, what other resources will your court find useful in providing practical guidance to the implementation of the IFCE?</p>
--

<p>Question 12. Will your court be willing to share the resources referred to in your answer to Question 11? If so, to whom will your court be willing to share such information with?</p>

VII. Review Timeline

41 The EXCO has started work on its review of the second edition of the IFCE, with a view to issuing the third edition sometime in the second half of 2019. The EXCO is heartened by all the positive feedback received on the IFCE as a court excellence tool thus far and the ongoing interest by various courts globally which are looking to implement the IFCE.

42 The EXCO is looking forward to receiving comments on the questions raised in this Consultation Paper. The EXCO believes that the comments will be invaluable in helping to improve the IFCE to make it as beneficial as possible for ICCE members and users.

RESPONSE TO CONSULTATION PAPER

Review of the International Framework for Court Excellence (2nd Edition, March 2013)

Please note that the International Consortium for Court Excellence Executive Committee (“EXCO”) retains the discretion to publish (or not publish) all submissions received. In the event that the EXCO decides to publish any submission, the published submission will be attributed to the respective respondents unless they expressly request the EXCO not to do so. As such, if respondents would like (a) their whole submission or part of it, or (b) their identity, or both, to be kept confidential, please expressly state so in the submission to the EXCO.

Name¹/Organisation: <small>¹If responding in a personal capacity</small>	
Email address for any clarifications:	
Confidentiality (if applicable):	I wish to keep the following confidential: <i><Please state></i>

No.	Consultation Question	Comments
Inclusion of New Topics		
1.	The EXCO seeks comments on additional new topic(s) that could be included in the IFCE. Please provide a brief elaboration on the rationale for the proposed topic(s).	<i><Please input comments here></i>

The Structure and Format of the IFCE		
The EXCO seeks comments on :		
2.	whether to retain both the Questionnaire and the Checklist as alternative methods of undertaking a self-assessment, or whether it would be sufficient to have only a Checklist.	<Please input comments here>
3.	ways in which the effectiveness of a court's approaches may be measured.	<Please input comments here>
4.	ways in which the Checklist may be enhanced to include statements that measure the effectiveness of a court's approaches.	<Please input comments here>
5.	a tiered approach in the IFCE Questionnaire and/or Checklist.	<Please input comments here>
6.	the utility of the Implementation Guide, and any experiences in using the same.	<Please input comments here>
7.	whether there ought to be one holistic IFCE document, or whether both the IFCE and the Implementation Guide should remain.	<Please input comments here>
External Independent Assessment		
8.	Will your court support an external independent assessment of your court's implementation of the IFCE in addition to the self-assessment? Please provide reasons.	<Please input comments here>

9.	The EXCO seeks comments on possible candidates for independent assessors who can conduct the external independent assessments.	<Please input comments here>
Knowledge Sharing		
10.	Will your court be willing to share country reports of its IFCE implementation experience? If so, (a) what is the extent of information which your court is willing to share, and (b) to whom will your court be willing to share such information with?	<Please input comments here>
11.	In addition to country reports, what other resources will your court find useful in providing practical guidance to the implementation of the IFCE?	<Please input comments here>
12.	Will your court be willing to share the resources referred to in your answer to Question 11? If so, to whom will your court be willing to share such information with?	<Please input comments here>