




**REGULATORY IMPACT STATEMENT FOR THE SUPPLIES  
PRACTITIONERS MANAGEMENT (CONTINUOUS  
PROFESSIONAL DEVELOPMENT PROGRAMMES) GUIDELINES,  
2024**

Prepared by the Kenya Institute of Supplies Management pursuant to sections 6 and 7 of  
the Statutory Instruments Act, No. 23 of 2013.

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## CHAPTER ONE: BACKGROUND

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### 1.0. Introduction

The practice of supply chain management operates in an environment that is fast-evolving, dynamic, volatile, complex and uncertain. To keep up with the dynamic environment of supply chain management, it is critical for supplies practitioners to continually equip themselves with the necessary knowledge and expertise required to perform their duties effectively.

The Kenya Institute of Supplies Management (the Institute) is the statutory agency mandated to train, register, license, discipline and regulate supply chain practitioners in accordance with the Supplies Practitioner Management Act, 2007. As the premier regulatory body for supply chain practitioners in Kenya, the Institute is obligated to monitor and enforce standards to maintain the competence of supply chain practitioners through continuous development of their knowledge and skills in the practice of supply chain.

The Institute has since its inception offered continuous development programmes to its members to build their capabilities and competencies in practice. Through the CPD programmes members can attain the required professional competence to execute their duties seamlessly and address emerging issues within the supply chain arena.

To enhance the Institute's efficiency in delivering the CPD programmes, and derive maximum benefit to the members, the Institute has developed the Supplies Practitioners Management (Continuous Professional Development Programmes Guidelines) 2024, (the Guidelines) to regulate the conduct of the CPD programmes. The Guidelines seek to ensure that the programmes are structured, flexible, cost-effective and accessible to all supplies practitioners in Kenya.

### 1.1 REGULATORY IMPACT STATEMENT.

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Regulatory Impact Statement (RIS) is a systematic policy tool used to examine and measure the likely benefits, costs, and effects of a new or existing regulation. RIS is an analytical report to assist policymakers in arriving at an informed policy decision. As an aid to decision making RIS includes an evaluation of possible alternative regulatory and non-regulatory approaches with the overall aim of ensuring that the final selected regulatory approach provides the greatest net public benefit.

RIS is conducted before a new regulatory instrument is introduced to provide a detailed and systematic appraisal of the potential impact of a new regulation to assess whether the

regulation is likely to achieve the desired objectives. RIS promotes evidence-based policymaking as new Guidelines typically lead to numerous impacts that are often difficult to foresee.

From a societal viewpoint, the RIS should confirm whether a proposed regulation is welfare-enhancing, in that, the benefits will surpass costs. RIS therefore has objectives of improving understanding of the real-world impact of regulatory action, including both the benefits and the costs of action, integrating multiple policy objectives, improving transparency and consultation and enhancing governmental accountability.

## 1.2. REQUIREMENT TO PREPARE RIS UNDER THE STATUTORY INSTRUMENTS ACT

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The Statutory Instruments Act, No. 23 of 2013 (SIA) is the legal framework governing the conduct of Regulatory Impact Statement (RIS) in Kenya. Sections 6 and 7 require that *if a proposed statutory instrument is likely to impose significant costs on the community or a part of the community, the regulation-making authority shall, prior to making the statutory instrument, prepare a regulatory impact statement about the instrument.*

The Act further sets out certain key elements that must be contained in the RIS namely:

- (a) a statement of the objectives of the proposed legislation and the reasons;
- (b) a statement explaining the effect of the proposed legislation;
- (c) a statement of other practicable means of achieving those objectives, including other regulatory as well as non-regulatory options;
- (d) an assessment of the costs and benefits of the proposed statutory rule and of any other practicable means of achieving the same objectives; and
- (e) the reasons why the other means are not appropriate.

Prior to making a statutory instrument, section 6 and 7 of the Statutory Instruments Act, No. 23 of 2013 (SIA) mandates the Council to prepare a Regulatory Impact Statement in circumstances where the proposed statutory instrument is likely to impose significant cost on the community, or part of the community.

Under the Act, a regulatory impact statement shall contain;

- (a) a statement of the objectives of the proposed legislation and the reasons;
- (b) a statement explaining the effect of the proposed legislation;
- (c) a statement of other practicable means of achieving those objectives, including other regulatory as well as non-regulatory options;
- (d) an assessment of the costs and benefits of the proposed statutory rule and of any other practicable means of achieving the same objectives; and
- (e) the reasons why the other means are not appropriate.

## CHAPTER TWO: LEGAL FRAMEWORK ON REGULATION OF SUPPLIES PRACTITIONERS IN KENYA

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### **2.0. Introduction**

The practice of supply chain management requires the application of specialised skills and a high degree of integrity as it involves direct or fiduciary relations with clients. The practitioners are called upon to exercise good judgement as individual and collective responsibility to uphold the integrity and culture of the profession.

To ensure the professional standards are met, the Kenyan law regulates the practice of supply chain management in Kenya, both in the public and private spheres.

This chapter examines the legal framework for the regulation of supply chain management in Kenya. It analyses the Constitutional and statutory framework for the practice of supply chain management.

### 2.1. THE CONSTITUTION OF KENYA, 2010

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The Constitution of Kenya is the supreme law of the Republic and binds all persons and all State organs at both levels of Government. Article 10 of the Constitution sets out the national values and principles of governance which are to be observed by all state organs, state officers, public officers and all persons whenever any of them apply or interpret the Constitution, any law, make or implement public policy decisions.

The national values and principles include patriotism, national unity, sharing and devolution of power, the rule of law, democracy, participation of the people, equity, non-discrimination, protection of the marginalised, good governance, integrity, transparency, accountability and sustainable development.

Management of public funds is regulated under Article 201 of the Constitution which sets out the principles of public finance. Specifically, Articles 201(a) and (d) call for openness and accountability in financial matters prudent and responsible use of public money.

In relation to the procurement of public goods and services, Article 227 requires public entities to contract for goods or services within a system that is fair, equitable, transparent, competitive and cost-effective.

Further, the conduct of public officers is further regulated by Articles 232 (a), (c), (e) and (f) of the same Constitution, which calls upon public officers to uphold high standards of

professional ethics, provide services in a prompt, effective, impartial and equitable manner, take accountability for administrative acts and provide information to the public in a transparent and timely manner.

The upshot of the cited Constitutional provisions is that supplies practitioners are obligated to uphold integrity and exercise high levels of professionalism whether practicing in the public, private, non-governmental or any other sector.

## 2.2. SUPPLIES PRACTITIONERS MANAGEMENT PRACTITIONERS ACT, CAP 537

The Supplies Practitioners Management Act is the primary legislation regulating the supply chain management profession in Kenya. The Act makes provision for the training, registration, licensing and overall regulation of supplies practitioners in Kenya.

Section 3 establishes the Kenya Institute of Supplies Management as the agency responsible for the regulation of the practice of supply chain in Kenya.

Section 5(b) of the Act obligates the Institute to make provision for the training and instruction of persons seeking registration under the Act. Similarly, Section 16(10) of the Act, 2007 requires members of the Institute to undergo such continuous professional development programmes as may be prescribed by the Council.

## 2.3. PUBLIC PROCUREMENT AND ASSET DISPOSAL ACT, CAP 412C

The Public Procurement and Asset Disposal Act, 412C seeks to give effect to Article 227 of the Constitution by providing procedures for efficient public procurement and disposal of assets by public entities.

Section 47 of the Act restricts management of the process of procuring and disposing off assets within public entities to persons with professional qualifications in procurement or supply chain management from a recognized institution who are members of the Institute or any other procurement or supply chain professional body recognized in Kenya.

## 2.4. PUBLIC FINANCE MANAGEMENT ACT, CAP 412A

The Public Finance Management Act (PFMA) provides for the effective management of public finances by the national and county governments, guides on the oversight

responsibility of Parliament and county assemblies and assigns different responsibilities to government entities in relation to utilization of public funds.

Pursuant to sections 30 and 121 of the Procurement at the National and County levels is expected to be carried out in with Article 227 of the Constitution and the relevant legislation on procurement and disposal of assets.

Similarly, by dint of sections 68 and 149 of the same law, accounting officers at the National and County Governments are required to ensure that all applicable accounting and financial controls, systems, standards, laws and procedures are followed when procuring or disposing of goods and services and that, in the case of goods, adequate arrangements are made for their custody, safeguarding and maintenance.

#### 2.5. HCCHRPET/E023/2021 OKIYA OMTATA OKOITI VERSUS KISM AND 4 OTHERS

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In 2021, the Council developed a Continuous Professional Development Policy to guide the conduct of CPD programmes for the Institute. On 18<sup>th</sup> January 2021, Okiya Omtata Okoiti (the petitioner) filed a Petition against the Institute. ( **HCCHRPET/E023/2021 Okiya Omtata Okoiti versus KISM \$ 4 Others**).

In the petition, the Petitioner challenged the Institute's authority to offer Continuous Professional Development Programmes to its members in view of its role as the regulator of the supply chain management profession. Additionally, the petitioner contended the adequacy of the consultative process before the adoption of the Policy by the Institute.

In its determination, the Court found that the Institute had an obligation to provide guidelines on CPD programmes.<sup>1</sup> Additionally, the Court found that provision of CPD programmes was the discretion of the Council.<sup>2</sup>

In finding Continuous Professional Development Policy, 2021 fell short of the established legal threshold on public participation, the Court noted that the Policy qualified as a statutory instrument having been enacted under the authority of the Supplies Practitioners Management Act, 2007 and ought to have adhered to the principles of making a statutory instrument laid out in the Statutory Instruments Act.<sup>3</sup>

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<sup>1</sup> Para 58

<sup>2</sup> Para 58

<sup>3</sup> Para 66 and 67

CHAPTER THREE: SUPPLIES PRACTITIONERS MANAGEMENT  
(CONTINUOUS PROFESSIONAL DEVELOPMENT PROGRAMMES)  
GUIDELINES, 2024

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### **3.0. Overview of the Guidelines**

The Supplies Practitioners Management (Continuous Professional Development Programmes) Guidelines, 2024, seek to operationalise section 16 (10) of the Supplies Practitioners Management Act, 2007 which provides that a member of the Institute shall be required to undergo Continuous professional development programmes.

#### **3.1. ARRANGEMENT OF THE GUIDELINES**

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The proposed Guidelines contain four Parts.

Part I of the Guidelines provides for preliminary matters which include the citation, interpretation of key terms, the purpose and scope of the Guidelines.

Part II of the Guidelines sets out the various types of continuous professional development programmes that a member of the Institute may undertake. Additionally, this Part obligates members to acquire thirty CPD hours from a structured continuous professional development programme and ten CPD hours from an unstructured continuous professional development programme.

Part III of the Guidelines sets the requirements for the accreditation of a CPD provider. Specifically, the Guidelines require that a person who seeks to be accredited as a provider shall be a member of the Institute; hold a valid practicing licence, be registered as a trainer in accordance with the Industrial Training Act and procure a professional indemnity cover of not less than one million shillings.

Part IV of the Guidelines provides for Miscellaneous provisions including failure to acquire CPD hours, transferability of CPD hours and review of the Council's decisions on accreditation.

#### **3.2. OBJECTIVES OF THE GUIDELINES**

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The underlying value of the proposed Guidelines is to entrench a framework for the promotion of professional standards through regular and coordinated programmes for the continuous development of supply chain management practitioner's competence.



Supplies practitioners must keep abreast with new developments in the law and the practice of supply chain and this is only achievable through regular training. Through well-regulated and coordinated CPD programmes members' knowledge and skills are enhanced and professional standards and ethics are maintained.

Implemented effectively, the Guidelines will ensure that supplies practitioners—

- (a) Build the knowledge, skills and competencies in supply chain management;
- (b) improve service delivery to clients, individuals and organizations;
- (c) are kept abreast of current trends, research and developments in the profession;
- (d) are motivated to continue practising and developing the profession;
- (e) reduce occupational stress risks;
- (f) identify and address any gaps or weaknesses in skills and competence to improve professionalism; and
- (g) increase the credibility and reputation of the profession; and
- (h) seek new opportunities for career advancement, such as promotions, pay raises, or new roles, which can increase your satisfaction and motivation.

### 3.3. BENEFITS OF THE PROPOSED GUIDELINES.

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The enactment of the proposed Guidelines is envisaged to have the following accruing benefits to the supply chain management profession:

**(a) Improved service delivery by the Institute.**

The Guidelines provide clear provisions on the application for accreditation by providers and timelines regarding applications for CPD programmes thus promoting the Council's effective and efficient service delivery.

**(b) Compliance with professional standards.**

The CPD programmes aim to equip supply chain practitioners with relevant and appropriate skills to improve their output in current positions as well as develop them to provide innovative strategic leadership including value-based decision-making. Improved provision and monitoring of the conduct of CPD programmes by the Institute will enhance members' compliance with professional standards of the supply chain management profession.

**(c) Complementing existing legal frameworks on the regulation of supplies practitioners:**

The draft Guidelines will be implemented in the context of the existing statutory framework on regulation of supplies practitioners. Specifically, the implementation of these regulations will facilitate compliance with section 47 of the Public Procurement and Asset Disposal Act which restricts management of the process of procuring and disposing off assets within public entities to persons with professional qualifications in procurement or supply chain management from a recognized institution who are members of the Institute or any other procurement or supply chain professional body recognized in Kenya

**(d) Incorporation of international best practice into the supply chain management.**

It is envisaged that the implementation of the Guidelines shall put the supply chain profession at par with similar professions locally, regionally and globally. By establishing a framework for regular training of supplies practitioners, the members of the Institute will be kept abreast of the developments in the industry.

## CHAPTER FOUR: CONSULTATIONS IN THE DEVELOPMENT OF THE GUIDELINES

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### 4.0. Introduction

Article 10 of the Constitution of Kenya, 2010 obligates State Organs to apply the national values and principles of governance while making or implementing a policy decision. The national values and principles include non-discrimination, transparency and participation of the people.

With regard to the subsidiary legislation, the Statutory Instruments Act, 2013 mandates the authority responsible for developing the subsidiary law to undertake consultations before making statutory instruments and in particular, where the proposed Guidelines are likely to have a direct or a substantial indirect effect on the community.

Additionally, the Act requires that the regulation-making authority to conduct public consultations drawing on the knowledge of persons having expertise in fields relevant to the proposed statutory instrument and to ensure that persons likely to be affected by the proposed statutory instrument are given an adequate opportunity to comment on its proposed content.

An evaluation of the public consultation process is necessary to ascertain whether the relevant stakeholders were given an opportunity to present their views which will ameliorate the proposed Guidelines.

### 4.1. APPROACH TO PUBLIC PARTICIPATION

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To fulfil the requirements of the Constitution and the Statutory Instruments Act, 2013 in relation to public participation, the Institute adopted various approaches to publicise the draft Guidelines and receive input from its stakeholders. Specifically, the Institute —

- (a) Issue a notice on *Daily Nation and Standard Newspapers* on January, 3<sup>rd</sup> 2024 inviting submissions on the draft Supplies Practitioner Management (Continuous Professional Development Programmes) Guidelines 2024.
- (b) Published a notice on the *Gazette* on 12<sup>th</sup> January 2024, inviting submissions on the Regulatory Impact Statement to the draft Supplies Practitioner Management (Continuous Professional Development Programmes) Guidelines 2024.
- (c) held meetings with supplies practitioners, key stakeholders and the general public on the draft Guidelines and the Regulatory Impact Statement between 18<sup>th</sup> January 2024 to 9<sup>th</sup> February 2024 ;

- (d) publicised the draft Guidelines and the draft Regulatory Impact Statement on the Institute's website and other platforms.

#### 4.2. INTERNAL CONSULTATIONS.

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The development of the Guidelines was spearheaded by the Institute's Professional Standards Committee. The Committee adopted the draft Guidelines on 11<sup>th</sup> December 2023 and presented the Guidelines to the Council on 15<sup>th</sup> December 2023 where the Council deliberated and approved the Guidelines for dissemination to other stakeholders.

#### 4.3. CONSULTATIONS WITH SUPPLIES PRACTITIONERS IN KENYA

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To give full effect to the requirements of the Statutory Instruments Act, 2013, the Institute invited supplies practitioners to make submissions on the proposed Guidelines in public hearings in the following regions of Kenya—

<b>Region</b>	<b>Venue</b>	<b>Date</b>
Nakuru	Vic Mac Hotel	19 <sup>th</sup> January 2024
Kisumu	Tom Mboya College	29 <sup>th</sup> January 2024
Eldoret	Sirikwa Hotel	30 <sup>th</sup> January 2024
Embu	Kenya School of Government	1 <sup>st</sup> February 2024
Kitui	Marie Garden Hotel	2 <sup>nd</sup> February 2024
Wajir	Grand Oasis Hotel	5 <sup>th</sup> February 2024
Kilifi	Pwani University	6 <sup>th</sup> February 2024
Mombasa	Kenya Coast National Polytech	7 <sup>th</sup> February 2024
Nairobi	Bomas	9 <sup>th</sup> February 2024

#### 4.4. CONSULTATIONS WITH OTHER PROFESSIONAL REGULATORY BODIES.

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In addition to the input received from supplies practitioners, the Institute sought further input from other comparable professional regulatory bodies in Kenya such as the Law Society of Kenya, the Environmental Association of Kenya, the Institute of Human Resource Management, the Institute of Certified Public Accountants of Kenya and the Institute of Certified Secretaries on 26<sup>th</sup> January 2024. The consultations aimed to establish best practices in the provision of continuous professional development programmes.

#### 4.5. CONSULTATIONS WITH RELEVANT GOVERNMENT AGENCIES.

Supplies practitioners offer a critical service to the government and facilitate the realisation of constitutional imperatives relating to the use of public finances. Effective regulation of the professional is therefore essential to the prudent and efficient management of public resources at both levels of government.

The Institute therefore engaged key government institutions responsible for fiscal matters notably the National Treasury and the Public Procurement Regulatory Authority on 26<sup>th</sup> January 2024.

#### 4.6. CONCLUSION

Sections 5 and 6 of the Statutory Instruments Act, 2013 obligate a regulatory making authority to make appropriate consultations with persons who are likely to be affected by a proposed statutory instrument.

The Act calls for the prioritisation of persons with knowledge and expertise in the field relevant to the proposed statutory instrument and the allocation of adequate time for submission of input.

By publicising the proposed Guidelines in different media and affording adequate opportunity to supplies practitioners, other professional regulatory bodies, government entities and the general public to give input, the Institute seeks to meet this requirement.

## CHAPTER FIVE: COST-BENEFIT ANALYSIS

### 5.0. Introduction

Section 7(2) of the Statutory Instruments Act obligates a regulation-making authority requires that an assessment of the costs and benefits of a proposed statutory instrument is undertaken. The assessment should include the economic, environmental and social impact and the likely administration and compliance costs including resource allocation costs.

This chapter examines the anticipated impact of the proposed Guidelines against the expected cost of implementation. The Chapter additionally explores other alternatives to the adoption of the proposed Guidelines and the effect of adopting the alternatives.

#### 5.1. FINANCIAL COST

The Institute proposes to accredit any person seeking to offer continuous professional development programmes to members of the Institute.

Accreditation is a critical quality assurance mechanism to ensure the course content, delivery and outcomes meet the established standard. Additionally, accreditation signifies that the programmes have undergone rigorous assessment to establish their credibility.

To meet the costs of accreditation, a provider will be required to—

- (a) pay an annual accreditation fee of Kshs. 300,000;
- (b) procure a professional indemnity cover of Kshs. 1,000,000; and
- (c) pay CPD Access Fee of Kshs. 250 per hour per member for each training.

In determining the fees chargeable for accreditation, the Institute undertook an analysis of the accreditation processes and attendant fees charged in other comparable professions and made the following observations;

<b>Professional Body</b>	<b>Accreditation fees (Kshs)</b>
Institute of Certified Secretaries of Kenya (ICS)	Kshs. 200,000 annually
Institute of Human Resource Management (IHRM)	Kshs. 7,500 per training (physical workshops) and Kshs. 3,500 (webinars)
Law Society of Kenya (LSK)	Kshs. 500,000 as a one-off payment

The comparative analysis demonstrates that accreditation is a significant process in the provision of continuous professional development programmes in any profession.

Additionally, the Institute finds that the accreditation fee proposed is within the margin of the fees charged by other similar professional bodies.

## 5.2. ANALYSIS OF THE IMPACT OF THE PROPOSED GUIDELINES ON VARIOUS SECTORS

<b>Sector</b>	<b>Impact</b>
<b>Economic</b>	<ul style="list-style-type: none"> <li>• enhanced compliance with Constitutional and Statutory dictates on prudent management of financial resources;</li> <li>• enhanced service delivery in the procurement of goods and services;</li> <li>• increased transparency and competitiveness in procurement of goods and services; and</li> <li>• harmony with best practice in professional regulation.</li> </ul>
<b>Professional environment</b>	<ul style="list-style-type: none"> <li>• improved compliance with professional standards in supply chain management;</li> <li>• enhanced skills and competencies in supply chain management;</li> <li>• improved confidence in the supply chain management profession;</li> <li>• elevation of the status of the supply chain management profession amongst other professional regulators; and</li> <li>• effective delivery of services by the Institute to its members.</li> </ul>
<b>Social</b>	<ul style="list-style-type: none"> <li>• coordinated and regulated supply chain management profession</li> </ul>

## 5.3. CONSIDERATION OF ALTERNATIVES TO ADOPTION OF THE PROPOSED GUIDELINES

The Statutory Instruments Act requires a Regulatory Making Authority to carry out an informed evaluation of a variety of regulatory and non-regulatory policy measures by considering relevant issues such as costs, benefits, distributional effects and administrative requirements. Statutory instruments should be the last resort in realizing any policy objectives. The options considered under this part are maintenance of the status quo, administrative measures and adoption of the proposed guidelines.

**(a) Maintenance of the *Status Quo***

Maintenance of the status quo means retaining the situation as is and taking no further action in relation to the provision of continuous professional development programmes to supplies practitioners.

Maintenance of the *status quo* will lead to various inadequacies impeding on effective provision of CPD programmes.

First, the Council will have failed to realise its obligations under provisions of section 16(10) in relation to prescribing the requisite CPD programmes to be undertaken by the members of the Institute.

Secondly, by maintaining the *status quo*, there would arise a legal vacuum on the appropriate instrument for the implementation of CPD programmes by the Institute, the earlier policy having been declared a nullity in *HCCHRPET/E023/2021 Okiya Omtata Okoiti versus KISM and 4 others.*

**(b) Option two: Administrative Measures**

The second option that may be used to implement section 16(10) of the Act is through administrative measures. This usually takes the form of issuance of ministerial orders, circulars and administrative measures to address the identified challenges. The issuance of such measures is not only cheap but also time-saving. However, the implementation of administrative measures is dependent on the goodwill of those concerned and may not be sustainable since they do not have the force of law.

This presents a major risk in terms of enforcement and the possibility of not getting implemented at all. The non-binding nature of administrative measures suggests that it cannot be a reliable avenue to give full effect to the salient provisions contained in the Constitution and the Act of Parliament.

**(c) Option three: Formulating the Proposed Supplies Practitioners Management (Continuous Professional Development Programmes) Guidelines, 2024.**

The Supplies Practitioners Management (Continuous Professional Development Programmes) Guidelines, 2024 will yield the following benefits:

- promotion of best professional standards;
- preparation of the supply chain professionals to deal with any emerging issues in the constant evolving technological space and
- monitoring accredited firms to ensure maintenance of high standards of professionalism and integrity in the discharge of their duties under the Guidelines and the Act.



The assessment of the cost and benefits, therefore, indicates that the benefits of formulating the Guidelines outweigh the costs. Therefore, option three was selected as the preferred option.

#### 5.4. CONCLUSION RECOMMENDATION

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Supplies practitioners owe it to themselves, and their fellow professionals, to ensure that they are professionally relevant and that the reputation and value of their qualifications are safeguarded.

The proposed Guidelines, if effectively implemented will provide a framework for the continuous enhancement of the skills and competencies of supply chain management practitioners and the maintenance of the desired professional standards.

In view of the above conclusion, it is recommended that the Supplies Practitioners Management (Continuous Professional Development Programmes) Guidelines, 2024, be adopted as proposed

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15<sup>th</sup> April 2024

*John Karani*

*Chairperson, Kenya Institute of Supplies Management*

