

# Fabrizio Cafaggi

## The enforcement of transnational private regulation

# Summary of the presentation

- The HIL project on transnational private regulation
- Legitimacy, quality, effectiveness and enforcement
- Enforcement of TPR
- Enforcement of TPR and enforcement of Transnational public regulation
- Enforcement and compliance
- Enforcement and legitimacy

# The research project

- Four dimensions across three sectors
- Legitimacy
- Quality
- Effectiveness
- Enforcement
- 3 Sectors
- Financial regulation
- Consumer regulation
- Corporate social responsibility and HR

# Definitions

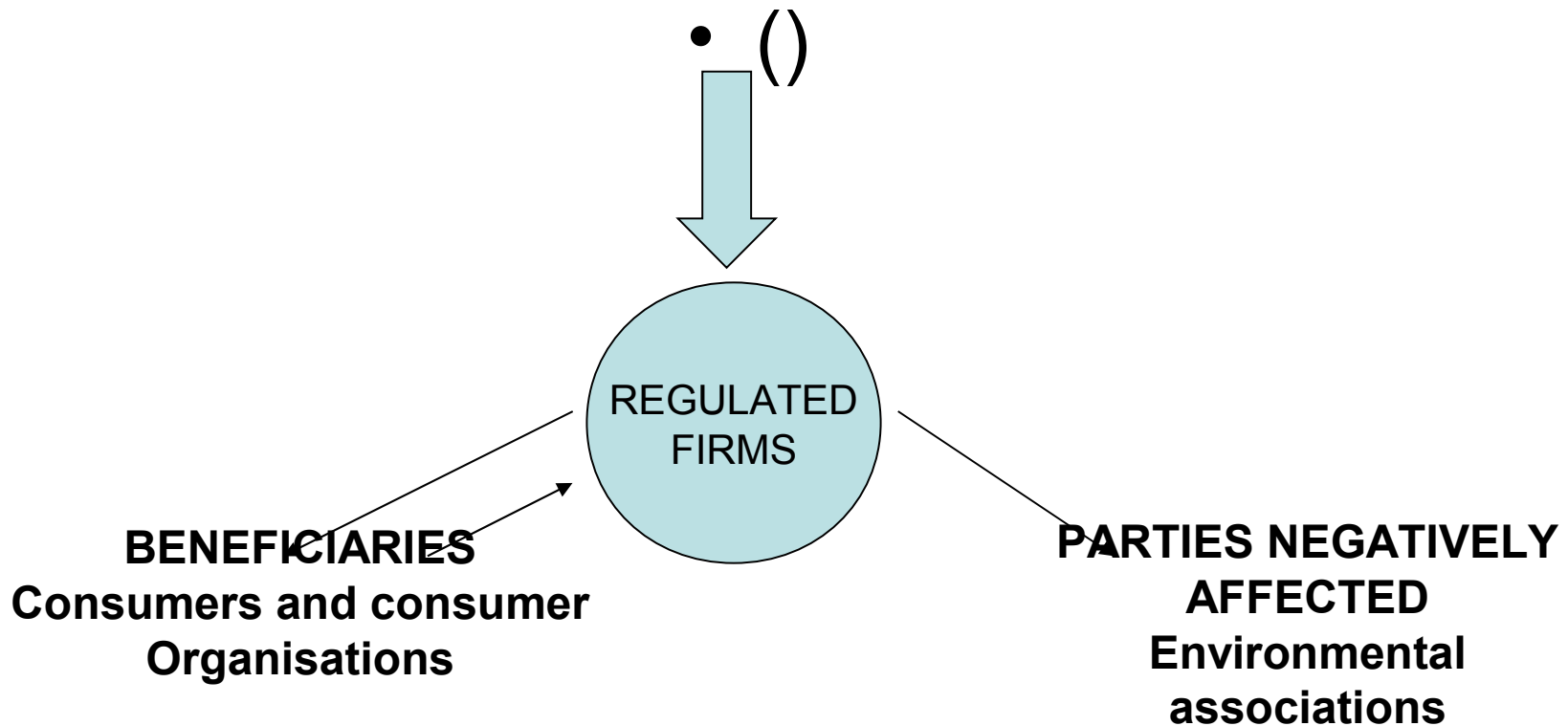
- Transnational private regulation
- **Transnational.** Transnational distinguished from international. Focus on private regimes.  
Transnational as multilevel regulatory regimes
- **Private.** Firms, NGOs. Disentangling the private sphere. Industry versus NGOs' driven regulatory regimes? Single versus multistakeholders
- **Regulation.** An inclusive meaning of regulation including market failures and distribution

## The relationship between the regulatory model and the enforcement mechanism

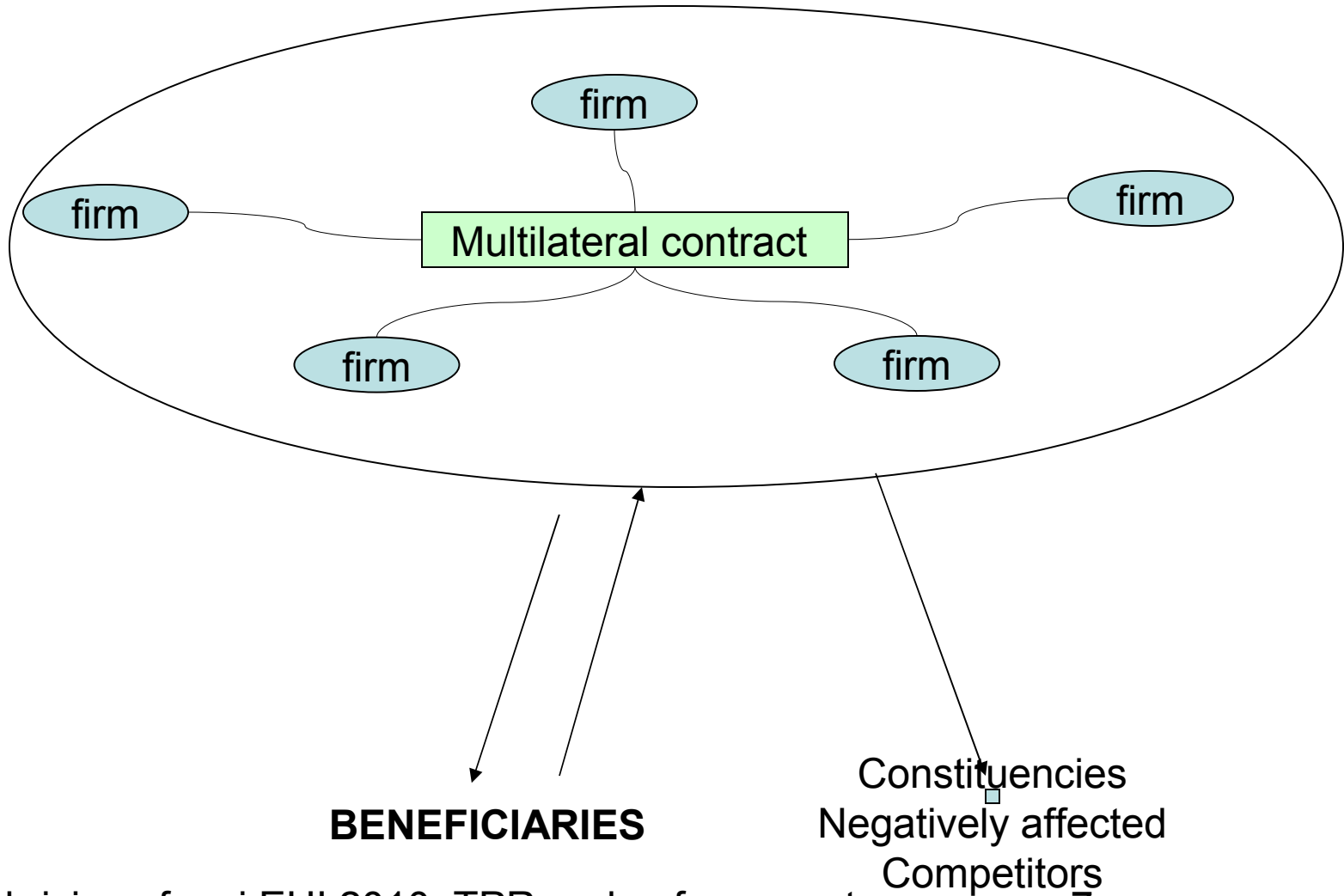
- There are different regulatory models
- A) organizational ( for profit-non profit)
- B) Multilateral contract
- C) Bilateral sequential contract ( supply chain)
- Each model deploys different enforcement mechanisms and a different combination between judicial and non judicial

# The organizational model

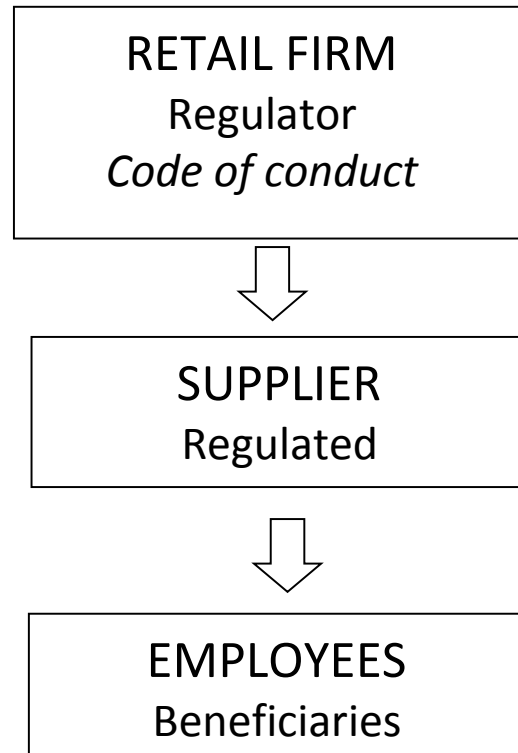
- Private regulator



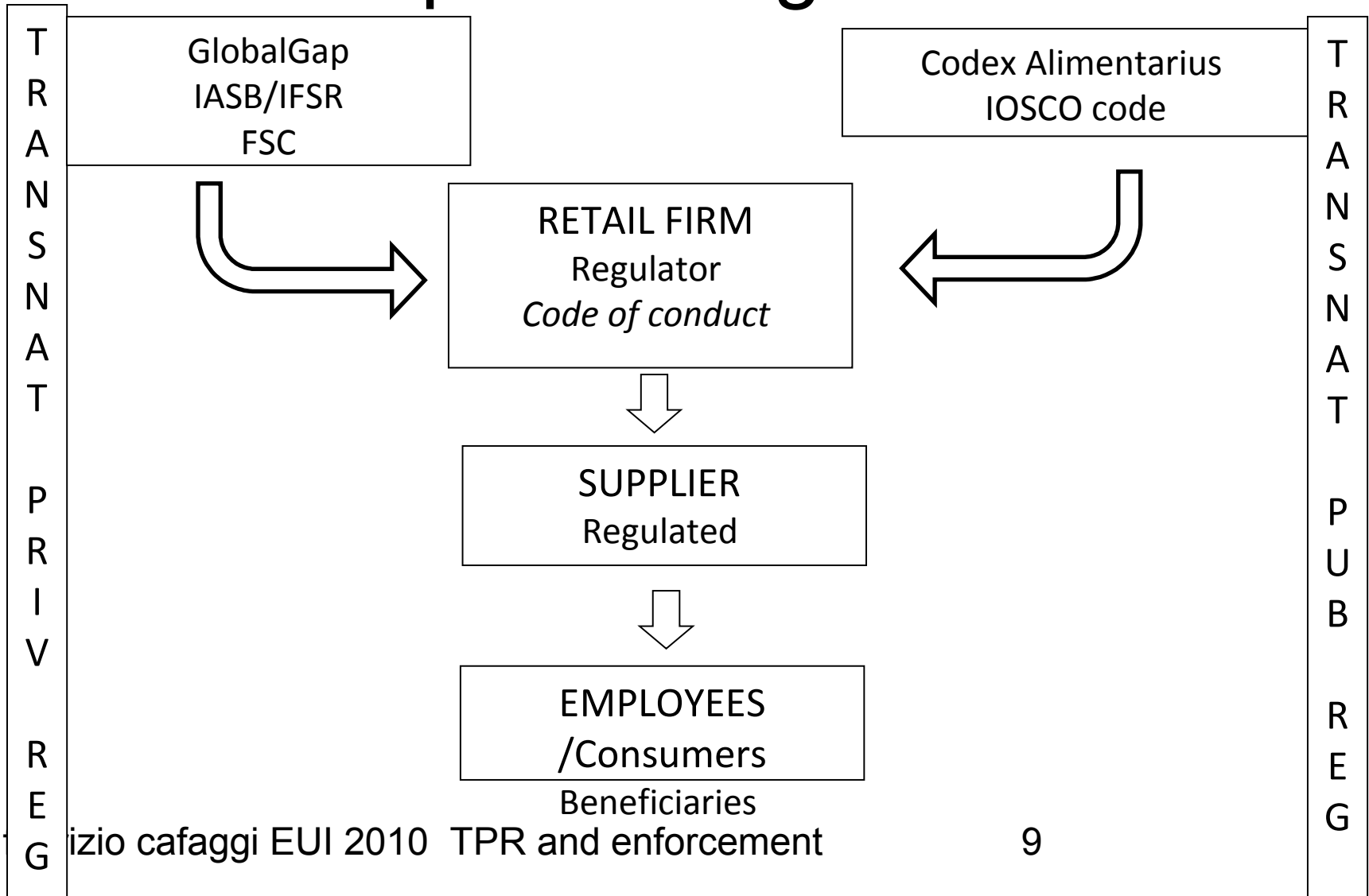
# the multilateral K model

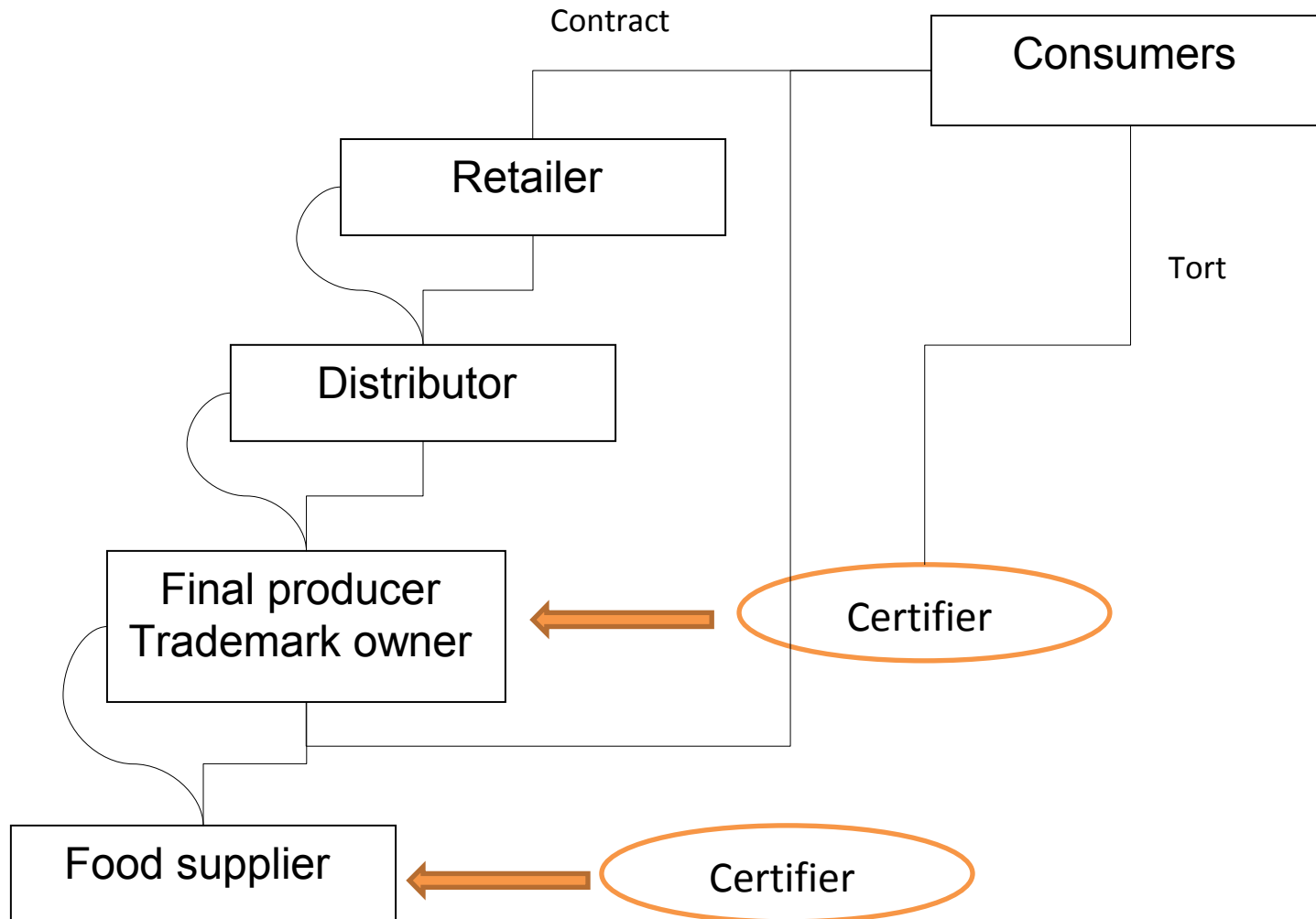


# The Supply chain model



# Complementarity between public and private regulation





\_\_\_\_\_ Tort  
 \_\_\_\_\_ Contract  
 \_\_\_\_\_ **10** \_\_\_\_\_ Regulatory chain

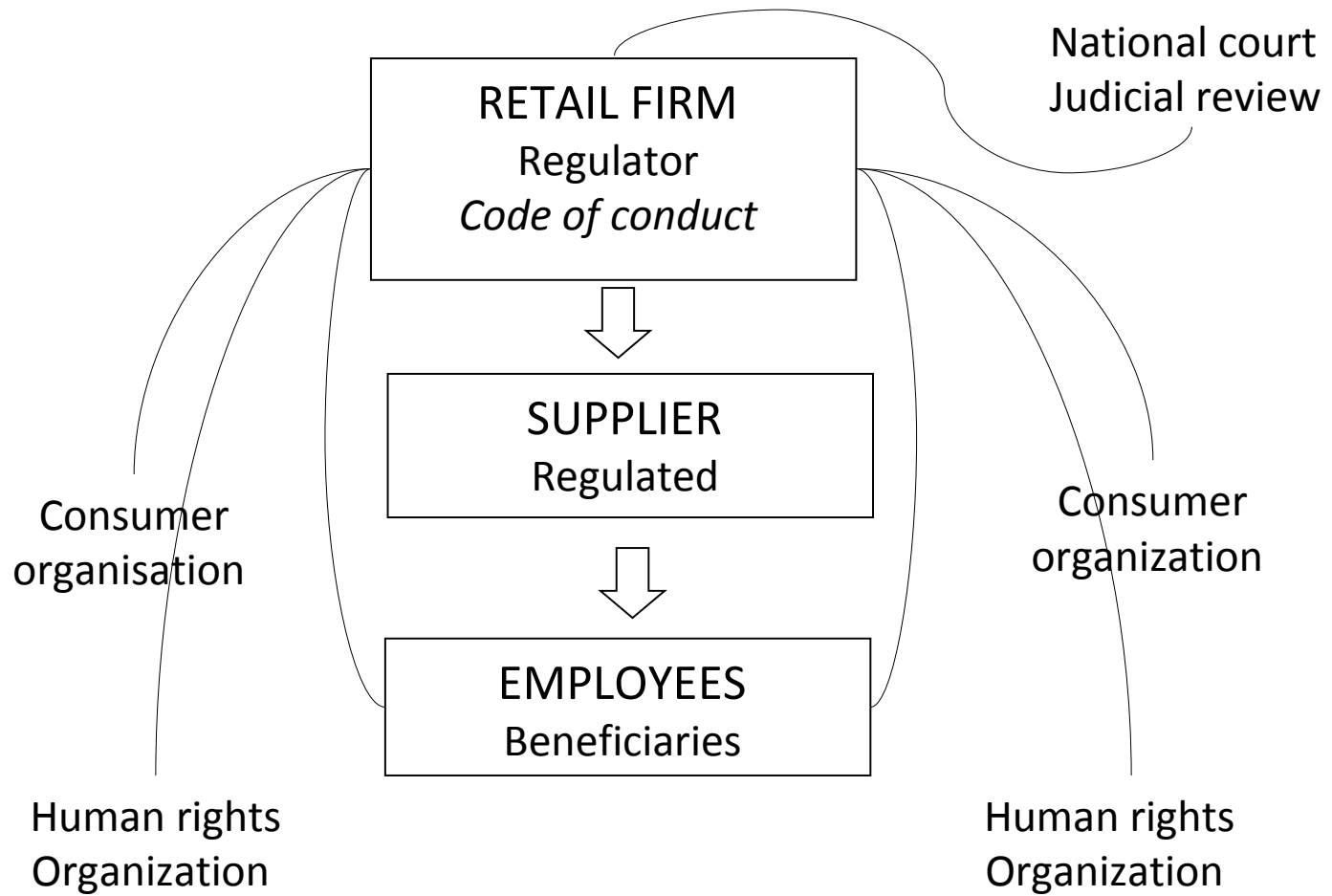
# Identity of the litigants and enforcement mechanisms

- 1) Regulator versus regulated
- 2) Regulated versus regulated
- 3) Regulator versus third parties
- 4) Regulated versus third parties

# Breach of the monitoring duties ( the regulator violates its duty to monitor the regulated firm)

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— Tort  
— Judicial review

# Enforcement of TPR

- 1) Is it possible to generate a common definition of enforcement of TPR across regimes?
- 2) What is the combination between judicial (international and domestic Courts) and private enforcement?
- 3) Do they reflect different goals? Are they related to the nature of the regulatory regime? For example does the enforcement of a command and control regime reflect a different combination between judicial and non judicial enforcement from that of market based regulation?

# Public and private

The complementarity of enforcement mechanisms

- Many of the private transnational regulatory regimes are complementary
- To what extent similar complementarity arises in the context of enforcement ? Which combined goals are meant to achieve?
- Judicial Enforcement of private and public regimes by Courts. The different role of judicial review in judicial and non judicial enforcement might affect the dialogue between courts and rule makers and the regulatory function of adjudication
- Private non judicial enforcement. How do private dispute resolution bodies differ from the dispute resolution bodies in the public sphere?

# Enforcement and compliance

- How do the two enforcement mechanisms affect compliance? Do they affect

# Enforcement and legitimacy

- What is the relationship between enforcement mechanisms and legitimacy of transnational private regulation?
- How does the difference between judicial and non judicial review of the rule making process affect the legitimacy of TPR?

# Enforcement of TPR

- A) The regulatory relationships
- The supply chain ( a series of bilateral contracts
- The regulatory contract ( an agreement among different stakeholders)
- The organizational model ( an
- B) enforcement approaches and the combination between judicial and non judicial change depending upon the the form of the regulatory regime