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Influence of International Investment Arbitration Under the International Law

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Abstract: Not only do MNEs bring construction and opportunities to the host states, but at the same time, unrestricted MNEs often bring shock and damage to the local economy and domestic market of the host states. In order to regulate international investment, there are many international treaties, conventions and laws in the world, which are collectively referred to as International Investment Law. The IIL incorporates international investment activities between the participating countries and their MNEs into a legal and regular framework. In the work of dealing with the relationship between them, a very important thing is to reasonably settle the investment disputes between the two parties. The methods to settle the disputes include litigation and arbitration, but the arbitration has actually become the most important and popular method. International investment arbitration is bringing lots of benefits to both the MNEs and the host states. The method of comparative research is used to illustrate the characteristics and differences between litigation and the arbitration in international investment disputes settlement. The advantages of arbitration are reflected and the reason why arbitration has become the most popular way to settle these disputes is explained. In the explanation in the article, the method of cases analysis is used, and especially in the fifth part, it focuses on the arbitration case of Cairn Energy PLC and Cairn UK Holdings Limited v. India. PCA Case. It supports the conclusion that arbitration has become the most popular method of international investment disputes settlement.

Keywords: International Investment Law, Multinational Enterprise, international investment dispute, international investment arbitration.

1. Introduction

Before the Second World War, international investment was not developed on a large scale. At that time, the size of the global economy was still small. The domestic markets of the major capitalist states were not saturated yet, which meant in a particular market the true sales volume of products was much smaller than the actual demand volume. And most investors didn't have enough money to take care of all the aspects of investment and business activities, so they usually prioritized domestic investment. Most international investment activities behaved as international fund flows. Except for investment among main capitalist states, the international investment mainly focused on the aspect that sovereigns invested in colonies to find high profits and grab the resources of the colonies. These international investment activities were almost unsustainable because the investors didn't directly control the investee companies and didn't want to operate or participate in the local markets in fact.

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For all the above reasons, the early international investment activities didn't develop rapidly. At the same time, the international investment appeared as an indirect investment, which meant the investors didn't join in the management of investee companies directly. These indirect investors just exported their funds to the investees' countries and earned profits back. In addition, the main investors were individual instead of incorporated. But with the end of WWII, recovery and development took the place of war and turmoil. Many new cases of international investment appeared, such as the Marshall Plan, which brought a lot of investment projects and fund flows from the USA to European countries devastated by the terrible war [1]. Meantime, the residents' spending power was gradually increasing. Therefore, the world economy and international investment activities recovered and continued developing. As a large number of new technology products that came from military technology entered the civilian market, investors got more and more economic profits, and the legal person replaced gradually the individual as the protagonist of economic activities, both domestic and international. The legal person mentioned above is an organization that has the capacity for civil rights and civil conduct, and independently enjoys civil rights and assumes civil obligations in accordance with the law. For example, a company can be a legal person, and it can set up a company in the host state just like a man who promotes a company. And following, a large number of new Multinational Enterprises were gradually established, which boosted international investment greatly. During this post-war period, major players in the game of international investment changed from individuals to legal entities too and the international investment changed to be direct, which means the investors could control the conduct of the investee entities and join in the management of investee entities.

This investment shows a clear directionality. Developed countries have absolute economic strength and advanced technology and developing countries have a great investment attraction, such as a lot of construction needs, huge economic markets, low land rent, and cheap labor. The above leads to the fact that fund flows in the international investment activities are mainly from the economic entities, which are Multinational Enterprises (hereinafter referred to as MNEs) usually, of developed countries to the developing countries [2]. The investee is commonly called the host state. With the deepening of international trade relations, many contradictions and conflicts appeared. For example, an MNE maybe wants to monopolize the market for a kind of product in the host state, but the host state must protect its own companies which want to sell the product too. In that case, lots of relevant domestic and international laws were gradually established to solve these problems. In this process, the concept of International Investment Law (hereinafter referred to as IIL) took shape step by step. The IIL adjusts the private and direct investment relationship. MNEs' international investment behaviors are directly regulated by the IIL.

The IIL is a collection of a range of international and domestic laws instead of the title of a particular law and it adjusts private international investment relationships. These laws have some shared characteristics and the most obvious point is the protection of overseas investment. For example, as one of the international laws, the Convention Establishing the Multilateral Investment Guarantee Agency (hereinafter referred to as MIGA) mentions that the MIGA shall "issue guarantees, including coinsurance and reinsurance, against noncommercial risk in respect of investments in a member country which flow from other member countries", which comes from Article 2(a) of Chapter I of the Convention on Multilateral Investment Guarantee Agencies. This article is one objective of the MIGA, which means one of its purposes is to protect international investments and to give some indemnification.

The IIL also gives some solutions to international investment disputes and one of them is international commercial arbitration. The arbitration can efficiently resolve international commercial disputes with both disputing parties' accreditation and enforcement because an arbitration claim must

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be filed with mutual agreement and at the same time, both parties acknowledge the legal effect of arbitration.

2. The Relationships Between MNEs and the Host States

MNEs bring their money and assets to the host states to expand their business. They may use the money to set up companies, they may utilize these companies for production and sales and they may occupy a portion of the host states' market which can bring them continuous profits. All of these economic activities create a kind of relationship that has a characteristic of duality. This duality is relative, which means if one stands from a different perspective he will get almost the opposite result. In other words, if an effect does the states a favor, it will be a negative effect on the MNEs very likely, such as in terms of profits and technology transfer [3]. And considering that most of MNEs are based in developed countries, while most developing countries are the host states, these effects usually show directionality.

2.1. The Positive Economic Effects MNEs Have on the Host States

In today's world, a country's economy can't almost develop only by its market and national consumption and investment. That means a country must join the global market and find some funds and technical support to help its development. In that case, MNEs bring many benefits to the host states as the main role of international investment activities. This article will sort out the possible positive impact of MNEs on the host states.

First of all, MNEs bring funds and advanced technology to the host states and help them complete economic construction. Most of the host states are developing countries. Compared with developed countries, they lack money and technology but need more economic construction than developed countries, which is the main trouble. For example, MNEs' intervention in areas in need makes that the host states use MNEs' funds and technology to complete infrastructure projects rapidly come true. Although the state government may have not enough money to pay for completing these construction projects, they can still accomplish the missions and pay money to the MNEs step by step or transfer income rights for a certain period of time to the MNEs and recover construction results finally. In the latter case, MNEs can also recover costs and earn profits.

MNEs can also bring jobs and opportunities. For the countries with excess human resources, stubbornly high unemployment ratio and financial crisis result in government support dropping and social chaos. MNEs take over projects in the face of government funding constraints. That helps the host states create more jobs which absorb excess manpower and give the people having no job an opportunity to live and work in peace [4].

MNEs promote the development of the local market economy. As a part of the host states' economy, MNEs' business development can also increase the states' economy naturally. On another hand, MNEs stimulate the advancement of local businesses in the same field. For example, Coca-Cola and Pepsi triggered a consumer boom for cola in China's local market and the local companies started to produce the same kind of product to earn money taking advantage of new product bonuses. In that case, China's domestic colas like Tianfu Cola once occupied most of the domestic cola market in China and are even sold overseas so that a local business sector is thriving by MNE's stimulation [5].

MNEs bring different management systems, which can enrich the local management models and promote the institutional progress of local enterprises [6-7]. Although an advanced management system won't create profits directly, it can make the company more efficient and make the staff complete more missions in the same long time. Taking an extreme example, assuming that one person can only do a certain amount of work and then retires with a certain amount of salary, an advanced

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management system can make him complete this cycle with less time. On another hand, a nice advanced management system avoids cumbersome regulation and increases employee happiness at work. That can make a company more competitive. When the local companies accept the more advanced management system from MNEs, they can improve their own management system based on their actual situation.

2.2. The Negative Economic Effects MNEs Have on the Host States

Everything has two sides, not except MNEs. The involvement of MNEs could also bring some negative effects on the host states. Here are some examples.

MNEs may take advantage of funds and technology to suppress the local businesses. Every company manager wants to earn more and more money, and it is a very ideal situation for MNEs that there is only his company selling the kind of product. Therefore, MNEs will take measures intentionally or unintentionally to squeeze other companies out of the domestic market in the same field in the host states. In addition, competitive MNEs often have some advantages in funds and technology. If the government doesn't implement policies to protect domestic businesses and limit the competitive MNEs or the domestic companies can't find methods to beat these MNEs, the MNEs will monopolize the market of this kind of product.

MNEs may hinder the balanced development of a country's regional economy. This case is particularly serious in developing countries. For a country, the development of various regions is usually uneven. Taking China as an example, eastern regions are on average more developed than the western, and people in southern regions usually have more purchasing power than those in the northern regions. For example, in 2021, the average provincial GDP of Southern China is 5 214.4374 billion RMB, which excludes Taiwan Province, Hong Kong Special Administrative Region and Macau Special Administrative Region, and this number of Northern China is 3 335.8493 billion RMB. In comparison, this number of Western China is just 1 812.5475 billion RMB. The data comes from the 2021 statistics of the National Bureau of Statistics of the People's Republic of China. MNEs will naturally prefer to invest in richer regions and this obvious non-equilibrium feature will exacerbate the current situation of unbalanced development among various regions of a country and the income disparity of residents.

The host states should know both two sides of the MNEs and handle the relationships with MNEs reasonably to achieve a win-win with them.

3. The Way the IIL Adjusts the Relationships Between MNEs and the Host States

The IIL adjusts the relationships between MNEs and the host states in many different ways. No matter which kind of investment laws and conventions, international or domestic, brings more than one system to regulate the behaviors of the MNEs and the host states.

3.1. The Ways the IIL Regulates the Trade and Investment Activities Between MNEs and the Host Countries

These laws write certain actions into themselves which clarify what must be done, what should be done, and what cannot be done. A kind of them is bilateral investment treaty (hereinafter referred to as BIT). It is established between two countries exclusively for the protection of international investment. For example, the BIT between China and Korea was established in 2007. In this BIT, it stipulates that the government of one party must grant most-favored-nation treatment to investors of the other party, which comes from Paragraph 3 of Article 3 of the China-Korea BIT, and that one party should encourage investors of the other to invest in its territory, which comes from Paragraph 1 of Article 2 of the China-Korea BIT. In addition, it also stipulates that one party cannot take

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unreasonable or discriminatory measures against investors of the other party, which comes from Paragraph 3 of Article 2 of the China-Korea BIT. The above terms are for government actions, but there are also some terms for investors' actions, such as the investors must invest in the territory of the other party in accordance with its laws and regulations, which comes from Article 12 of the China-Korea BIT.

Some international trade organizations are set by the laws and conventions. The member countries and their MNEs can cooperate in the organizations more easily and conveniently. A classic example is the International Center for Settlement of Investment Disputes (hereinafter referred to as ICSID). This institution is established by the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States. The ICSID aims to increase the confidence of developed country investors to invest in developing countries and resolve investment disputes through arbitration and mediation. If an MNE believes that its investment interests have been damaged by the government of the host state, it can initiate arbitration at ICSID, which is certainly according to the contract or the agreement of both parties. Then the ICSID will trial the case with its custom rules.

In addition, some international institutions use investment guarantees to maintain the investment relationships between MNEs and the host states. For example, MIGA which is mentioned earlier is an affiliate of the World Bank Group. MIGA facilitates capital flows to developing countries and guarantees non-commercial risks of investment, such as the collection of MNEs' properties, which comes from Article 2 of the Multilateral Investment Guarantee Agency Convention. Moreover, the Convention Establishing the MIGA stipulates that if disputes about guarantee or reinsurance contracts arise between member states and the MNEs, they should initiate arbitration and the final determination should be made according to the mentioned rules or contracts, which comes from Article 58 of the Multilateral Investment Guarantee Agency Convention.

3.2. The Main Methods to Settle Economic Disputes

The methods to settle the disputes mainly contain commercial litigation and arbitration. Although litigation is a common way to settle disputes in daily life, there is growing evidence that the parties especially MNEs and the host states in international investment disputes are increasingly inclined to choose international commercial arbitration to settle investment disputes [8]. Considering both the Convention on the ICSID and the Convention Establishing the MIGA stipulate the parties should use arbitration to settle their investment disputes, the author supposes economic arbitration is the main and most useful method to settle economic disputes between MNEs and host states in recent.

4. The Reasons Why Arbitration Is the Most Important

Considering the perfection and enforcement of the litigation, why do they choose arbitration more instead of litigation which seems to be more reliable? To explain this question, let's begin with the features and differences between litigation and arbitration.

4.1. Features

The litigation is hosted by a specialized agency. If not involved in international affairs the litigation will be hosted by courts established by the country, while the international litigation will be hosted by the domestic courts in the host state or the International Court of Justice. For example, in the Morocco-Nigeria BIT, certain major cases are to be prosecuted in the judicial process of the local country [9]. In other words, whatever the litigation is, it must be hosted and processed by a domestic or international judiciary with some written laws and legal precedents. The court has legal permissions and procedures and the judges, the referees of the court, use their judicial power conferred by laws to handle litigation cases.

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The arbitration is hosted by a tribunal. The tribunal can be permanent or temporary for a particular arbitration. The parties make an agreement in the contract that if they have some disputes that need to settle, they can present an arbitration case in an arbitral tribunal. The arbitration is not judicial but contractual and self-managing. In spite of these features, the result given by the arbitral tribunal also has a certain legal effect.

4.2. Differences

What differences do arbitration and litigation have?

The first one appearing to us is how they are initiated. A case of arbitration must be initiated with both the MNE and the host state's agreement, which comes from Chapter 4, Section 1, Article 36 of the ICSID Convention. When the MNE and the host state reach business cooperation, they will often make a contract in which they will make it clear how they settle disputes, such as by international commercial arbitration chosen by most contracts. The process is identical for the two participants and private except they require publicity [8]. However, a case of litigation is usually initiated by one party of them and the party can initiate a lawsuit without the other's agreement. A case of litigation is usually conducted in public. If the parties want a private trial, they may ask the court for it, although the court may not allow the request and continue the public hearing. In addition, when one party files a lawsuit against the other party, the other party must respond. It is different from the autonomy of the will of the arbitration.

From the point of view of the acquisition of power, the law gives power to the courts, which comes from Article 4 of the Civil Procedure Law of the People's Republic of China. All the results are from relevant provisions of the law with the proceedings prescribed by the law. The parties have a certain right, obtained by laws, to choose courts but within the range limited by the laws and that won't be always successful because of the possible rejection of the court. But it is the MNEs and the host states (the disputing parties) who give the power to the arbitration essentially, which is explained as follows. Certainly, that doesn't mean that the parties make arbitration rules. In fact, arbitration tribunals have the power to make their own rules, such as the London Court of International Arbitration makes its rules and regulations [10]. The disputing parties can choose their favorite tribunal exactly as their wish to settle the disputes. Generally speaking, the parties choose arbitration to settle their disputes and choose freely the tribunal which is satisfying and give it the right to hear the case and then get some results.

Apart from the above differences, the litigation generally adopts the system of the two-instance final, which means if one of the parties refuses to accept the first result it can file the lawsuit again to get a new result. But the arbitration adopts the system of the one judgment to final [11], which means once the judgment is made the parties must accept the result and can't initiate the arbitration again on the same issue.

From the referees' point of view, judges are full-time but arbitrators are almost part-time. Judges are just judges so it is inevitable that judges don't have much industry expertise outside of the legal profession, but arbitrators may have their own major jobs. Besides, judges of the litigation can only be chosen by the court. Cases are automatically assigned to judges without the willings of parties, and the parties can only refuse one or more certain judges to participate in a case, and this kind of rejection is also limited by laws. But the two parties may each choose an arbitrator freely, and then the arbitration tribunal will select one of the presiding arbitrators [12]. These three arbitrators will settle the arbitration cases together and give a unified ruling scheme after discussion and trial.

The last main difference is jurisdiction. The litigation has a strict jurisdiction system prescribed by law. When a case of litigation is initiated, where the case should be distributed and which level of the court should hear the case is already determined. Generally speaking, the court is selected mainly according to the address of the litigants, the place of contract performance, or the subject matter by-

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laws, which takes into account the ease of trial and enforcement, which comes from Chapter 2, Chapter 23 and Chapter 24 of the Civil Procedure Law of the People's Republic of China. In comparison, the arbitration doesn't have a strict jurisdiction system. Because a case of arbitration is initiated willingly, giving the power to the parties to choose tribunals is understandable. Furthermore, the arbitration is dependent on the case itself and the parties' willings.

4.3. Advantages of Arbitration

Because of the differences, the arbitration brings different advantages to the MNEs and the host states from the litigation.

The first advantage is saving time on average. Compared with the court, the arbitration tribunal doesn't usually allow the parties to appeal, which means once the adjudication is made, the trial of the case is over and the parties should accept the result. The feature that parties can't appeal helps them save time on average [13]. In today's international business's increasingly fast-paced, this feature makes the settlement of disputes more effective, and then the MNEs can deal with other businesses. The host states usually cooperate with many MNEs, so it is also beneficial to the government to develop international commercial issues. In addition, MNEs can choose a tribunal freely so they can find the tribunal or arbitrator using the same working language and save time and money to employ translators.

The second advantage is executive power. In today's world, there isn't an internationally generic convention that recognizes the enforceability of foreign judgments of litigation [13]. If the host state has disputes with the MNE, its government may sue the MNE in its local court. But this judgment of which the enforcement against the MNE is proposed may be just regarded as a claim with some evidence for support. In this case, generally speaking, the MNE and the government of its home country doesn't maybe want to execute this judgment unless asking for mutual legal assistance, which comes from Chapter 27 of the Civil Procedure Law of the People's Republic of China. Although they can execute the judgment results by asking the local court or relevant institutes to help them, there is not as many mutual legal assistance agreements as the international arbitration in the world. However, the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards makes arbitral awards avoid the above situation. In this convention, the potency of arbitration is protected, and it allows the local institutions in the host states to execute the arbitral awards and the executive power of arbitration is thereby guaranteed. As of July 21, 2022, there are 170 countries in the world having joined the Convention, because Turkmenistan has acceded to the "Convention on the Recognition and Enforcement of Foreign Arbitral Awards" (New York Convention) on May 4, 2022, becoming the 170th State Party to the New York Convention [14].

The third advantage is confidentiality. Different from the widely accepted openness of litigation, the process of trial of arbitration is certainly confidential. In international commercial arbitration, some commercial secrets are often encountered. This kind of trial shouldn't be open to the public. Although the parties can ask for a private trial, the final decision is in the hands of the court, which means the court may refuse this proposal. Therefore, if the disputes are related to secrets, choosing arbitration as the settlement can protect the secrets as well as avoid unnecessary speculation and effects of public opinion on the case. It can also help make the arbitral awards execute successfully and smoothly.

The next advantage is professionalism [13]. The judges in litigation are selected by courts and they are full-time, which means they don't maybe have enough knowledge about other academic areas while the arbitrators are partly selected by the parties and are part-time. The MNEs and the host states' governments can choose arbitrators with the same expertise in the area of the cases. These arbitrators are believed to be able to make more reasonable arbitral awards than the judgment of courts.

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The last-mentioned advantage is fairness and neutrality. If disputes between MNEs and the host states are settled by litigation, they should usually trial at the court in the host states and apply the local domestic laws. This inevitably raises the MNEs' doubts about the fairness of the litigation. The arbitration system which allows both parties to choose arbitrators and tribunals they believe in dispels this suspicion.

Through the above arguments and facts, the author's suppose can get confirmed. Commercial arbitration is actually more useful and important than litigation and MNEs and the host states prefer to use arbitration to settle their investment disputes.

That being the case, why do more and more MNEs and the host states choose arbitration instead of litigation? In other words, what benefits does arbitration bring to both parties involved in international investment?

5. The Benefits Investment Arbitration Brings for MNEs and the Host States

Although there are so many advantages investment and commercial arbitration has, what specifically does it bring to the MNEs and the host states? To explain this question, this paper will analyze this with Cairn Energy PLC and Cairn UK Holdings Limited v. India. PCA Case.

This case arose out of India's revision of the Income Tax Act and the imposition of capital gains tax on Cairn Energy under the new Income Tax Act, and Cairn Energy initiated the arbitration under the UK and India BIT and the UNCITRAL Arbitration Rules. For reasons of space, the specific case content will not be repeated here. The following is an analysis of the benefits brought by arbitration to both parties in this case.

5.1. From the Perspective of MNEs

The first benefit is that arbitration helps MNEs save time. In this case, Cairn Energy's two subsidiaries, Cairn UK Holdings Limited's (hereinafter referred to as CUHL) and Cairn India Holdings' (hereinafter referred to as CIL) multiple related shares, dividends, chattels and transfers were frozen and seized by Indian government. These properties are directly related to the interests of Cairn Energy. This arbitration started in February 2016 and ended in December 2020 with the announcement of the verdict [15]. Cairn Energy used almost 5 years to win the arbitration, and then the Indian government should once return CUHL's and CIL's properties. Compared to litigation, the Indian government can't appeal to the tribunal, so it can help Cairn Energy quickly unblock its properties which can bring continuous benefits. Moreover, if Cairn Energy chooses litigation to settle this dispute, it will usually file a lawsuit in a court in India, but the court maybe won't trial the case rapidly considering the court may have many other cases to trial. It will undoubtedly increase unnecessary time costs in which the frozen properties can't generate expected profits. But they can choose temporary tribunal to trial this case specially. Therefore, choosing arbitration help Cairn Energy and its subsidiaries save time and reduce potential financial losses.

The second benefit is freedom and fairness. If Cairn Energy and its subsidiaries choose litigation, considering the CIL is registered in India and these frozen properties are in India too, the case will be assigned possibly to an Indian court by laws. But that may make Cairn Energy worry about the fairness of the host state's court. However, Cairn Energy can choose arbitration tribunals freely. It can choose the tribunals and the arbitrators it trusts so that it can avoid unfair treatment and judgment.

The third benefit is confidentiality. Although the public can now learn something about this case, it must also be approved by Cairn Energy because arbitration hearings are by default closed to the public. Cairn Energy can choose freely whether the arbitration case is open to the public or not. But if it chooses litigation, the case will default open to the public. And if it applies for the case not to be open, the court will also not certainly agree with its wish. Therefore, from the perspective of

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protecting commercial secrets, arbitration gives more and more reliable options to Cairn Energy than litigation.

In addition, not only for Cairn Energy, but also for all the MNEs, arbitration is a more stable method to settle international investment disputes. Because some developing countries are or will unpredictably be in a state of turmoil, such as the turbulent situation in Sri Lanka in July 2022 and the 2022 Russian-Ukrainian War, the legal systems of the host states don't necessarily remain intact. In that case, litigation isn't certainly very reliable, while arbitration is more reliable if there isn't global catastrophic upheaval because permanent or temporary arbitral tribunals are available in many parts of the world.

5.2. From the Perspective of the Host States

Although many of the aforementioned benefits of the arbitration for Cairn Energy seem to conflict with the interests of the Indian government, choosing arbitration also brings a lot of benefits to the Indian government.

Firstly, the choice of arbitration to settle international investment disputes is the general trend. For example, the ICSID already has 170 contracting states, and lots of BITs have been established between many countries. Actively taking arbitration under the UK-India BIT framework helps India integrate into the world investment economic circle. The more in line with the world investment status quo, the faster India can adapt to the international standard investment model. That saves the learning cost of MNEs to invest in India and improves India's investment attractiveness.

Secondly, arbitration is easier to retrieve. Compared with domestic litigation, arbitration can be more easily searched and understood by investors from all over the world due to its international feature. The Indian government can take this opportunity to actively implement the arbitration results and demonstrate the Indian government's integrity. At the same time, through rapid and thorough implementation the Indian government can reflect its determination to protect MNEs investment, thereby enhancing foreign investors' confidence in the Indian market and attracting more MNEs to invest in India. This attraction is what many MNEs have been looking for [16].

Thirdly, arbitration is targeted. Arbitration focuses on the case itself. The Indian government agreed to use arbitration to settle this dispute, and the arbitration just focuses on whether the additional taxation of Cairn Energy and its subsidiaries by the Indian government is a retrospective application of the revised Income Tax Act. Therefore, even if in the end, the Indian government lost the arbitration, it should only enforce this Cairn Energy-related award and its new Income Tax Act will not be affected and can continue to operate.

6. Conclusion

This paper analyzes the relationship between MNEs and the host states in the area of international investment and highlights the impact of MNEs on the host states. The MNEs have many positive effects on the host states, such as MNEs help the host states complete economic construction. But the MNEs also bring some negative effects to them.

In order to amplify the positive aspects and eliminate the negative aspects as much as possible, a series of IILs came into being. These laws and conventions and the organizations established by them adjust the` relationship between MNEs and the host states. This is mainly reflected in the settlement of investment disputes between the two parties. The main methods include litigation and arbitration.

By comparing the features and differences of arbitration and litigation, and expounding the advantages of arbitration, this paper determines that arbitration is more effective and practical than litigation.

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Finally, according to the Cairn Energy PLC and Cairn UK Holdings Limited v. India. PCA Case, this paper specifically analyzes the benefits of choosing arbitration from the perspective of MNEs, taking Cairn Energy and its subsidiaries as an example, and the host states, taking Indian government as an example.

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