The People's Republic of China
4th Intermediate People's Court of Beijing Municipality
Civil Decision

(2024) Jing. 04 Min.Te. No.411

Claimant: the Export-Import Bank of China, domiciled at No. 30, Fuxing Men Nei Street, Xicheng District, Beijing, the People's Republic of China.

Legal Representative: Wu Fulin Title: Chairman

Entrusted Attorney: Liu Zhuo, Lawyer with Beijing Silkroad, Anchorite & Sage Law Firm.

Entrusted Attorney: Gong Yue, Lawyer with Silkroad, Anchorite & Sage (Shenzhen) Law Firm.

Respondent: Boldtumur Eruu Gol LLC, domiciled at Apartment No.00, West Serebo Road, Zone 5, Qingertai District, Ulaanbaatar City, Mongolia.

Authorized Representative: Chuluunkhuu Purevdorj, CEO.

Entrusted Attorney: Yang Yuanqing, Lawyer with Beijing Huamao & Guigu (Handan) Law Firm.

Entrusted Attorney: Cheng Zi'en, Lawyer with Beijing Huamao & Guigu Law Firm.

This Court accepted and reviewed the case of applying for cancellation of the arbitration award by the Claimant - the Export-Import Bank of China against the Respondent - Boldtumur Eruu Gol LLC (hereinafter referred to as "Mongolia Iron Mining Company") on April 2, 2024. Now the hearing has been completed.

The Export-Import Bank of China claimed that, it requests the Court to revoke the [2023] Zh.G.M.Zh.J.C.Zi No.2273 Decision made by China International Economic and Trade Arbitration Commission (hereinafter referred to as "CIETAC") on October 23, 2023. Facts and grounds: In 2011, the Export-Import Bank of China and Mongolia Iron Mining Company signed a Loan Contract, under which, the Export-Import Bank of China provides a loan of USD 200 million for Mongolia Iron Mining Company and its actual controller Li Xiaoming to acquire the La Le Gao Te Iron Mine in Mongolia. Mongolia Iron Mining Company and its related affiliates provided guarantee for this loan. Mongolia Iron Mining Company provides mortgage guarantee to the Export-Import Bank of China with its all 12 locomotives and 1800 railcars, and provides pledge guarantee with its all No.MV-008888 Mining Licenses and all derived mining rights and related interests. The two parties signed the "Mortgage Agreement" and "Pledge Agreement" and handled the pledge registration in Mongolia according to law. Due to the default of Mongolia Iron Mining Company since the end of 2014, the principal and interest of more than USD 200 million of loans were seriously overdue. On March 25, 2019, the Export-Import Bank of China filed an arbitration claim against Mongolia Iron Mining Company regarding the guarantee liability issue. However, there exists the following problems in the process of trial and adjudication:

I. The arbitration procedure is unreasonable, the time consumed is too long, which seriously violate the arbitration rules and reflect serious procedural flaws.

(I) It took too long for CIETAC to file the case.

Since the dispute settlement clause stipulates that "arbitration proceedings shall be conducted in both Chinese and English", after the arbitration was initiated on March 25, 2019, the Export-Import Bank of China translated the arbitration application document and all the evidence into English at the request of CIETAC, and submitted the above-mentioned English translation on July 24, 2019, however, it was not until December 2, 2019 that CIETAC made the arbitration notice of the case and began to serve the same on Mongolia Iron Mining Company.

(II) It took too long for CIETAC to form a tribunal, and the interval between sessions after the tribunal formation is very long.

According to the arbitration notice from CIETAC dated December 2, 2019, the parties concerned were required to select the arbitrator within 15 days from the date of receipt of the arbitration notice, but Mongolia Iron Mining Company did not select the arbitrator within the specified period. During the period, the Export-Import Bank of China also communicated with CIETAC on the formation of the Tribunal through calls or written means many times, hoping to speed up the formation of the Tribunal. But CIETAC expressed that it could not estimate the duration for formation of the tribunal. The tribunal was finally formed on June 23, 2020. After the formation of the tribunal, the case started with a long trial period, and two hearings were held on September 23, 2020, and May 18, 2023. Therefore, after the first hearing on September 23, 2020, the second hearing date was scheduled for May 18, 2023. The long interval between the two hearing dates is certainly unreasonable, and CIETAC did not provide any relevant explanation for this scheduling. The Export-Import Bank of China holds that there are serious flaws in CIETAC's hearing schedule.

(III) The lengthy deciding time for the arbitral award violates the procedural requirements of Article 48 of the *China International Economic and Trade Arbitration Commission (CIETAC) Arbitration Rules* (hereinafter referred to as the "Arbitration Rules") regarding the time limit for the arbitral award.

For this case, the duration from the formation of the arbitral tribunal on June 23, 2020 to the issuance of the arbitral award on October 23, 2023 lasted for a total of 40 months, significantly exceeding the time limit for rendering the award as stipulated in Article 48.1 of the Arbitration Rules, which requires the arbitral tribunal to render the award within 6 months after its formation. Although in the multiple notifications regarding extensions of the deadline for the arbitration award issued by the arbitration commission, it is clearly stated that the extension has been approved by the president of the arbitration court, Article 48.2 of the Arbitration Rules specifically stipulates that an extension of the deadline must be justified by legitimate reasons, and should be limited to the necessary purposes. Extending the deadline for rendering an award multiple times for such a long period without explaining justifiable reasons to the parties concerned clearly violates the procedural requirements regarding the deadline for

rendering an award stipulated in Article 48.1 and 48.2 of the Arbitration Rules.

Additionally, during the case hearing, the Export-Import Bank of China has requested CIETAC to explain the specific reasons for the slow progress and multiple delays in the arbitration process. At the same time, they also expressed that if the deadline for the arbitration decision is further extended, state-owned assets will be at great risk. They earnestly implored CIETAC to strictly abide by the provisions of the Arbitration Rules and make a timely arbitration decision to safeguard the legitimate rights and interests of the Export-Import Bank of China. However, CIETAC has not provided a clear explanation to the Export-Import Bank of China regarding the specific reasons for the multiple delays, and the arbitration decision was not made until October 2023.

II. The defects in the arbitration procedure gave Mongolia Iron Mining Company sufficient time to take various measures to escape debts, which seriously damaged the legitimate rights and interests of The Export-Import Bank of China, resulting in serious damage to state-owned financial assets.

Due to serious procedural flaws such as unreasonable delays in various stages of the arbitration process, Mongolia Iron Mining Company has had ample time to maliciously take unlawful measures to obstruct the Export-Import Bank of China from exercising its mortgage rights and pledge rights, in order to achieve its illegal goal of embezzling Chinese state assets. Following the arbitration initiated by the Export-Import Bank of China, Mongolia Iron Mining Company initiated administrative proceedings in Mongolia seeking to obtain a court order through this process to revoke the related pledge registration of the China Export-Import Bank. After a difficult legal battle of the Export-Import Bank of China, through three rounds of review process, Mongolia Iron Mining Company was unable to achieve its goal through the administrative litigation process. Subsequently, Mongolia Iron Mining Company immediately began to initiate criminal proceedings. In this criminal case, Mongolia Iron Mining Company submitted false evidence and made statements that were seriously inconsistent with the facts. The Mongolian court failed to collect sufficient evidence, leading to procedural errors in judicial process and failure to notify the Export-Import Bank of China through legal procedures. In this case, the Mongolian criminal court directly affirmed the "Mortgage Agreement" and the "Pledge Agreement" invalid and ordered the cancellation of the pledge registration by the Export-Import Bank of China, seriously damaging the rights and interests of the Export-Import Bank of China in debts and guarantees, causing damage to state-owned financial assets.

III. The arbitration award shall be revoked since it violates the relevant legal procedures and goes against the public interest of our society.

The arbitration award pointed out that the arbitral tribunal's final award rejecting the arbitration claim of the Export-Import Bank of China was due to the criminal judgment made by the Criminal Court of Mongolia that the Mortgage Agreement and the Pledge Agreement were invalid and the cancellation of the case involved the pledge registration. However, on the one hand, there is no bilateral treaty on the recognition and enforcement of criminal judgments between China and Mongolia, and the Mongolian criminal judgment has not been recognized

in China, and does not have effective legal effect on Chinese parties. On the other hand, the Mongolian criminal judgment has major flaws in legality and rationality and should not be accepted by the tribunal. During the investigation and trial of this criminal case, there were many violations of legal provisions, the reasoning and logic of the judgment were confused, and the Export-Import Bank of China, as an important party, was not notified through legal procedures, which seriously damaged the rights and interests of the Export-Import Bank of China. Meanwhile, the arbitral tribunal also clearly stated in the arbitration award that "after careful reading of the criminal court's judgment, the arbitral tribunal is far from being convinced by the legal basis or reasoning on which the criminal Court's judgment was based".

However, the arbitral tribunal, under the premise that it does not recognize the persuasive nature of the criminal judgment in Mongolia and that the judgment has significant deficiencies in terms of legality and reasonableness, has determined the Mongolian criminal judgment as an important evidence and legal document in this case, and adopted this Mongolian criminal judgment and based on which, made the ruling of rejecting the arbitration request of the Export-Import Bank of China. As a result, on one hand, this has allowed Mongolian criminal judgments not recognized by our country to have legal effect on parties concerned in our country, which violates the relevant rules of legal procedure; on the other hand, the nature of such a ruling is to recognize Mongolia's abuse of judicial sovereignty and conniving at Mongolian debtors' evasion of debts by cheating or even criminal means. This infringes upon the legitimate rights and interests of the Export-Import Bank of China and causes serious damage to state-owned financial assets, moreover, at the level of social public interest, it seriously disturbs the order of Chinese investors' external financial activities, infringes on financial stability and financial security, and endangers the safety and confidence of non-specific investors to participate in international financial activities, which is a violation of major social public interests and goes against the basic principles of legal fairness and justice and social public order and good customs. Furthermore, it damages the judicial credibility and deterrence, and is unfavorable to China's judicial sovereignty.

Mongolia Iron Mining Company argued that: I. Mongolia Iron Mining Company hasn't violated the arbitration rules resulting in an extension of the proceedings.

1. The Export-Import Bank of China delayed the arbitration proceedings without cause. First, although the Export-Import Bank of China applied for arbitration on March 25, 2019, it only submitted the translation of the relevant documents on July 24, 2019, and only confirmed the address of service of Mongolia Iron Mining Company on November 29, 2019, which seriously delayed the arbitration procedure after the acceptance of the case. Second, the arbitration case was first heard on September 23, 2020, but the Export-Import Bank of China, after unreasonable delay, submitted another application to change the arbitration request on April 18, 2022, resulting in a further extension of the arbitration proceedings. Finally, the Export-Import Bank of China failed to take the initiative to state the factual basis of its arbitration claim, and did not provide a written explanation of the current situation of the pledges and collateral until September 22, 2023, shortly before the rendering of the arbitration award. It can be seen that in the arbitration case, the procedure was delayed by the Export-

Import Bank of China.

2. Mongolia Iron Mining Company initiated administrative litigation in Mongolia to safeguard its legitimate rights and interests through proper legal means, which has no impact on the arbitration procedure and outcome.

According to the Pledge Agreement at issue in the arbitration case, the pledge was made to finance the Bayan Khundii iron ore project located in Erdenesuvd sum, Selenge province, Mongolia, which in fact never received any loan. Based on the aforementioned background, upon learning that the Export-Import Bank of China filed an arbitration case, Mongolia Iron Mining Company initiated administrative litigation in Mongolia to request the cancellation of the pledge registration established by the Export-Import Bank of China on its exploration and mining rights certificates. This is to legally safeguard its legitimate rights and interests, and there is no situation of unreasonable delay in the proceedings.

II. The arbitral tribunal did not base its arbitration decision on Mongolia's criminal judgment, therefore the arbitration case does not involve the recognition and enforcement of Mongolia's criminal judgment.

According to the arbitral award, the arbitral tribunal made its decision based on the provisions of the Pledge Agreement and the fact that the pledge registration of the mining licenses involved, which were attached to the case, by the Export-Import Bank of China, had been canceled, and also the fact that there was no registration of rights by the Export-Import Bank of China on the collateral. The arbitral tribunal did not use the facts determined by the court in a criminal judgment in Mongolia as a basis for arbitration, therefore, the arbitration case is not related to the recognition and enforcement of the criminal judgment in Mongolia. 1. Procedurally, the Export-Import Bank of China has been legally served in the criminal procedure of Mongolia; and the legality of the criminal judgment has been confirmed by the superior court, the judgment has taken effect and is final. The Mongolian National Police Agency's fraud investigation department has officially notified the Export-Import Bank of China through authorized representative and email, informing them of the criminal investigation proceedings and requesting the designation of an agent by the Export-Import Bank of China. 2. In fact, the criminal procedure in Mongolia was initiated and promoted by the Export-Import Bank of China, and the Export-Import Bank of China has been aware of this criminal procedure. 3. The criminal judgment is legal, valid, binding, and has been executed.

III. The Export-Import Bank of China has accepted the arbitration fee paid by Mongolia Iron Mining Company in accordance with the arbitral award, and the Export-Import Bank of China shall be bound by the arbitration award.

IV. The Export-Import Bank of China violated its loan supervision duties by improperly issuing loans, resulting in the funds involved in the loans not being used for the purposes stipulated in the loan agreement, and should solely bear all losses caused by this. In this case, the Export-Import Bank of China failed to perform its duty to supervise the flow of loan funds, and their lending behavior was grossly negligent, which led to the fact that the loan in question was never used for the purposes agreed in the Pledge Agreement and prescribed by law, and

was never used in Mongolia, nor was it provided to Mongolia Iron Mining Company. Due to the lack of supervision and significant flaws in the lending process of the Export-Import Bank of China, the loan were actually completely controlled by a third-party named Li Xiaoming, and were not used for the Mongolian iron ore investment business as stipulated in the "Pledge Agreement" in this case. The Export-Import Bank of China shall bear legal liability for its own gross negligence and all losses resulting therefrom.

V. The arbitral tribunal only makes decisions on the rights and obligations between the claimant and the respondent, so the arbitral award does not involve, let alone violate, China's public interests.

The Export-Import Bank of China and Mongolia Iron Mining Company are commercial entities with the same legal status. The [2023] Zh.G.M.Zh.J.C.Zi No.2273 arbitral decision only deals with the contractual rights and obligations between the Export-Import Bank of China and Mongolia Iron Mining Company. There is no direct or indirect infringement of other legitimate rights and interests of the public, so the arbitral award does not involve, let alone violate, public interests. Therefore, the Export-Import Bank of China applied for the cancellation of the arbitration award on the ground of "violating the public interest", and its claim cannot be supported.

Upon examination, it was found that on March 25, 2019, the Export-Import Bank of China, in accordance with the arbitration clauses stipulated in the Mortgage Agreement and the Pledge Agreement signed with Mongolia Iron Mining Company, submitted an application for arbitration to the China International Economic and Trade Arbitration Commission (hereinafter referred to as "CIETAC"), and CIETAC accepted the application (case No.: X20191266). On October 23, 2023, CIETAC rendered the [2023] Zh.G.M.Zh.J.C.Zi No. 2273 decision, under which, all the arbitration claims filed by the Export-Import Bank of China were rejected; the arbitration fee for this case was RMB 480,000. The Export-Import Bank of China and Mongolia Iron Mining Company each bear half of the arbitration fee, namely RMB 240,000. Since the Export-Import Bank of China has prepaid RMB 480,000 as the arbitration fee for this case, Mongolia Iron Mining Company shall pay RMB 240,000 to the Export-Import Bank of China within twenty (20) days from the date of this award.

The Court holds that this case involves an application by a party to revoke a foreign-related arbitration award, and in accordance with Article 70 of the *Arbitration Law of the People's Republic of China*, Article 291 of the *Civil Procedure Law of the People's Republic of China* (amended in 2023) should be taken as a matter of examination. Article 291 of the *Civil Procedure Law of the People's Republic of China* provides: If the respondent of an award made by a foreign-related arbitration institution of the People's Republic of China provides evidence to prove that the arbitration award has any of the following circumstances, a collegial bench of the People's court shall, after examination and verification, order that the arbitration award shall not be executed: (1) The parties have not stipulated an arbitration clause in the contract or have not subsequently reached a written arbitration agreement; (2) The respondent has not been notified of the appointment of an arbitrator or the commencement of the arbitration proceedings, or fails to state its views due to other reasons for which the respondent is not responsible; (3)

The composition of the arbitral tribunal or the procedure of the arbitration does not conform to the arbitration rules; (4) The matters awarded do not fall within the scope of the arbitration agreement or the arbitration institution has no authority to arbitrate. If the People's court finds that enforcement of the award is contrary to the public interest, it shall order not to enforce it. The above provisions are the legal grounds for the people's court to revoke the foreign-related arbitration award. The reasons submitted by the parties involved to suggest non-compliance with the above provisions shall not be used as the basis for revoking the foreign-related arbitration award.

In response to the reasons for the arbitration award of the Export-Import Bank of China to be revoked, this Court's analysis and determination are as follows:

With regard to the claim from the Export-Import Bank of China that the arbitral procedure is unreasonable, the Export-Import Bank of China asserts that the arbitral procedure took too long and that the rulings make criminal judgments of Mongolia that have not been recognized by China legally binding on Chinese parties. This Court holds that, in accordance with Article 48 of the Arbitration Rules, (I) the arbitral tribunal shall make the award within six months after the formation of the tribunal. (II) At the request of the arbitral tribunal, the President of the Arbitration Court of the Arbitration Commission may extend the time limit if he/she considers it to be justified and necessary. (III) The period during which the proceedings are suspended shall not be counted in the time limit for the award provided for in paragraph (I) above. In this case, based on the actual need of the case trial and procedure, the President of the Arbitration Court has agreed and decided to extend the time limit for making the award of this case to October 23, 2023 at the request of the arbitral tribunal. The arbitration award was made on October 23, 2023, within the time limit for hearing, so there is no situation that is inconsistent with the arbitration rules. Meanwhile, the arbitral tribunal did not base the arbitration award on Mongolia's criminal judgment, therefore the arbitration case does not involve the recognition and enforcement of Mongolia's criminal judgment. According to the arbitration award, since the Mongolian Criminal Court finally ruled that the Mortgage Agreement and the Pledge Agreement were invalid and revoked the pledge registration of the mining license No. MV-008888, the arbitral tribunal holds that it has no power to change the fact that the pledge registration has been revoked by DGMC, the pledge requested by the Export-Import Bank of China in this arbitration has in fact ceased to exist, and the rights of the Export-Import Bank of China as the pledgee involved in the case can no longer be practically exercised. Based on the expert opinion provided by the Export-Import Bank of China on the mortgage involved in the case, the original mortgage right of the Export-Import Bank of China on the mortgage involved in the case was also found invalid by the criminal court because of the Mortgage Agreement and could not be exercised. Even if it is considered that the mortgage security interest of the Export-Import Bank of China must be registered in order to be effective, there is no evidence that the parties to the Mortgage Agreement actually handled the mortgage registration. In such circumstances, the arbitral tribunal concluded that there was no valid mortgage. Therefore, the arbitral tribunal did not base its arbitration award on the facts established by the court in Mongolia's criminal judgment. The arbitration case does not involve the recognition and

enforcement of Mongolia's criminal judgment, and there is no situation that is inconsistent with the arbitration rules. Therefore, the Court does not support the aforesaid claims of the Export-Import Bank of China.

With regard to the claim submitted by the Export-Import Bank of China that the arbitration award is against the public interest of China, the Court holds that, contrary to social public interests refers to the ruling against the general public as the interest party, involving the most fundamental legal and moral common interests of the whole society, which should be manifested in the form of violating the basic policies and standards of our law, violating the basic value orientation of social and economic life, endangering social public order and life order. It violates the basic moral principle that all members of society generally recognize and follow. The dispute involved in the case is a civil dispute between equal legal persons, and the effect of the arbitration award is based on the rights and interests of equal legal persons. The available evidence cannot prove that the award is contrary to the public interest, such as seriously disturbing the order of Chinese investors' foreign financial activities, infringing on financial stability and security, and endangering the safety and confidence of unspecified investors participating in international financial activities, as stated by the Export-Import Bank of China. Meanwhile, the financial assets of the Export-Import Bank of China are not equivalent to social public interests. The Court does not support the claim of the Export-Import Bank of China that the arbitral award is against the public interest.

To sum up, the reasons of the Export-Import Bank of China on its application for revoking the arbitral award cannot be established, and the Court does not support its application for revoking the arbitral award.

In accordance with Article 70 of the *Arbitration Law of the People's Republic of China* and Article 291 of the *Civil Procedure Law of the People's Republic of China* (hereinafter referred to as the "Civil Procedure Law"), the ruling is as follows:

The application of the Export-Import Bank of China is rejected.

The application fee of RMB400 shall be borne by the Export-Import Bank of China (already paid).

Chief Judge: Wang Xiang
Judge: Cheng Na
Judge: Li Xiaorui

(Seal of No. 4 Intermediate People's Court of Beijing Municipality)
June 27, 2024

Judge Assistant: Ma Xiaoyan
Court Clerk: Cao Jialu

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中华人民共和国
北京市第四中级人民法院
民事裁定书

（2024）京04民特411号

申请人：中国进出口银行，住所地中华人民共和国北京市西城区复兴门内大街30号。

法定代表人：吴富林，董事长。

委托诉讼代理人：刘卓，北京锦路安生律师事务所律师。

委托诉讼代理人：公越，北京锦路安生（深圳）律师事务所律师。

被申请人：蒙古国伊罗河铁矿有限责任公司（Boldtumur Eruu Gol LLC），住所地蒙古国乌兰巴托市青格勒台区第5分区西色勒波路00号公寓。

授权代表：普·朝伦呼（Chuluunkhuu Purevdorj），首席执行官。

委托诉讼代理人：杨元庆，北京市华贸硅谷（邯郸）律师事务所律师。

委托诉讼代理人：程子恩，北京市华贸硅谷律师事务所律师。

申请人中国进出口银行与被申请人蒙古国伊罗河铁矿有限责任公司（Boldtumur Eruu Gol LLC，以下简称蒙古国铁矿公司）申请撤销仲裁裁决一案，本院于2024年4月2日立案后进行了审

查。现已审查终结。

中国进出口银行称，请求撤销中国国际经济贸易仲裁委员会于2023年10月23日作出的[2023]中国贸仲京裁字第2273号裁决。事实和理由：中国进出口银行于2011年与蒙古国铁矿公司签订了《借款合同》，中国进出口银行提供2亿美元的借款以供蒙古国铁矿公司及其实际控制人李晓明收购位于蒙古国的拉勒高特铁矿。蒙古国铁矿公司在内的蒙古国铁矿公司的相关关联公司针对本笔借款提供了担保。蒙古国铁矿公司以其所有的12台车头和1800节车皮向中国进出口银行提供抵押担保，并将其所有的第MV-008888号采矿许可证及其衍生的所有采矿权和相关权益向中国进出口银行提供质押担保，双方签订《抵押协议》《质押协议》并依法在蒙古国办理质押登记。因蒙古国铁矿公司自2014年底开始出现违约，超过2亿美元的借款本金及利息严重逾期未偿还，中国进出口银行于2019年3月25日就要求蒙古国铁矿公司承担担保责任事宜提请仲裁。但是，本案在审理与裁决过程中存在下列问题：

一、仲裁程序不合理，耗时过长，严重违反仲裁规则，存在严重程序瑕疵。

（一）贸仲立案时间过长。

因争议解决条款约定“仲裁程序应以中文和英文”进行，故中国进出口银行在2019年3月25日提起仲裁后，应贸仲要求对仲裁申请书及全部证据进行了英文翻译，并于2019年7月24日

完成了前述英文翻译件的提交，然而贸仲直至2019年12月2日才作出本案仲裁通知，开始向蒙古国铁矿公司进行送达。

（二）贸仲组庭时间过长，组庭完成后开庭时间间隔甚远。

根据贸仲2019年12月2日的仲裁通知，当事人应在收到仲裁通知之日后15天内选定仲裁员，但蒙古国铁矿公司并未在规定期限内选择仲裁员。期间中国进出口银行亦多次与贸仲通过电话或书面方式就组庭进行沟通，希望能够加快组庭工作的推进。但贸仲表示无法预估组庭的持续时长。最终组庭于2020年6月23日才完成。完成组庭后，案件又进入了漫长的审理期，分别于2020年9月23日、2023年5月18日进行了两次开庭审理。因此，在2020年9月23日进行第一次开庭审理后，第二次开庭时间被安排在2023年5月18日，两次开庭安排时间间隔如此之长，确属不合理，贸仲对此开庭安排也并未作出相关说明，中国进出口银行认为贸仲在开庭安排的程序存在严重瑕疵。

（三）裁决时间过长，违反了《中国国际经济贸易仲裁委员会仲裁规则》（以下简称“《仲裁规则》”）第四十八条关于裁决期限的程序规定。

本案自2020年6月23日仲裁庭组庭至2023年10月23日作出仲裁裁决书，历时40个月整，严重超过了《仲裁规则》第四十八条第（一）款规定的“仲裁庭应在组庭后6个月内作出裁决书”的裁决期限。虽然在仲裁委给出的多次延长裁决期限通知中明确延期已经过仲裁院院长同意，但《仲裁规则》第四十八条第（二）

款明确规定延长期限需确有正当理由，且应以必要目的为限。在没有向当事人说明正当理由的情况下，在如此长时间的期间内多次延长裁决期限，明显违反《仲裁规则》第四十八条第（一）款与第（二）款关于裁决期限的程序规定。

另外，在案件审理期间，中国进出口银行已请求贸仲对本案裁决进程缓慢及多次延期的具体缘由作出说明，同时亦向贸仲表示若继续延长裁决期限，国有资产将陷入巨大风险之中，恳望贸仲严格依照《仲裁规则》的规定，尽快作出仲裁裁决以维护中国进出口银行的合法权益，但贸仲始终未对多次延期作出裁决的具体理由向中国进出口银行进行释明，且本案仲裁裁决书仍至2023年10月才作出。

二、仲裁程序瑕疵给予蒙古国铁矿公司充分时间采取各种逃废债措施，严重损害中国进出口银行合法权益，造成国有金融资产严重受损。

由于贸仲在仲裁程序各环节中的严重不合理拖延等程序瑕疵，导致蒙古国铁矿公司拥有充足的时间窗口恶意采取种种不法措施阻碍中国进出口银行实现抵押权和质押权，以达到其侵吞中国国有资产的不法目的。在中国进出口银行提起仲裁后，蒙古国铁矿公司在蒙古国启动行政诉讼，试图通过该程序由法院判令撤销中国进出口银行相关质押登记。经中国进出口银行艰难应诉，历经三审程序，蒙古国铁矿公司未能通过该行政诉讼程序实现其目的。其后，蒙古国铁矿公司又立即着手启动刑事诉讼程序。在

该刑事案件中，蒙古国铁矿公司提交虚假证据并作出与事实严重不符的陈述，蒙古国法院未收集足够证据，存在司法程序性错误且未通过法定程序通知中国进出口银行。在此情况下，蒙古国刑事法院直接认定《抵押协议》和《质押协议》无效并判令撤销中国进出口银行质押登记，严重损害中国进出口银行债权与担保权益，造成国有金融资产严重受损。

三、仲裁裁决书违反有关法定程序，违背我国社会公共利益，应当予以撤销。

仲裁裁决书指出，致使仲裁庭最终裁决驳回中国进出口银行的仲裁请求系因蒙古国刑事法院作出的刑事判决中认定《抵押协议》和《质押协议》无效并判决撤销案涉质押登记。但是，一方面，我国与蒙古国之间并没有关于承认与执行刑事判决的双边条约，该蒙古国刑事判决书未在中国得到承认，对我国当事人不具备生效法律效力；另一方面，该蒙古国刑事判决合法性与合理性存在重大缺陷，不应被仲裁庭采信。该刑事案件在侦查和审判过程中存在诸多违反法律规定的情形，判决说理逻辑混乱，未通过法定程序通知作为重要当事人的中国进出口银行，严重损害中国进出口银行权益。同时，仲裁庭在仲裁裁决书中亦明确载明“在仔细阅读刑事法院判决书后，仲裁庭远未被该刑事法院判决所依据的法律基础或说理所说服”。

但仲裁庭在不认可蒙古国刑事判决具有说服力且该判决合法性与合理性存在重大缺陷的前提下，又将该蒙古国刑事判决认定

为对本案有重要影响的证据和法律文件，且采信并根据该蒙古国刑事判决并作出驳回中国进出口银行仲裁请求的裁决，一方面实际上使得未经我国承认的蒙古国刑事判决对我国当事人发生法律效力，违反了有关法定程序规则；另一方面，此等裁决性质上即是认可蒙古国滥用司法主权、纵容蒙古国方债务人通过欺骗甚至违法犯罪手段逃避债务的行为，不仅侵犯中国进出口银行的合法权益并造成国有金融资产严重受损，更是在社会公共利益层面严重扰乱我国投资者对外开展金融活动的秩序，侵害金融稳定和金融安全，并危及不特定投资者参与国际金融活动的安全与信心，属于侵害重大社会公共利益，有悖法律公平正义基本原则与社会公序良俗。并损害司法公信力和威慑，对我国司法主权有损害。

蒙古国铁矿公司称，一、蒙古国铁矿公司没有违反仲裁规则，导致程序延长。

1. 中国进出口银行无故拖延仲裁程序。首先，中国进出口银行虽于 2019 年 3 月 25 日申请仲裁，但于 2019 年 7 月 24 日才提交相关文件的翻译件，于 2019 年 11 月 29 日才确认蒙古国铁矿公司送达地址，严重拖慢了案件受理后的仲裁程序。其次，仲裁案于 2020 年 9 月 23 日就已首次开庭，但中国进出口银行经不合理的拖延，于 2022 年 4 月 18 日又提交了一份变更仲裁请求申请书，导致仲裁程序进一步延长。最后，中国进出口银行未能主动说明其仲裁请求的事实依据，直至仲裁裁决作出前夕的 2023 年 9 月 22 日才应要求对质押物及抵押物现状进行书面说明。可见，仲裁案

件系中国进出口银行拖延程序。

2.蒙古国铁矿公司在蒙古国提起行政诉讼，系通过正当法律手段维护其合法权益，对仲裁程序和结果也没有影响。

根据仲裁案件所涉《质押协议》，质押是为了给位于色楞格省埃鲁苏木的巴扬戈尔铁矿项目提供资金，但事实上该项目从未收到任何贷款。基于前述背景，在得知中国进出口银行提出仲裁案件后，蒙古国铁矿公司在蒙古国提起行政诉讼程序请求撤销中国进出口银行在其探、采矿权证上设立的质押登记，系通过合法手段维护其合法权益，不存在不合理拖延程序的情形。

二、仲裁庭并未以蒙古国刑事判决作为其作出仲裁裁决的事实依据，因此仲裁案不涉及蒙古国刑事判决的承认和执行问题。

根据仲裁裁决书，仲裁庭根据《质押协议》的约定以及中国进出口银行依附于涉案探、采矿证的质押登记已经被注销的事实以及抵押物上并无中国进出口银行的权利登记事实作出仲裁裁决，仲裁庭并未以蒙古国刑事判决中法院认定的事实作为仲裁审理依据，因此仲裁案与蒙古国刑事判决的承认和执行问题无关。1.程序上，中国进出口银行在蒙古国刑事程序中已经被合法送达；且刑事判决的合法性已经由上级法院予以确认，判决已经生效并且是终局的。蒙古国家警署诈骗侦察部门已经通过通知授权代表及邮件告知的方式，向中国进出口银行通知刑事诉讼侦察事宜，并要求中国进出口银行指定代理人。2.事实上，蒙古国刑事程序正是由中国进出口银行推动启动，中国进出口银行对蒙古国刑事

案件知情。3.刑事判决书合法有效、具有约束力，且已经被执行。

三、中国进出口银行已经接受蒙古国铁矿公司依据裁决支付的仲裁费用，中国进出口银行应受到仲裁裁决的约束。

四、中国进出口银行违反贷款监管职责，不当发放贷款，导致案涉贷款没有用于贷款协议规定用途，应当自行承担由此导致的各项损失。本案中国进出口银行未能履行监管贷款资金流向的职责，放款行为存在重大过失，导致案涉贷款从未用于质押协议约定和法律规定的用途，从未用于蒙古国境内，也未提供给蒙古国铁矿公司。由于中国进出口银行疏于监管且放贷流程存在重大漏洞，导致贷款资金实际完全被案外人李晓明掌控，并未用于本案《质押协议》中约定的蒙古国铁矿投资事宜。中国进出口银行应当对其自身重大过失承担法律责任以及由此导致的各项损失。

五、仲裁庭仅针对申被双方之间的权利和义务作出裁决，该裁决的作出并不涉及更不违反我国社会公共利益。

中国进出口银行与蒙古国铁矿公司是法律地位平等的商事主体，【2023】中国贸仲京裁字第2273号仲裁裁决仅处理了中国进出口银行与蒙古国铁矿公司之间的合同权利、义务关系，不存在直接或间接侵害其他社会公众合法权益的情况，因此该仲裁裁决并未涉及更不违反公共利益。因此中国进出口银行以“违反社会公共利益”为由申请撤销仲裁裁决，其主张不能成立。

经审查查明，2019年3月25日，中国进出口银行依据与蒙古国铁矿公司签订的《抵押协议》以及《质押协议》中约定的仲裁

条款，向中国国际经济贸易仲裁委员会（以下简称贸仲）提交仲裁申请，贸仲予以受理，案件编号X20191266。2023年10月23日，贸仲作出〔2023〕中国贸仲京裁字第2273号裁决：中国进出口银行提出的全部仲裁请求被驳回；本案仲裁费为人民币480 000元。中国进出口银行和蒙古国铁矿公司各承担该仲裁费的一半，即人民币240 000元。由于中国进出口银行已预付人民币480 000元并抵作本案仲裁费，蒙古国铁矿公司应在本裁决书作出之日起二十（20）日内向中国进出口银行支付人民币240 000元。

本院认为，本案是当事人申请撤销涉外仲裁裁决案件，根据《中华人民共和国仲裁法》第七十条，应当以《中华人民共和国民事诉讼法》（2023年修正）第二百九十一条作为审查事项。《中华人民共和国民事诉讼法》（2023年修正）第二百九十一条规定：对中华人民共和国涉外仲裁机构作出的裁决，被申请人提出证据证明仲裁裁决有下列情形之一的，经人民法院组成合议庭审查核实，裁定不予执行：（一）当事人在合同中没有订有仲裁条款或者事后没有达成书面仲裁协议的；（二）被申请人没有得到指定仲裁员或者进行仲裁程序的通知，或者由于其他不属于被申请人负责的原因未能陈述意见的；（三）仲裁庭的组成或者仲裁的程序与仲裁规则不符的；（四）裁决的事项不属于仲裁协议的范围或者仲裁机构无权仲裁的。人民法院认定执行该裁决违背社会公共利益的，裁定不予执行。上述条款是人民法院撤销涉外仲裁裁决的法定事由。对于当事人提出的不符合上述规定的申请理由，

不能作为撤销涉外仲裁裁决的依据。

针对中国进出口银行提出的仲裁裁决应予撤销的理由，本院分析认定如下:

关于中国进出口银行提出的仲裁程序不合理的主张，中国进出口银行认为仲裁程序耗时过长且裁决使得未经我国承认的蒙古国刑事判决对我国当事人发生法律效力。本院认为，根据《中国国际经济贸易仲裁委员会仲裁规则》第四十八条作出裁决的期限规定，（一）仲裁庭应在组庭后 6 个月内作出裁决书。（二）经仲裁庭请求，仲裁委员会仲裁院院长认为确有正当理由和必要的，可以延长该期限。（三）程序中止的期间不计入上述第（一）款规定的裁决期限。由于案件审理和程序推进的实际需要，经仲裁庭请求，仲裁院院长同意并决定将作出案涉裁决的期限最终延长至 2023 年 10 月 23 日。案涉仲裁裁决于 2023 年 10 月 23 日作出，未超过审理期限，不存在与仲裁规则不符的情形。同时，仲裁庭未以蒙古国刑事判决作为其作出仲裁裁决的事实依据。根据仲裁裁决书，因蒙古国刑事法院最终判决《抵押协议》《质押协议》无效并撤销案涉质押登记即第 MV-008888 号采矿许可证的质押登记,仲裁庭认为由于无权改变案涉质押登记已被 DGMC 撤销的事实，中国进出口银行在本仲裁中请求执行的质押事实上已不复存在，中国进出口银行作为案涉质押的质权人的权利已实际无法得到行使。基于中国进出口银行提供的就案涉抵押的专家意见，中国进出口银行最初对案涉抵押的抵押权也因《抵押协议》被刑事法院

认定无效而不能得到行使；即使认为中国进出口银行的抵押担保权益须经登记方能生效，没有任何证据显示《抵押协议》双方实际办理了抵押登记。在此情况下，仲裁庭得出不存在有效抵押的结论。因此仲裁庭并未以蒙古国刑事判决中法院认定的事实作为仲裁审理依据，仲裁案不涉及蒙古国刑事判决的承认和执行问题，不存在与仲裁规则不符的情形。对于中国进出口银行的前述主张，本院不予支持。

关于中国进出口银行提出的仲裁裁决违背我国社会公共利益的主张，本院认为违背社会公共利益是指违背以社会公众为利益主体的，涉及整个社会最根本的法律、道德的共同利益，其表现形式应当是违背我国法律的基本制度与准则、违背社会和经济生活的基本价值取向，危害社会公共秩序和生活秩序，违背社会全体成员共同普遍认可、遵循的基本道德准则。案涉纠纷系平等民事主体之间的民事纠纷，仲裁裁决的效力所及于的是平等民事主体之间的权益，现有证据无法证明该裁决存在中国进出口银行所述的严重扰乱我国投资者对外开展金融活动的秩序，侵害金融稳定和金融安全，并危及不特定投资者参与国际金融活动的安全与信心的情形。同时中国进出口银行金融资产亦不等同于社会公共利益。对于中国进出口银行认为裁决违背社会公共利益的主张，本院不予支持。

综上，中国进出口银行提出的申请撤销仲裁裁决的理由不能成立，对其申请撤销仲裁裁决的请求，本院不予支持。

依照《中华人民共和国仲裁法》第七十条，《中华人民共和国民事诉讼法》第二百九十一条之规定，裁定如下：

驳回中国进出口银行的申请。

申请费人民币400元，由中国进出口银行负担（已交纳）。

审　判　长　王　翔

审　判　员　程　娜

审　判　员　李晓蕊

二〇二四年六月二十七日

本件与原本核对无异

法官助理　马晓妍

书　记　员　曹佳璐