

# Interpretation of "More than Half" and "More than Half" in the Company Law—Starting from Article 24 of the Judicial Interpretation (III) of the Company Law

Xiang Fangning\*

China Jiliang University, Hangzhou, China

\*Corresponding author

**Abstract:** This article starts with Article 24 of the judicial interpretation (III) of the Company Law to discuss whether "more than half" of the Company Law includes the number of the number. In theory and practice, there are mainly two different views on this: one view combines Article 71 of the Company Law and the importance of the majority principle in company decision-making, believing that "more than half" does not include the number itself; Another viewpoint is based on the interpretation of "more than half" in China's Civil Code, which includes the original number and the principle of integration of civil and commercial law. It is believed that "more than half" should include the original number. This article analyzes and compares the provisions of the Company Law that include "more than half" and "more than half", and argues that the nominalization of dormant shareholders can be compared to equity transfer; the importance of the "majority decision principle" in companies, and the fact that the provisions containing "more than half" in the Civil Code do not apply to commercial rules.

**Keywords:** Nominalization of dormant shareholders; Equity transfer; More than half; majority

## 1. Introduction

The Chinese "Company Law" does not specify the procedures for the disclosure of anonymous shareholders. However, the prevailing view [as explained in the "Interpretation of the Company Law (III)"] holds that since the disclosure of anonymous shareholders shares certain similarities with the transfer of equity to parties outside the company—both involve the acceptance of "new unfamiliar shareholders" by the original shareholders—the restrictions on the transfer of shares stipulated in Article 71 of the \*Company Law\* should apply.

However, as a specific provision governing the process of converting anonymous shareholders into named ones, Article 3, Paragraph 24 of the "Interpretation (III) of the Supreme People's Court on Several Issues Concerning the Application of the Company Law of the People's Republic of China" (hereinafter referred to as "Interpretation (III)") does not adopt the "majority" consent condition stipulated in Article 71 of the Company Law, but instead uses the condition of "more than half" consent. In this context, does "more than half" equate to "majority"? Does it include the exact majority? The Company Law does not clarify this, leading to inconsistent judicial rulings in similar cases. Different verdicts are underpinned by distinct theoretical justifications. Taking Article 24 as the starting point, this article introduces two types of rulings—"more than half" inclusive and exclusive of the exact majority—and analyzes the legal rationale behind them, ultimately providing an explanation.

## 2. Interpretation (III) Article 24: Ambiguities in the Interpretation of "More Than Half"

The Origin of the Term "More Than Half" in Article 24 of the "Interpretation (III)" The issue of nominal shareholders being recognized as actual shareholders involves the relationships among nominal shareholders, actual contributors, other shareholders, and the company. [1]

Article 24, Paragraph 3 of the Judicial Interpretation of the Company Law (III) provides an interpretation on the issue of naming anonymous shareholders, clarifying the conditions for confirming shareholder status. If an actual investor requests the company to change shareholders, issue a capital contribution certificate, record them in the shareholder register and company articles of association, and

register with the company registration authority without obtaining the consent of more than half of the other shareholders, the People's Court will not support such a request. The criterion adopted in this provision—"consent of more than half of the other shareholders"—essentially grants other shareholders the decision-making power over whether the actual investor can be named. This raises another challenge: how to interpret "more than half" and whether the majority itself is included.[2]

### ***2.1. The Relationship with the "Majority" Provision in Article 71 of the Company Law***

The head of the Supreme People's Court [Answering Journalists' Questions on the Interpretation of the Company Law (III)] stated that when formulating this interpretation, their view was that when a hidden shareholder applies to become a company shareholder, according to Article 71, Paragraph 2 of the Company Law, the transfer of shares by a shareholder to a third party outside the shareholder group must obtain the consent of more than half of the other shareholders. The term "more than half" does not include the exact half, and it refers to the majority in terms of number of shareholders, not the majority in terms of voting rights. In other words, the process of a hidden shareholder becoming a named shareholder can be regarded as the transfer of shares by a shareholder to a third party outside the company's shareholder group. [3]

In addition to the distinction between "more than half" and "over half," there are differences between Article 24 of the "Interpretation (III) of the Company Law" and Article 71 of the Company Law regarding the preemptive rights of other shareholders. The Company Law stipulates that when shares are transferred to a third party outside the shareholders, if more than half of the shareholders disagree with the transfer, those dissenting shareholders are obligated to purchase the shares; otherwise, they will be deemed as agreeing to the transfer. Other shareholders have preemptive rights to these shares under the same conditions, and if multiple shareholders claim preemptive rights simultaneously, the shares shall be purchased proportionally based on their capital contribution. During the process of unmasking hidden shareholders, dissenting shareholders are not obligated to purchase the shares and have no preemptive rights. If more than half of the other shareholders agree to the actual investor's unmasking, the hidden shareholder obtains shareholder status through a change in business registration. If the agreement is not reached with more than half of the other shareholders, the nominal shareholder remains the company's shareholder.

### ***2.2. Interpretation adopted in the "Nine Civil Minutes" [Minutes of the National Conference on Civil and Commercial Trial Work of Courts]***

Article 28 of the "Nine People's Minutes" has made relevant restrictive provisions on the conditions for the naming of anonymous shareholders. The condition for anonymous shareholders to apply for naming is to prove that more than half of the other shareholders are aware of their actual contributions and have not objected.

Article 28 of the "Nine People's Minutes" adopts the view that "more than half" of the other shareholders are aware of and do not oppose the condition for the actual contributors to be named, which does not include half of the original number. Different from the expression of "more than half" of other shareholders agreeing in Article 24 of Interpretation (III) of the Company Law.

#### ***2.2.1. Analogous application of Article 71 of the Company Law***

Ding Yujie and Deqing County Haisheng Dredging Co., Ltd. Shareholder Identity Confirmation Dispute Case [Huzhou Intermediate People's Court (2016) Zhe 05 Min Zhong No. 468], Ding Yujie filed a lawsuit with Huzhou Intermediate People's Court, requesting to confirm his 21% stake in Haisheng Company and change the industrial and commercial registration to register him as a shareholder of the company. In terms of legal application, according to Article 24 (3) of the Judicial Interpretation of the Company Law (III), the Intermediate People's Court of Huzhou City believes that when the actual investor requests to be named as a shareholder, the actual investor will enter the company from outside and become a member of the company, which is different from the shareholder transferring the stock to outside the shareholder. Similar to third parties, according to the characteristics of the "humanity" of limited liability companies, reference should be made to the Company Law Article 71: Restrictions on the transfer of equity to external parties, which require the consent of more than half of the other shareholders. 'More than half' refers to the fact that 'more than half' does not include this number.

The judgment basis of the Supreme People's Court on whether "more than half" includes this number is that the dispute focus of this case is the anonymization of anonymous shareholders, that is, the actual

contributors require the confirmation of their shareholder qualifications by name. In the eyes of other shareholders, the actual contributors enter the company from outside the company, which is similar to Article 71 of the Company Law on the transfer of equity by shareholders. That is, the restriction condition for external equity transfer in Article 71 is that "more than half" of the other shareholders agree, and the "more than half" in this restriction condition does not include this number. As for adopting a majority decision, the main reason is simply to "maintain the company's agreement" and "solve the problem of human cooperation rather than capital cooperation". [4]

The basic attribute of a limited liability company is "humanity", and there is a close mutual trust relationship between shareholders. When a limited liability company is established, its initiators usually choose people they trust as partners, so the relationship between shareholders is very close. The internal transfer of equity generally does not harm the integrity of the company, therefore, there are fewer restrictions and simpler procedures in the internal transfer of the company. However, when shareholders transfer their equity to a third party other than the existing shareholders, the entry of new shareholders can disrupt the balance between the original shareholders, which may have a negative impact on the company's operations. Therefore, in order to maintain the company's human nature, certain restrictions need to be imposed when transferring equity to three parties other than shareholders. [5]

### ***2.2.2. The resolution of the Company Law adopts the principle of "majority rule"***

In the case of Lin Fangqing v. Changshu Kailai Industrial Co., Ltd. and Dai Xiaoming Company for dissolution dispute [Jiangsu Provincial High People's Court (2010) Su Shang Zhong Zi No. 0043], the plaintiff Lin Fangqing believes that Kailai Industrial Co., Ltd. (Kailai Company) has encountered serious difficulties in operation, and the company is in a stalemate, but cannot be resolved in any other way, causing great losses to its own interests. Therefore, it demands the dissolution of Kailai Industrial Co., Ltd; In this case, the defendant Kailai Company and its actual controlling shareholder Dai Xiaoming defended themselves, arguing that Kailai Company and its subsidiaries have good operating conditions and do not have the qualifications to dissolve the company. Kailai has only two shareholders, namely the plaintiff Lin Fangqing and the third party Dai Xiaoming, each holding 50% of the equity. The decision of the shareholders' meeting must be passed by "more than half" of the shareholders.

In practice, the equity voting mechanism of companies like Kailai Company stipulates that "more than half" must not include this number. Because once this number is included, either party can independently make any valid company resolution without the consent of the other party; If the other party is unwilling to implement the new resolution, they can independently formulate a resolution that is opposite to the previous one but still effective. If this cycle continues, the company will never be able to produce any effective resolutions that can be executed. From this perspective, there is a clear flaw in the special shareholding governance structure of Kailai Company, which is that in the case where two people each hold 50% of the special shareholding ratio, if no agreement is reached, either party has the right to refuse any proposal from the other party. This creates a difficult situation to break this deadlock through self remedies, and the only way to solve the company's deadlock is to file a lawsuit requesting dissolution of the company.

Corporate deadlock generally occurs in limited liability companies with relatively few shareholders, where company resolutions may not be passed due to individual shareholder vetoes. Because the number of shareholders in a limited liability company is relatively small, shareholders often hold multiple positions and can participate in the company's business activities as directors or managers. Therefore, conflicts among shareholders may lead to conflicts and deadlocks in the company's management, making it difficult to make effective decisions. In addition, there are strict restrictions on the transfer of equity to third parties other than shareholders in the Company Law and the company's articles of association. In order to protect the integrity of the company, the possibility of resolving the company's deadlock through the transfer of equity to third parties is minimal. [6]

After the trial by the Jiangsu Provincial High People's Court, in order to better implement the theory of majority rule in companies, avoid the occurrence of corporate deadlock, and based on the comprehensive protection of the legitimate rights and interests of shareholders, the rationality of the corporate governance structure, and the healthy and orderly development of the market economy, it is determined that "more than half" does not include this number, and therefore agrees with the plaintiff's request for company dissolution.

### ***2.2.3. Judges who believe that "more than half" includes this number and their reasons***

The People's Court of Yangdong District, Yangjiang City, in the case of Donglian Company v. Lihu Company and Ni Ling [7], Donglian Company, as the actual investor, requested Lihu Company and Ni

Ling to assist Donglian Company in handling the equity change registration procedures at the company registration authority. The other shareholders of the company only include Ruijin Company or Xuanmiao Company. Ruijin Company agreed to Donglian Company's request for change of industrial and commercial registration, while Xuanmiao Company held opposing opinions, resulting in a deadlock of half to half. Now, the dispute arising from whether the actual investor Lihu Company can be named has been brought to court.

The Yangdong District People's Court of Yangjiang City applies Article 24, Paragraph 3 of the Interpretation of the Company Law (III) in terms of legal application, which stipulates that in order for the actual contributor to be confirmed as a named shareholder, it must obtain the consent of more than half of the other shareholders of the company. Regarding the question of whether "more than half" includes this number, please refer to the relevant provisions of the General Principles of the Civil Law of the People's Republic of China (now the Civil Code of the People's Republic of China). According to the above legal provisions, in order for the actual contributor to be confirmed as a named shareholder, it is necessary to obtain the consent of half of the other shareholders of the company. In this case, in order for other shareholders of Lihu Company, Ruijin Company, Xuanmiao Company, and Donglian Company, to be confirmed as named shareholders of Lihu Company, the consent of either Ruijin Company or Xuanmiao Company is required.

#### Reason for Judgment 1: Interpretation of "More than Half" in the Civil Code

Article 155 of the General Principles of the Civil Law of the People's Republic of China (now the Civil Code of the People's Republic of China) stipulates that the terms "above", "below", "within", and "expiration" referred to in civil law include this number; The terms 'dissatisfaction' and 'beyond' do not include this number. There are 48 articles in the Civil Code that contain the expression "above". In the case where the relationship between civil law and commercial law is a combination of civil and commercial law, and there is a clear interpretation of "above" in the Civil Code, the Company Law, as a special commercial law, refers to relevant provisions in the Civil Code when there is no special provision for "above".

According to the above legal provisions, in order for the actual contributor to be confirmed as a named shareholder, it is necessary to obtain the consent of more than half of the other shareholders of the company. In this case, the other shareholders of Lihu Company refer to Ruijin Company and Xuanmiao Company. Donglian Company needs to be confirmed as the named shareholder of Lihu Company. If one of the shareholders of Ruijin Company or Xuanmiao Company agrees, half of the conditions for establishment are met, and Donglian Company can change its industrial and commercial registration.

The parts not explicitly stipulated in the Company Law shall apply to the civil and commercial system

In the Company Law, there are 12 expressions of "more than half" and 10 expressions of "more than half". However, there is no clear provision in the Company Law and its judicial interpretations regarding whether "above" and "more than half" include this number.

The relationship between civil law and commercial law theoretically belongs to the relationship between "common law" and "special law", and has become a consensus in both theoretical and practical circles at home and abroad. According to the principle of "priority of special laws" in legal application, "when commercial laws do not make special provisions for relevant issues, the general rules of the Civil Law Basic Law shall apply to relevant disputes." Countries that separate civil and commercial law have clearly stipulated the application principles of commercial contracts in their legislation. Wang Chen, Vice Chairman of the Standing Committee of the National People's Congress, pointed out in the "Explanation on the Draft Civil Code of the People's Republic of China" that "our civil legal system construction has always adhered to the tradition of integrating civil and commercial law, and has incorporated many commercial regulations into our civil law system." [8] Therefore, the issue of "more than half" not stipulated in the Company Law and its judicial interpretations should refer to the interpretation in the Civil Code, which includes this number.

### 3. Sorting and Analysis of "More than Half" and "More than Half" in the System of Company Law

Adopting the clause of "more than half" and its understanding Article 24, Paragraph 3 of Interpretation III of the Company Law: If the actual contributor requests the company to change its shareholders, issue a capital contribution certificate, record it in the shareholder register, the company's articles of association, and register it with the company registration authority without the consent of more

than half of the other shareholders of the company, the people's court shall not support it. The restriction on the name recognition of anonymous shareholders in Interpretation III of the Company Law requires the consent of "more than half" of the other shareholders in the company.

The so-called "consent of more than half of the other shareholders" comes from the provision in Article 71 (2) of the Company Law that "when a shareholder transfers shares to a person other than a shareholder, the consent of more than half of the other shareholders must be obtained". Due to the fact that a limited liability company has both human and capital capabilities, the actual investors who request to be named and obtain shareholder status to join the company's operation and management must obtain the consent of more than half of the other shareholders.

Article 47 of the Company Law stipulates the powers of the board of directors. One of the powers of the board of directors is that more than half of the directors may jointly elect directors to convene and preside over board meetings when the chairman and vice chairman are unable to do so.

Article 51 of the Company Law stipulates the powers of the Board of Supervisors. One of the powers of the Board of Supervisors is that more than half of the supervisors may jointly elect supervisors to convene and preside over meetings of the Board of Supervisors when the Chairman of the Board of Supervisors is unable to do so.

### ***3.1. Regarding the "majority" clause and its understanding***

In the Company Law, shareholders must obtain the consent of more than half of the other shareholders before transferring their equity to someone outside the company. In theory, regarding the meaning of "more than half" mentioned in this article, it is generally believed that it is a voting system that replaces capital majority voting with "one share, one vote" by a majority of people. In judicial practice, the view of majority voting is also widely recognized. The principle of "one share, one right" based on equal distribution of equity is a prerequisite for capital majority decision-making. Shareholders determine the size of their voting rights based on the amount of equity they hold. Shareholders with more equity bear greater investment risks, and it is reasonable to apply capital majority decision-making in shareholder meetings. In the Company Law, when voting on shareholders, the principle of "one share, one right" is adopted, also known as "capital majority rule".

The simple majority of the number of people is based on the number of people as the voting basis. Human cooperation is a basic characteristic of limited liability companies. Therefore, certain restrictions are set on the transfer of shares to third parties outside the company's shareholders. If people outside the company's shareholders want to enter the company and participate in its operations, they need the consent of more than half of the other shareholders. The purpose of this restriction is to maintain relative stability among shareholders. Therefore, when making decisions on companies with a "people-oriented" nature, the shareholders' meeting should not only adopt a capital majority vote, but also a majority vote.

### ***3.2. Board resolution with more than half of the members***

Article 112 of the Company Law stipulates that a board meeting must be attended by more than half of the directors in order to be held. Resolutions made by the board of directors must be passed by more than half of all directors. Voting on board resolutions shall be conducted by one person, one vote. Board resolutions require the approval of more than half of all directors, and voting shall be conducted by "one person, one vote".

The decisions of the board of directors are based on the opinions of the majority of directors, that is, a majority vote. The board of directors is the power organ of the company, responsible to the shareholders' meeting or the general meeting of shareholders. The reason why the board of directors adopts a majority vote is that directors have equal legal status and, unlike company shareholders, most directors do not participate in the company's investments. Therefore, the board of directors adopts a majority vote rather than a capital majority vote. The principle of 'one person, one right' is based on a majority vote, and any director in the board of directors has equal voting rights in terms of legal effect and significance. If a director's proposal is approved by more than half of the directors present at the meeting, then the proposal is passed, representing the board of directors as the expression of the company's intention. Regardless of whether individual directors attend the meeting or not, whether they approve or disapprove, all directors must obey the decision of the board of directors. [9]

### **3.3. Shareholders' Meeting Resolutions with More than Half of Voting Rights**

Article 16 of the Company Law: If a company provides guarantees to its shareholders or actual controllers, it must be approved by the shareholders' meeting or the shareholders' general meeting. Shareholders specified in the preceding paragraph or shareholders controlled by the actual controllers specified in the preceding paragraph shall not participate in the voting on the matters specified in the preceding paragraph. Such voting shall be passed by more than half of the voting rights held by other shareholders present at the meeting.

The restriction for the company to provide guarantees to the actual controller or shareholders of the company is that the provision of guarantees requires the consent of "more than half" of the voting rights of other shareholders present at the meeting. The principle of 'one share, one right', which means equal distribution of shares, is a prerequisite for capital majority decision-making and a general principle for decision-making in companies. In the Company Law, when voting on shareholders, the principle of "one share, one right" is adopted, also known as "capital majority rule". In the transfer of shares, voting can only be carried out under the premise that the minority obeys the majority.

The shareholders' meeting, as the institution that determines the willingness of investors, is different from the board of directors, which is the fully fledged organ of the company with "one person, one right". It should determine voting rights based on capital contributions. Shareholders with higher capital contributions bear greater investment risks than those with smaller capital contributions and should have greater voting rights. So, the equivalence of decision-making power is a prerequisite for capital majority decision-making, not an equality between directors like the board of directors. This is a capital majority decision-making determined by one share, one power. [10] The will of the major shareholder can determine the direction of the company's operations, and even if the minor shareholder opposes, they must obey the resolutions of the shareholders' meeting or the general meeting of shareholders.

### **3.4. Summary**

#### **3.4.1. Consideration of using the expression "more than half"**

Unlike the capital majority decision in company decision-making, the nomination of anonymous shareholders and the election of directors or supervisors by board members to convene and preside over meetings in special circumstances, where "more than half" refers to a majority decision.

In order to protect the basic attribute of the integrity of a limited liability company, in the process of naming anonymous shareholders, the actual contributors who change the shareholder register and business registration must obtain the consent of "more than half" of the other shareholders before entering the company.

In special circumstances where there are no directors or supervisors available to preside over a meeting, a director or supervisor may be elected jointly by more than half of the directors and supervisors to convene and preside over the board of directors or supervisor. This reflects the will of the majority of directors and supervisors to convene meetings in special circumstances where board meetings and supervisory meetings cannot be held normally, enabling the company to respond promptly in the face of changing markets and safeguard its interests. [11]

#### **3.4.2. Consideration of using the expression "more than half"**

The first type of clause with a majority of shareholders is equity transfer, as mutual trust between shareholders is a prerequisite for the establishment of a limited liability company and the basis for the company's business activities and management. Human compatibility is a fundamental attribute of the company. In order to maintain the integrity of limited liability companies, the Company Law imposes restrictions on the transfer of equity by shareholders to third parties other than shareholders: the consent of more than half of the other shareholders is required, with the aim of maintaining the personal trust relationship between company shareholders, that is, maintaining the integrity of limited liability companies.

Another type of clause requires the approval of a board resolution by a majority of directors present at the board meeting. Due to the fact that directors are individuals who have no relationship with capital contributions, they each hold equal legal status as the appointed persons of the company, and the board of directors, as the governing body of the company, is responsible to the shareholders' meeting or general meeting. Therefore, directors exercise voting rights in the position of the board of directors, rather than in their personal capacity as directors. The resolution of the majority of directors represents the will of

the board of directors, with the majority of directors deciding on company resolutions and a small number of directors obeying the will of the majority of directors.

The clause requiring a majority of the company's capital is a resolution passed by the shareholders' meeting, which is based on the principle of "one share, one right" and requires a majority of voting rights. This is a manifestation of the principle of majority voting in the company's capital. The majority of shareholders can decide the direction of the company's operations and control the will of a minority. Capital majority voting can ensure the efficiency of the company's operations and make quick decisions in response to the ever-changing market, while maintaining democracy within the company.

#### **4. Interpretation of Company Law (III) states that "more than half" does not include the interpretation of this number**

##### ***4.1. Consistent with the intent of Article 71 of the Company Law***

The recognition of shareholder qualifications in the Company Law mainly refers to Articles 32 and 71. Article 32 specifies the matters recorded in the shareholder register and the validity of the shareholder register. Shareholders recorded in the shareholder register have a constructive effect on the company's internal affairs, and shareholders recorded in the shareholder register do not need to provide a capital contribution certificate to be presumed as company shareholders; To have an adversarial effect on external parties of the company, against third parties involved in the company and business registration. In the anonymous capital relationship, as the nominal shareholder is a party to the shareholder register and business registration, when the actual investor applies to change the business registration, it means that the nominal shareholder leaves and the actual investor enters the company on behalf of the nominal shareholder to participate in company decision-making and governance. Its legal effect is the same as transferring shares to a third party outside the shareholder.

Article 71 of the Company Law imposes restrictions on the external transfer of company shares by shareholders, mainly based on the protection of the company's integrity through the trust relationship with the original shareholders. [12] Limited liability companies have stronger stability compared to joint-stock companies and are often formed by the combination of shareholders with special skills or services. In a limited liability company, the company has a strong sense of personal trust. If the shareholder identity is changed without the consent of other shareholders, allowing third parties outside the company to enter the company and participate in its operations, it will definitely undermine the stable personal trust relationship between the original shareholders and affect the survival and development of the company. In the third paragraph of Article 24 of the Judicial Interpretation of the Company Law (III), certain restrictions have been imposed on the procedure for identifying the actual contributors, which provides room for analogical application of Article 71 (2) of the Company Law for the transfer of equity to third parties other than shareholders.[13]

##### ***4.2. The Importance of Majority Decision Theory***

The formation of effective resolutions in companies has evolved from the initial principle of "unanimous consent" to the current principle of "majority rule". The principle of majority rule overcomes the problem of low efficiency of the principle of unanimous consent, representing the will of the company through the will of the majority of shareholders and controlling the will of a small number of people. Because the principle of majority rule can balance efficiency while maintaining democracy, reduce time and money waste, and better grasp opportunities for enterprises to gain benefits, it has been used to this day. [14]

The explanation that "more than half" does not include this number is more in line with the principle of majority decision-making in company decision-making and improves the overall operational efficiency of the company. If "more than half" includes this number, it will result in a 1:1 decision between the supporting and opposing parties, which does not comply with the principle of majority decision-making in the shareholders' meeting. Moreover, in limited liability companies with fewer members and simpler equity, it is easy to encounter corporate deadlock when making decisions. In extreme cases, there may only be two shareholders, and any decision of the company can be made with the consent of one party, which is obviously unreasonable and not only reduces the operational efficiency of the company, but also harms the interests of shareholders. [15].

#### **4.3. Avoiding company deadlock**

Corporate deadlock not only harms the interests of the company, but also harms the interests of shareholders and directors within the company. On the one hand, the normal operation of a company relies on good cooperation between shareholders or directors. When the company reaches a deadlock, this positive relationship no longer exists, and the shareholders' meeting and board of directors cannot be held normally, nor can they form executable company resolutions. The company's deadlock has caused serious obstacles to the operation and business of the company. The normal operation of the company is chaotic, and the company's human resources and property will continue to be consumed due to the company's deadlock; Especially when shareholders or directors of a company are involved in a corporate deadlock, it not only breaks the original trust relationship between shareholders and directors, but also wastes a lot of money and time for the company. Moreover, due to the company's long-term unstable environment, the expected return on shareholder investment will not be met. Corporate deadlock is more likely to occur in Priority Zeen Company, which has a smaller number of shareholders and a simpler equity structure. Additionally, due to the strong restrictions on external equity transfers, it is generally difficult to resolve corporate deadlock through equity transfers to third parties outside of the company's shareholders.

The implementation of the "majority rule principle" in the company can solve the problem of corporate deadlock caused by a small number of shareholders. The shareholders' meeting of the company will not be unable to form effective company resolutions due to the same number of shareholders, especially for companies like Kailai Company, which only have two shareholders. If "more than half" includes this number, when the positions of the two shareholders are inconsistent, no decision can be made, and the deadlock between the two parties will inevitably lead to a corporate deadlock. [16]

#### **4.4. The provisions in the Civil Code that include the term 'above' are difficult to apply to commercial rules**

There are 48 articles in the Civil Code that include "above", such as Article 177 of the Civil Liability Code, Article 278 of the usufructuary rights code, Article 306 of the co owners' right of first refusal, etc. None of them directly stipulate the provisions applicable to commercial rules. "When commercial laws do not make special provisions for relevant issues, the general rules of the Civil Law Basic Law shall apply to disputes." The reasonableness needs to be urged.

Taking Article 24 of Interpretation (III) as an example, the issue of the naming of anonymous shareholders can be divided into two parts: whether the contract between the actual investor and the nominal investor stipulated in the first and second paragraphs is valid, and whether the actual investor can enter the company with the consent of more than half of the other shareholders stipulated in the third paragraph. The validity of the contract between the actual investor and the named shareholder is a prerequisite for the actual investor to obtain investment rights. Investment equity not only includes property attributes but also identity attributes, including self benefit rights and co benefit rights. Article 102 of the Civil Code of China clearly stipulates that agreements related to identity relationships shall be subject to other legal provisions, that is, the contract section only binds the creditor's rights relationship and cannot bind the identity relationship. The identity relationship is separately stipulated by other sections of the Civil Code, so it is naturally impossible to directly apply the relevant provisions of the contract section in the special commercial law.[17]

### **5. Conclusions**

The issue of "more than half" and "more than half" including this number is not specifically stipulated in China's Company Law and relevant judicial interpretations. Different courts have adopted different interpretation methods when dealing with legal provisions containing "more than half" and "more than half", resulting in judicial chaos of different judgments in the same case. Therefore, it is necessary to analyze this issue in conjunction with relevant provisions of the Civil Code and the special value of commercial law, unify standards, improve judicial efficiency, and protect the rights and interests of company shareholders.

This article argues that when applying for a change in the business registration requirement based on anonymous shareholders, it means the departure of the nominal shareholders for the company, and the actual contributors replace the nominal shareholders to enter the company's internal decision-making and governance. Its legal effect is the same as transferring shares to a third party outside the shareholders.

Article 24 of the Judicial Interpretation of the Company Law (III) can be regarded as an analogy of Article 71 of the Company Law, which should be unified with the agreement of "more than half" of other shareholders in Article 71, and the interpretation that includes this number is more in line with the principle of majority decision-making in company resolutions to avoid corporate deadlock.

## References

- [1] Ge Weijun, *The Legal Nature of Equity Proxy Holding in Limited Liability Companies: A Review of Article 24 of China's Judicial Interpretation of the Company Law (III)* [J]. *Legal Science (Journal of Northwest University of Political Science and Law)*, 2016, 34 (05): 175-183
- [2] Qian Yulin, *Methodological Interpretation of the Application Relationship between Civil Law and Commercial Law: Taking Articles 24 and 25 of Judicial Interpretation (III) of the Company Law as an Example* [J]. *Law*, 2017, (02):88-96.
- [3] Deng Xu, *On the Transfer of Equity of Limited Liability Companies to Foreign Parties: A Review of Article 72 of the New Company Law* [J]. *Journal of Huaihai Institute of Technology (Humanities and Social Sciences Edition)*, 2013,11 (18): 50-52
- [4] Wang Xinxin, *Company Law* [J], Renmin University Press, 2008, 212
- [5] Dong Jia, *A Preliminary Study on the Equity Transfer of Limited Liability Companies: Analysis from Article 72 of the Company Law* [J]. *Knowledge Economy*, 2014, (02):40.
- [6] Jiang Tao, *Company deadlock and the right to request company dissolution* [J]. *Journal of Shanxi Provincial Political and Legal Management Cadre College*, 2012, 25 (02): 93-95
- [7] *The Second Civil Trial Division of the Supreme People's Court Guidelines for Trial of Company Cases (Revised Edition)* [M]. Beijing: Law Press, 2018
- [8] Wang Chen, *Explanation on the Draft Civil Code of the People's Republic of China - On May 22, 2020, at the Third Session of the Thirteenth National People's Congress* [J]. *Bulletin of the Standing Committee of the National People's Congress of the People's Republic of China*, 2020, (S1):178-197.
- [9] Wang Baoshu, *Directors and Board of Directors of Limited Liability Companies* [J]. *Foreign Legal Translation and Evaluation*, 1994, (01):1-12.
- [10] Shen Guiming, *On the Standardization of Voting on Board Resolutions by Company Law: Errors and Amendments in Article 112 of China's Company Law* [J]. *Law*, 2011, (06):90-98
- [11] Mei Shenshi, *Guo Yuchen Unveiling the Inability of Board Resolutions* [J]. *Board of Directors*, 2017, (Z1):60-63.
- [12] Wang Hong, *A Brief Discussion on the Protection of Small and Medium sized Shareholders' Rights in Limited Liability Companies* [J]. *Science and Technology Information (Scientific Research)*, 2007, (36):752-753.
- [13] Li Xiaojun, *Legal Analysis of the Principle of Majority Decision in Companies* [J]. *Collection of Commercial Law Essays*, 2007, (01):71-86.
- [14] Jiang Daxing, *Rethinking the Function of Corporate Joint Resolution Behavior* [J]. *Tsinghua Law*, 2019, 13 (06): 135-158
- [15] Xu Siling, Zhou Yinchun *Capital Majority Decision Principle from the Perspective of Law and Economics* [J]. *Modernization of Shopping Malls*, 2013, (15):135-136.
- [16] Li Pingping, *A Brief Discussion on the Mechanism for Resolving Corporate Stalemates* [J]. *Fortune Times*, 2022, (10):106-108.
- [17] Zhou Yin, *The independent value of the concept of increasing liability in China's commercial law: from the perspective of the compatibility and incompatibility of civil and commercial liability*