

Comparison of IULLCA with Repealed Idaho LLC Act

IULLCA retains the principal features of Idaho Code §§ 53-601 et seq. (the “Old Act”). Cross-reference tables correlating the provisions of the IULLCA and the Old Act may be viewed at <http://www.hawleytroxell.com/wp-content/uploads/2011/08/Cross-Reference-Tables-Master-RAR.pdf>. Under both the IULLCA and the Old Act:

- An LLC is a separate entity (IULLCA -104(1) and Old Act 53-633, -634) with power to sue or be sued (IULLCA -105 and Old Act 53-658).
- Liability of members and managers for LLC obligations is limited (IULLCA -304 and Old Act 53-619).
- Formalities are not required to maintain limited liability (IULLCA -304 and Old Act 53-625(4)).
- Whether the LLC is member-managed or manager-managed is determined by the operating agreement. Absent an express manager-management provision in the operating agreement, the default rule is member-management (IULLCA -407(1)) and Old Act 53-621(1)).
- Default rules provide for per capita voting by members and managers (IULLCA -407(2), (3) and Old Act 53-623(1)); and unanimous member vote is required for transactions outside the ordinary course of business or for amendment of the operating agreement (IULLCA -407(2), (3) and Old Act 53-623(2)).
- Default rules provide for per capita distributions (IULLCA -404 and Old Act 53-628, -629).
- Express authority is granted to exculpate members and managers from liability for money damages for breach of duty. Like the IBCA, IULLCA forbids exculpation of liability for receipt of financial benefit to which not entitled, unlawful distributions, intentional infliction of harm on the LLC or a member, or intentional violation of criminal law (IULLCA -110(7) and Old Act 53-624).
- The “transferable interest” in an LLC (*i.e.*, the right, originally associated with a person’s capacity as a member, to receive distributions, whether or not the person remains a member)¹ is personal property (IULLCA -501 and Old Act 53-635).
- A transferee acquires only the transferable interest unless admitted as member (IULLCA -502 and Old Act 53-638).
- A charging order against the transferable interest (*i.e.*, a lien requiring the LLC to pay over to the judgment creditor any distribution that would otherwise be paid to the judgment debtor) is the exclusive remedy by which a judgment creditor may satisfy a judgment against an LLC member’s membership interest (IULLCA -503 and Old Act 53-637).

The major innovative changes in IULLCA are valuable gap-fillers and improvements on uncertain areas of the law under the Old Act.

- Single member LLCs are expressly authorized. IULLCA -201(1).
- A non-economic member (i.e., a member with no economic interest or obligation to make capital contribution) is allowed (IULLCA -401(4)).
- Managing member of member-managed LLC: IULLCA -110(6) allows the operating agreement to relieve some members of a responsibility those members would otherwise have and impose it on one or more other members, and then to eliminate or limit fiduciary duties pertaining to the responsibility the relieved members would otherwise have.
- Manager need not be member (IULLCA -407(3)(f)); but a non-member manager is nonetheless bound by the operating agreement (IULLCA -110(1)(b)).
- Manager need not be natural person. (IULLCA -102(10) (manager is “person”); IULLCA -102(17) (“person” broadly defined)
- The LLC is bound by, and may enforce, the operating agreement regardless whether the LLC is a party to the agreement (IULLCA -111).
- Member’s self-interest: Approval of conflicts of interest requires full disclosure and independent decision-maker
- IULLCA spells out more detailed information rights of managers, members and transferees (IULLCA -410, -502. Compare Old Act 53-625), which may not be unreasonably restricted (IULLCA -110(3)(f)). IULLCA includes separate comprehensive schemes for member-managed and manager-managed LLCs. See IULLCA -410. It requires LLC to disclose all material information needed by a member asked to provide consent to any action. Information rights extend to dissociated members but not transferees.
- IULLCA specifies members’ remedies, which may not be unreasonably restricted (IULLCA -110(3)(i))
 - ✓ Member’s remedy for oppression: IULLCA -701(1)(e) expands the grounds for judicial dissolution (or other judicial remedies) to include (i) illegal or fraudulent conduct or (ii) oppressive conduct that is *directly harmful to the member* (compared to Old Act 53-643 requirement that in either event the conduct cause *irreparable harm to the LLC*). The operating agreement may not vary court’s power to decree dissolution (IULLCA -110(3)(g)).
 - ✓ Direct action: IULLCA -901 authorizes direct action by member against other members or managers or the LLC to enforce the member’s rights and protect the member’s interests, provided that the actual or threatened injury is not the result of injury suffered by the LLC.
 - ✓ Derivative action: IULLCA -902 authorizes any member to bring a derivative action following demand or demand futility. (Compare Old Act 53-659 which requires approval by vote of members.) IULLCA -905 authorizes formation of a special litigation committee to consider a derivative action

demand. The court cannot substitute its judgment for a properly constituted and functioning SLC.

- Unlawful distributions are defined, following the IBCA model²: IULLCA -405 (what constitutes an unlawful distribution), -406 (liability for unlawful distribution).
- Dissociation of member no longer constitutes an event of dissolution (IULLCA - 701. Compare Old Act 53-642(3)). Members no longer any need to take action within 90 days to avoid dissolution that otherwise would occur upon dissociation under the Old Act.

IULLCA -808 addresses consequences of foreign LLC transaction of business without a certificate of authority (following the IBCA model)³.

¹ IULLCA -102(26).

² Idaho Code §30-1-640.

³ Idaho Code §30-1-1502.