Successor Obligation Negotiation Checklist

Phase 3 of the pathway: fourteen items in three stages, pre-transaction assessment, contract structuring and post-closing integration, that decide whether a buyer has priced the legacy of a site or merely inherited it.

From *Legacy Grievances and Historical Claims: A Guide to Post-Operational Dispute Resolution* by Thomas Gaultier

This checklist guides practitioners through the key elements that must be addressed when negotiating the allocation of legacy liabilities during an asset transfer. It is designed to complement, not replace, standard M&A legal advice. See Chapter 3 for the underlying legal analysis.

#	Negotiation Item	Key Considerations
Pre-Transaction Assessment		
1	Successor liability exposure assessment completed	Apply four traditional exceptions and expanded doctrines; identify which liabilities transfer regardless of contract terms (propter rem)
2	Community commitment register compiled and verified	Independent verification essential; seller's own community reports are invariably optimistic
3	Community perception assessment conducted	Commission independently of the seller; assess trust and confidence levels separately
4	Closure cost stress-testing performed	Apply 20% to 100% overrun range; test against worst-case contamination scenarios
Contract Structuring		
5	Community commitment assumption clause included	Explicitly enumerate which community commitments the buyer assumes; silence defaults to buyer exposure for propter rem obligations
6	Environmental liability schedule attached	Itemise all known contamination, ongoing treatment obligations, and perpetual care requirements
7	Re-opener clauses negotiated	Allow renegotiation if post-closing discoveries reveal liabilities materially exceeding those disclosed
8	Indemnification provisions structured	Specify scope, caps, baskets, and survival periods; recognise that indemnities are worthless if the seller becomes insolvent
9	Escrow or holdback provisions established	Must account for latency periods of 20+ years; standard 12 to 18 month escrows are inadequate for legacy risk
10	Contingent risk insurance obtained	Cover liabilities that exceed what can be contractually allocated between the parties
Post-Closing Integration		

11	Transition services agreement in place	Seller provides transitional support for community relationships, regulatory compliance, and site knowledge transfer
12	Compliance programme integration plan developed	Address compliance and control gaps during transition; these are where new claims germinate
13	Community introduction and relationship transfer managed	Buyer introduces itself to host community within first 30 days; acknowledges predecessor's commitments publicly
14	Records and documentation archive secured	Store in multiple formats and jurisdictions; ensure documentary record survives political and corporate transitions

Price the past, or inherit it.

From Legacy Grievances and Historical Claims: A Guide to Post-Operational Dispute Resolution by Thomas Gaultier. Free to adapt in your own work; please keep the attribution.
thomasgaultier.com/resources/legacy-grievances