



TaylorWessing

# Session #10

Webinar

16 October 2024



TaylorWessing

# Think big - possible exit strategies

Exit of a start-up

16 October 2024 | Alisa Mathes-Salathe



# Agenda

- 1** Introduction - Exit and its effects
- 2** Exit strategies for start-ups – Types, choice and timing
  - 2.1** “Classic” exit strategies
  - 2.2** Alternative (exit) strategies
  - 2.3** Finding the optimal exit strategy and timing
- 3** Sale of the company – overview of the process



# 1 | Introduction

Exit and its effects

# 1. What is an exit and what are its effects?

- In general: **Strategic transaction** in the company's lifecycle through which the founders and investors realize the value of the company they have built.
- **Depending on exit strategy** and **perspective** of the relevant participant (company, founders, management, investors), an exit does **not necessarily mean an end**.
- Merely a important milestone or transition point potentially **unlocking new opportunities** and growth.
- **A well-timed** and **well-planned exit** can generate financial and other **material value** for the relevant participants as well as the wider economy.
- In case the company has material struggles, there are **strategies for an "emergency exit"** helping at least to minimize risks and losses of the participants.



# 2 | Exit strategies for start-ups

Types, choice and timing

## 2.1 “Classic” exit strategies - overview

### 1) Trade Sale:

- Full or partial sale of the company or parts of it to a **strategic buyer**, which is regularly a larger **company** operating in a similar or related area (e.g. larger biotech or pharmaceutical companies).
- **Mostly** structured as **share deal** (i.e. sale of the shares in the company); **rarely** structured as **asset deal** (i.e. sale of all or certain assets of the company, in particular IP).

### 2) Private Equity Sale:

- Full or partial sale of the company or parts of it to a **financial buyer**, which is regularly a **private equity firm**. Regularly structured as **share deal**.

### 3) Initial Public Offering (IPO):

- Going public through an IPO which allows the company to **sell its shares public**.

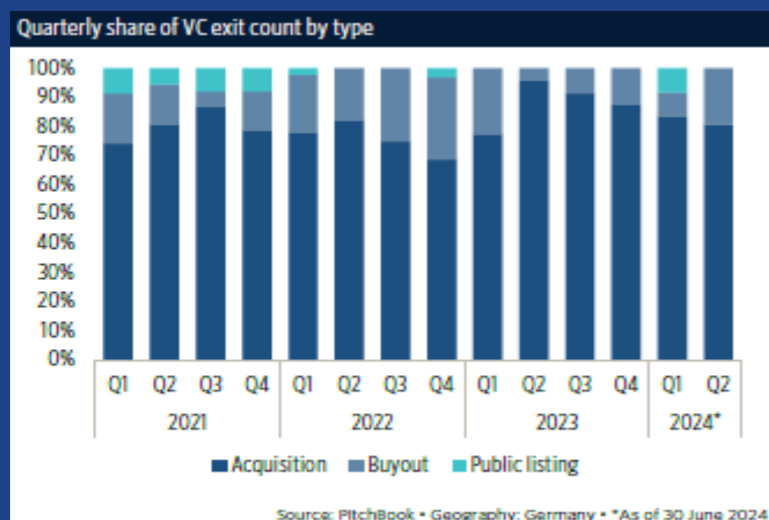
### 4) Buyout / Buyback:

- (Re-)buying shares in the company from investors not by third parties, but by the **company itself or persons within the company** (e.g. founders, management) – often with the help of outside financing (leveraged buy-out / buy-back).



## 2.1 “Classic” exit strategies – market insights

**Acquisition** (here: incl. trade sale and private equity sale) remained **consistently the most often exit strategy**.



Source: PitchBook, Germany Market Snapshot Q2 2024

Top five VC-backed exits by exit value since 2023*					
Company	Date	Exit value (€M)	Exit type	Industry group	Industry code
LeanIX	November 7, 2023	€1,231.0	M&A	Software	Business/productivity software
Cardior	March 25, 2024	€1,025.0	M&A	Pharmaceuticals & biotechnology	Drug discovery
YFood	March 1, 2023	€215.0	M&A	Consumer nondurables	Beverages
pure-systems	October 4, 2023	€87.7	M&A	Software	Business/productivity software
TIER	March 26, 2024	€60.0	M&A	Transportation	Automotive

Source: PitchBook • Geography: Germany • \*As of 30 June 2024

Top five VC-backed public listings by exit value (2022-2024)*					
Company	Date	Exit value (€M)	Exit type	Industry group	Industry code
AUTO1 Group	February 4, 2021	€6,578.5	IPO	Transportation	Automotive
CureVac	August 14, 2020	€2,228.1	IPO	Pharmaceuticals & biotechnology	Drug discovery
ATAI Life Sciences	June 18, 2021	€1,697.0	IPO	Pharmaceuticals & biotechnology	Drug discovery
Lilium	September 14, 2021	€1,117.1	Reverse merger	Commercial products	Aerospace & defense
Sono Motors	November 17, 2021	€766.9	IPO	Transportation	Automotive

Source: PitchBook • Geography: Germany • \*As of 30 June 2024

## 2.1 “Classic” exit strategies – advantages and challenges (1/2)

### 1) Trade Sale:

- **Motive of buyer:** **Strategic** rather than purely financial reasons, which can vary in the **individual case** (e.g. enhancing R&D pipeline; gaining faster access to innovative technologies; realizing cost and other synergies; access to specialized talents).
- **Suitable for:** Regularly **mature start-ups** with adequately established market positions or developments in an advanced stadium fitting in the strategy of the buyer.
- **Pro:** Fast capital procurement; synergies/scaling effects; often willed to pay a **higher purchase price** than financial investors.
- **Challenges:** **Integration risks**; potential **loss of control** over the company's future direction (often: 100 % share deal).

### 2) Private Equity Sale:

- **Motive of buyer:** Predominantly **financial reasons**; build / grow the business and sell it at a profit after a certain holding period (often +/- 5 years).
- **Suitable for:** **Advanced start-ups** with stable cash flow or significant growth potential; good prospects to unlock additional value through operational improvements or consolidation with other portfolio companies.
- **Pro:** Strategic / financial **support**; possible “intermediate step” for start-ups not yet suitable for a trade sale / IPO; regularly more **flexible participation** models; PE firms can **often move faster** due to streamlined internal systems and external approach (incl. familiarity with doing transactions).
- **Challenges:** They typically demand **high levels of control** and might implement changes in management or strategic direction; regularly **more complex** transaction structure and documentation.

## 2.1 “Classic” exit strategies – advantages and challenges (2/2)

### 3) Initial Public Offering (IPO):

- **Suitable for:** Regularly for **well-established start-ups** with **significant growth** prospects, solid financing structure, strong brand equity or high level of innovation and the ability to attract public market investors.
- **Pro: Substantial liquidity opportunities;** higher market visibility; long-term growth opportunities.
- **Challenges: High costs** and **complex process** of going public; high regulatory and disclosure requirements of being a public company; **loss of control** and decision-making powers for the founders and management; **stronger pressure** to fulfill the expectations of shareholders.

### 4) Buyout / Buyback:

- **Suitable for: Stable businesses** with predictable cash flows and a strong, experienced founder / management team.
- **Pro:** Allows for **continuity in management** while providing **liquidity for investor**; can help to optimize the shareholder structure and to make shares available for important (future) management team members or key employees.
- **Challenges:** Securing the necessary financing (very **rare in life sciences** due to high liquidity requirements); ensuring the management team can handle the complexities of ownership; in case the company buys own shares, the relevant corporate law requirements have to be complied with.

## 2.2 Alternative (exit) strategies – overview (1/2)

### 1) Secondaries:

- **Existing investor** sells shares in the company to another (VC) investor **without the company itself being sold** (e.g. in case the investor required liquidity or strategic focus has changed).

### 2) Merger with peers:

- Company merges with **another start-up** with a **similar business**, a **clear strategic fit** and **similar goals** (e.g. synergy effects; pool resources, reduce competition; create a stronger market position, often enhancing attractiveness to acquirers).

### 3) Strategic partnerships and alliances:

- **Different types** of strategic partnerships or alliances with **larger companies or research institutions** are which are quite common in the life sciences industry (e.g. R&D collaborations; licensing agreements).
- Can – depending on the specific partnership – lead to an **quasi-exit** or **acquisition discussions**. For details, please refer to our **earlier Coffee Break Sessions** (in particular #4 - R&D Collaborations).



## 2.2 Alternative (exit) strategies – overview (2/2)

### 4) Acqui-Hires:

- Type of acquisition where the primary motivation is to **acquire the target company's talent** rather than its products, services, or technology (common in the tech industry, where skilled employees / developers are highly valued).

### 5) Restructuring under the German Restructuring Act (*Unternehmensstabilisierungs- und Restrukturierungsgesetzes - StaRUG*):

- **(Preventive) restructuring** procedure of the company under its own direction and responsibility beyond (public) insolvency proceedings.
- Suits in particular for companies (only) **burdened by high financial liabilities** and for which refinancing is challenging due to the high debt (not for any restructuring cases).

### 6) Liquidation:

- Formal corporate law procedure resolved by the shareholders to **dissolve** and **liquidate** the company.
- Typically a **last resort / “emergency exit”**, in case the company is unable to sustain its operations or secure funding.



## 2.3 Finding the optimal exit strategy and timing

Deep understanding of the **company's readiness** and **external factors**, **careful planning** and **proper preparation** are key. Both, finding the **optimal exit strategy** and **timing** depend on **various considerations**, in particular:

Company already reached a notable size/stage of establishment?

Business works without the founders?

Business case has potential and (prospect of) success and growth?

How about the company's financial health?

Ready for the due diligence process?

Issues/pitfalls to be fixed before starting an exit process?

What are the (individual) reasons for the exit?

What are the (existing) investors expectations?

Possible, to continue daily business and growth during exit process?

Are the relevant management and team members on board?

How is the current market situation?

Do you have the relevant advisors on board?

If the decision for one exit strategy is difficult, a **“dual track”** can initially be pursued (connected with **increased organisational demands** and transaction **costs**.)

# 3 | Sale of the company

Overview on the process

## 3.1 Sale process – Preparation



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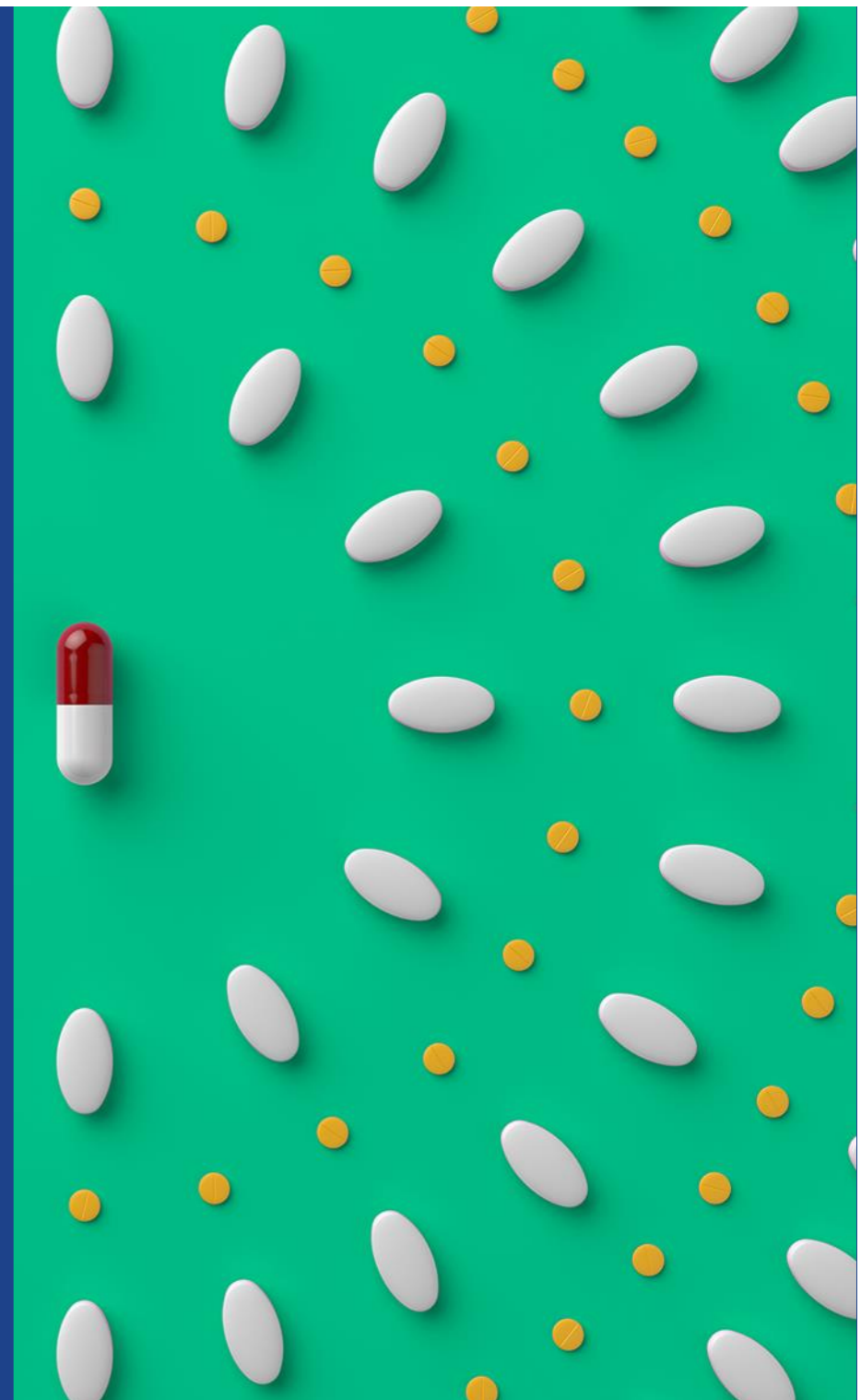
Additionally to the considerations listed above: To be considered whether a **Vendor Due Diligence Report (VDD Report)** or a **Legal Fact Book (LFB)** shall be prepared (both voluntary).

### 1) VDD Report:

- **Comprehensive presentation** of the opportunities and risks of the target.
- Financial, tax and legal **issues** are analyzed and **addressed** in the VDD Report.
- Often very similar to a buy-side due diligence.
- Seller regularly to grant **reliance** to the buyer (i.e. liability up to an agreed maximum limit).

### 2) LFB:

- Purely **descriptive presentation** of the target and its legal situation.
- Legal analysis should be subject to the buyer.
- Regularly **no reliance** granted.



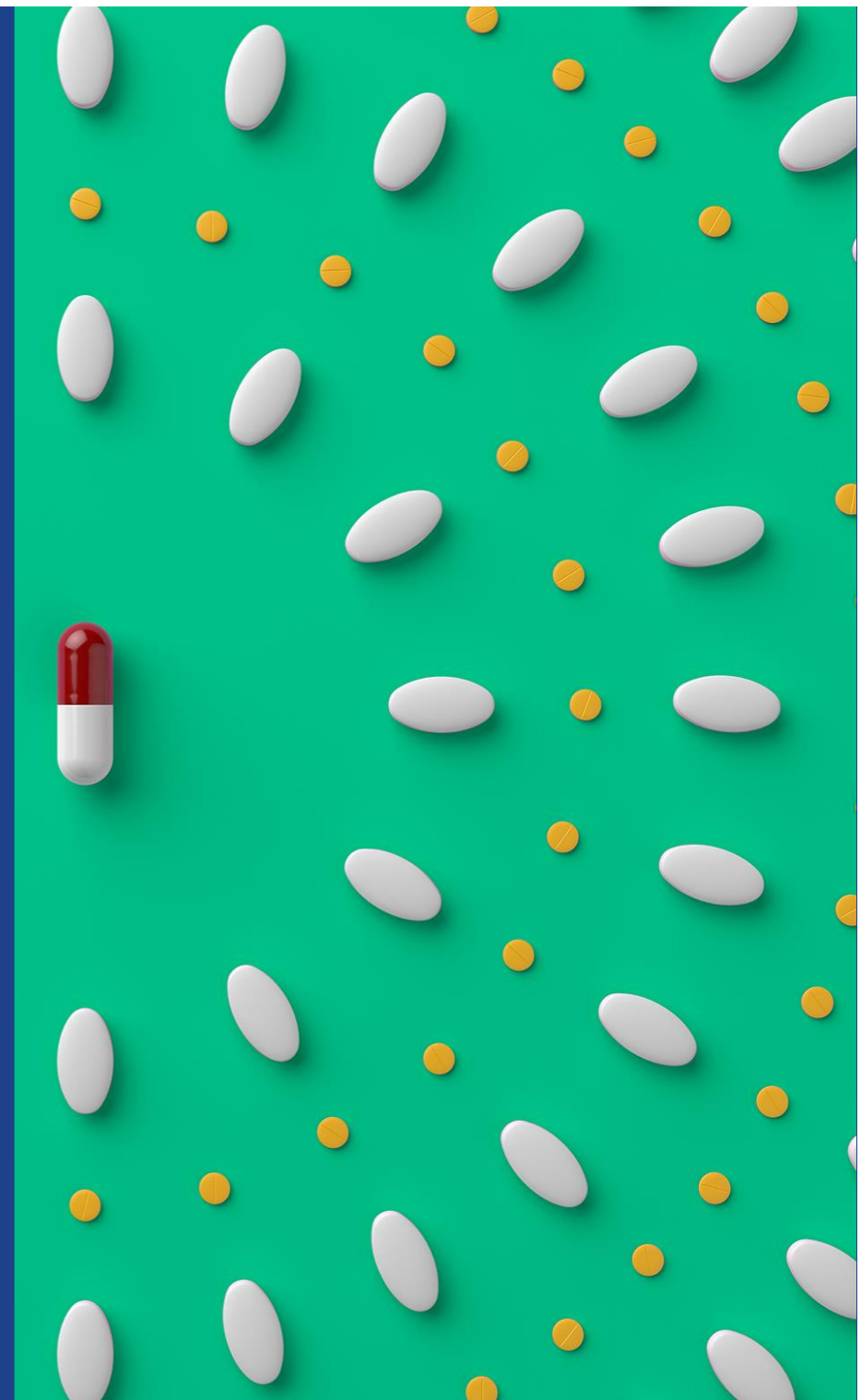
## 3.2 Sale process – Selection of potential buyers



## 3.2 Sale process – Selection of potential buyers

- 1) Initial, rough buyer selection (**long list**) and **first market approach** by M&A advisor.
- 2) **Confidentiality agreement (NDA)** to be sent to and **first contact** with potential buyers.
- 3) Potential buyers signing the NDA are provided with a **information memorandum** on the setting out key information about the business, its prospects, and why it's attractive.
- 4) Potential buyers provide **initial offers**, between which a further selection is made. The **process continues** with either several or just one **seriously interested buyer/s**.
- 5) Prior to further negotiations, a **letter of intent (LoI)** setting out the first key aspects of the transaction documentation is signed with prospective buyers (often incl. **exclusivity**).

**Specifics** apply in so-called **auction processes**: Intend to make to sale process **more efficient**, thereby **achieving maximum value** while **minimizing the risks** for the sellers. Regularly a **multi-stage process** (e.g. multiple rounds of offers and phases often due diligence) with a longer preparation period.

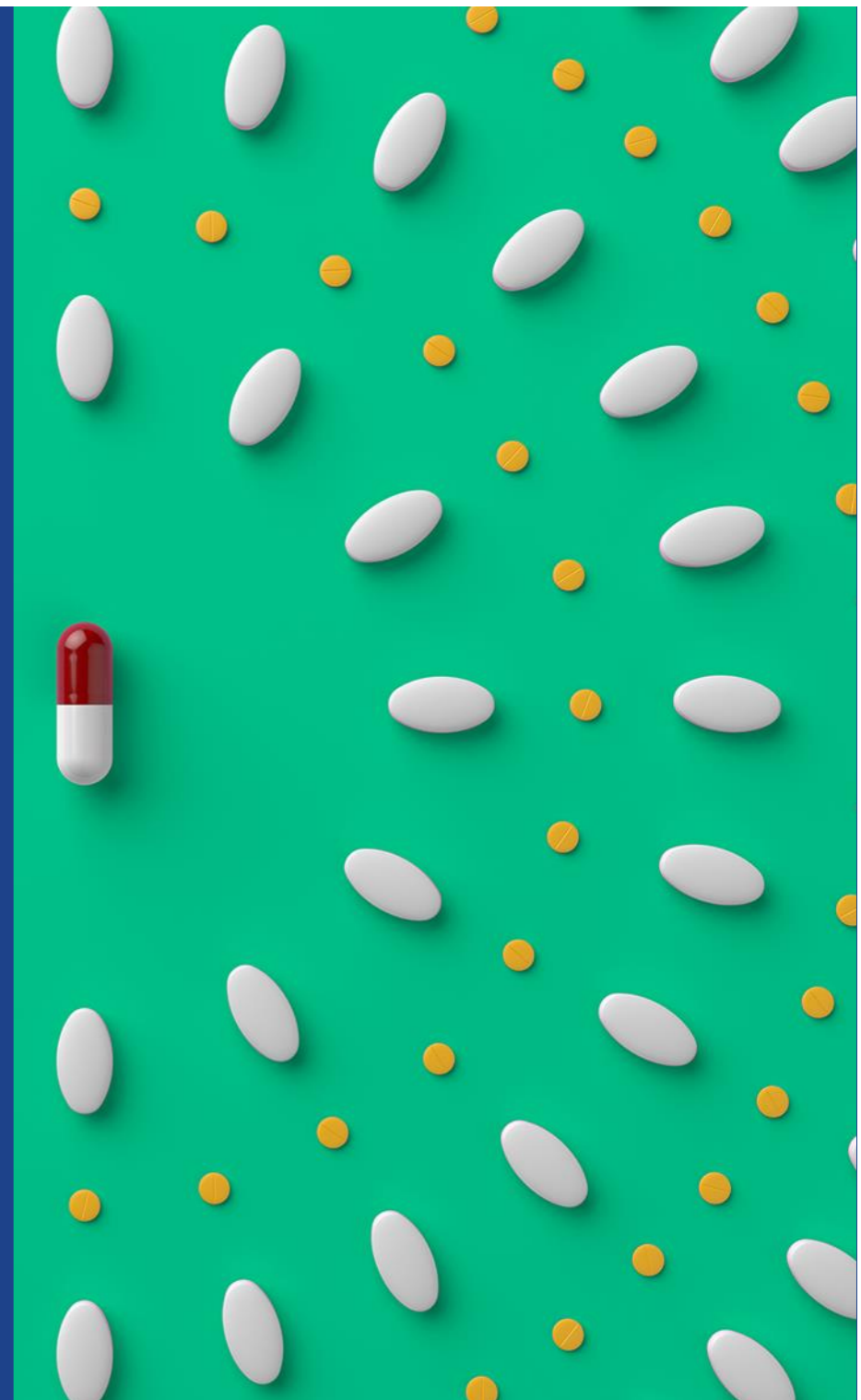


## 3.3 Sale process – Due Diligence



## 3.3 Sale process – Due Diligence

- As part of the Due Diligence, the potential buyer **reviews the opportunities and risks** of the target.
- Often limited scope of review; main areas are **legal, financial and tax**.
- Buyer has to provide relevant information in a **virtual data room (VDR)**.
- Queries to be addressed by the buyer during a so-called **Q&A process**.
- Focused legal topics in life sciences transactions are in particular: **IP, regulatory approvals / compliance, corporate structure, material agreements, subsidies**.



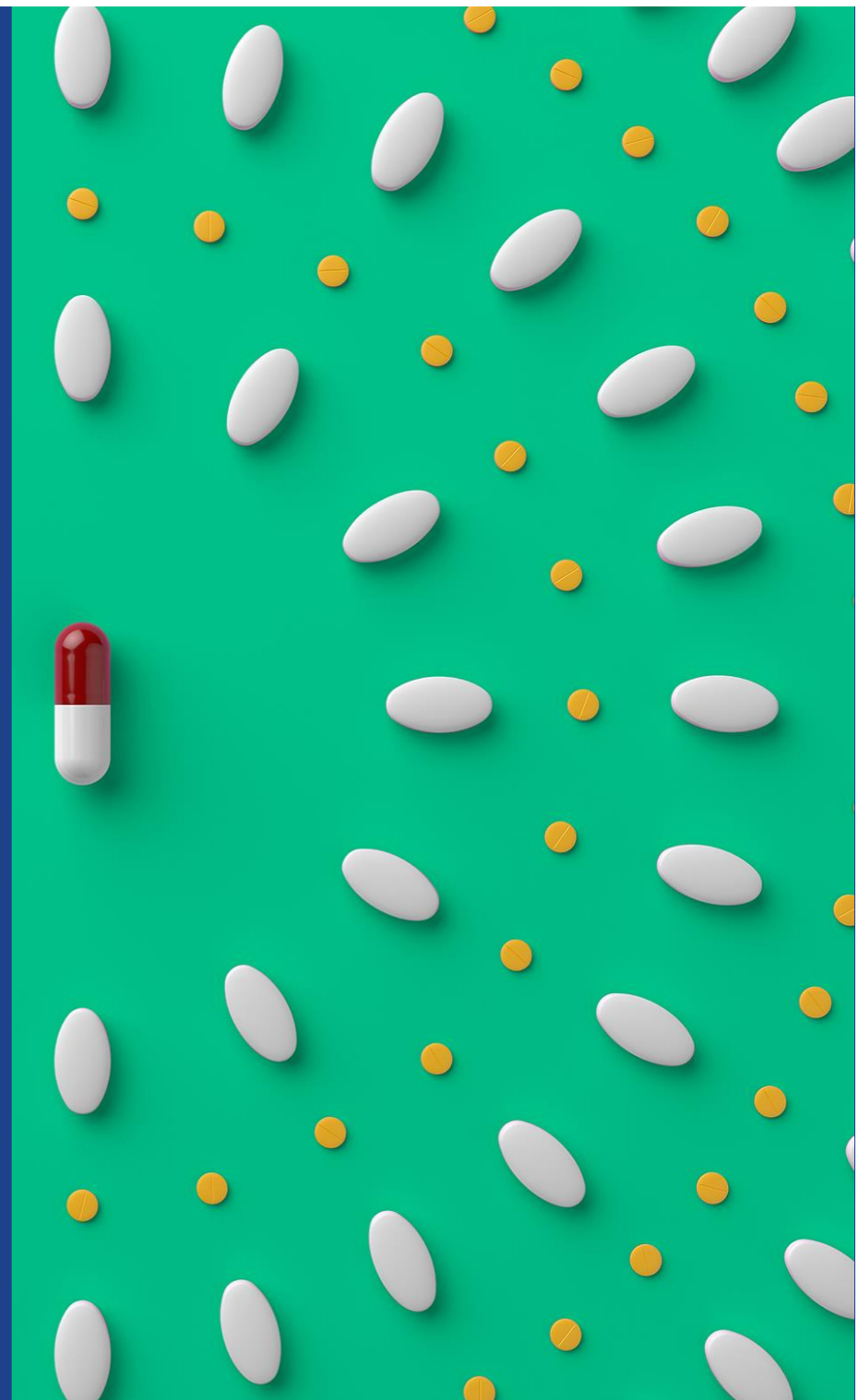
## 3.4 Sale process – Negotiations



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Regularly the following topics are **focused**:

- 1) Purchase price mechanism (various options, e.g. lock-box or closing accounts)
- 2) Warranties and indemnities
- 3) Limitation of liability (e.g. liability caps or baskets; limitation periods)
- 4) W&I insurance
- 5) Management (e.g. new employment contracts; non-compete clauses)
- 6) Closing conditions (e.g. regulatory approvals)



## 3.5 Sale process – Signing and Closing



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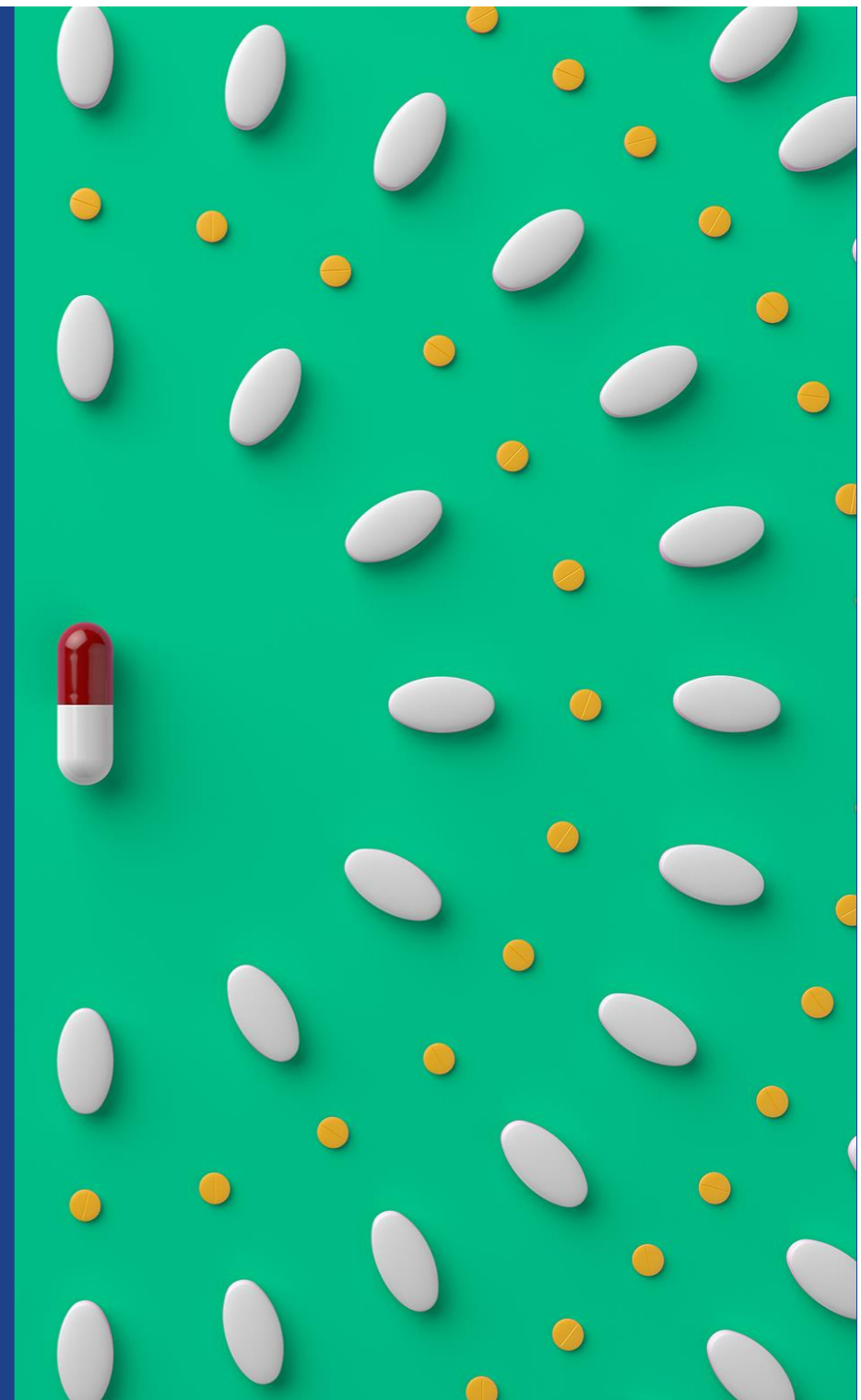
### 1) Signing:

Following the negotiations, the final transaction documentation (e.g. SPA) is signed. To be considered: Formal requirements (e.g. notarization); PoA; consent requirements/resolutions; KYC-checks with notary and other party; possibly merger control

### 2) Closing:

Completion of the transaction; regularly a certain weeks or months after the signing. Requires regularly:

- Fulfilment of all previously negotiated closing conditions or waiver of individual closing conditions by the buyer,
- Obtaining all third-party consents and approvals under public law.
- Involvement of backing managers.
- Submission of the required applications to the commercial register.
- Preparation of balance sheet as at closing date; potentially recalculation of purchase price; payment of purchase price.



## 3.6 Sale process – Post-Closing / Integration



# Questions and discussion





**13 November 2024 – 10 am**  
**Session #11 | Website, Social  
Media, Advertising & Co**

**Dr. Angela Knierim**  
(IG Life Sciences & Healthcare, Taylor Wessing)

**Attention:  
Change of  
date!**

# Your Taylor Wessing Team

Alisa Mathes-Salathe studied law at the Philipps University of Marburg and the Université Paris-Sud, Paris. She also successfully passed an additional qualification in pharmaceutical law at the Philipps University of Marburg. Alisa Mathes-Salathe completed her legal clerkship at the Higher Regional Court of Frankfurt am Main with stages at a leading international law firm in Frankfurt am Main and Hong Kong, for which she also worked for a number of years as a research assistant focusing on medical device liability and post-M&A litigation.

After her admission as Attorney at Law in 2018, she started working as an Attorney at Law at a leading international law firm in the Corporate/M&A practice area and joined Taylor Wessing in 2022.

## Languages

- German, English



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