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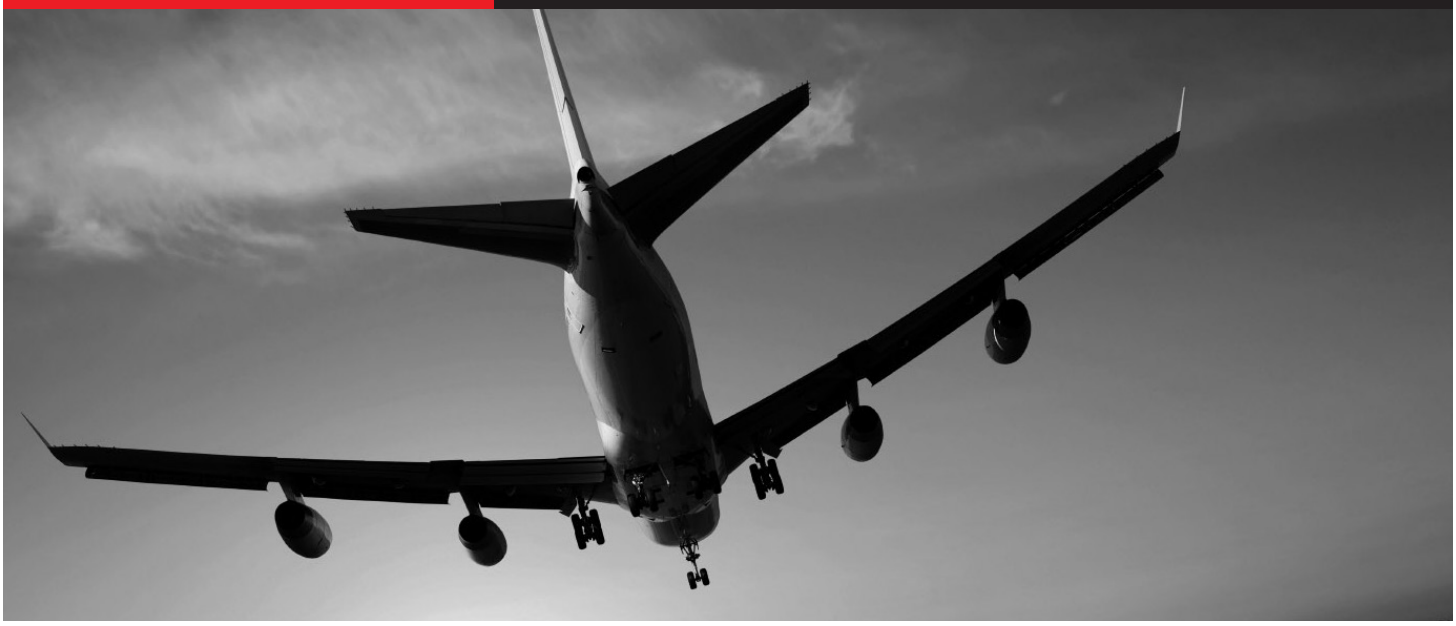

Abogados Sierra, the leading aviation firm in Mexico, has expanded its unparalleled legal practice to Latin America. This expansion is the beginning of a new chapter: Sierra LATAM.

Sierra LATAM's new Miami office will serve as the headquarters of our expanded Latin America regional practice. Sierra LATAM is your one stop 'flight' for aviation legal services around the region.

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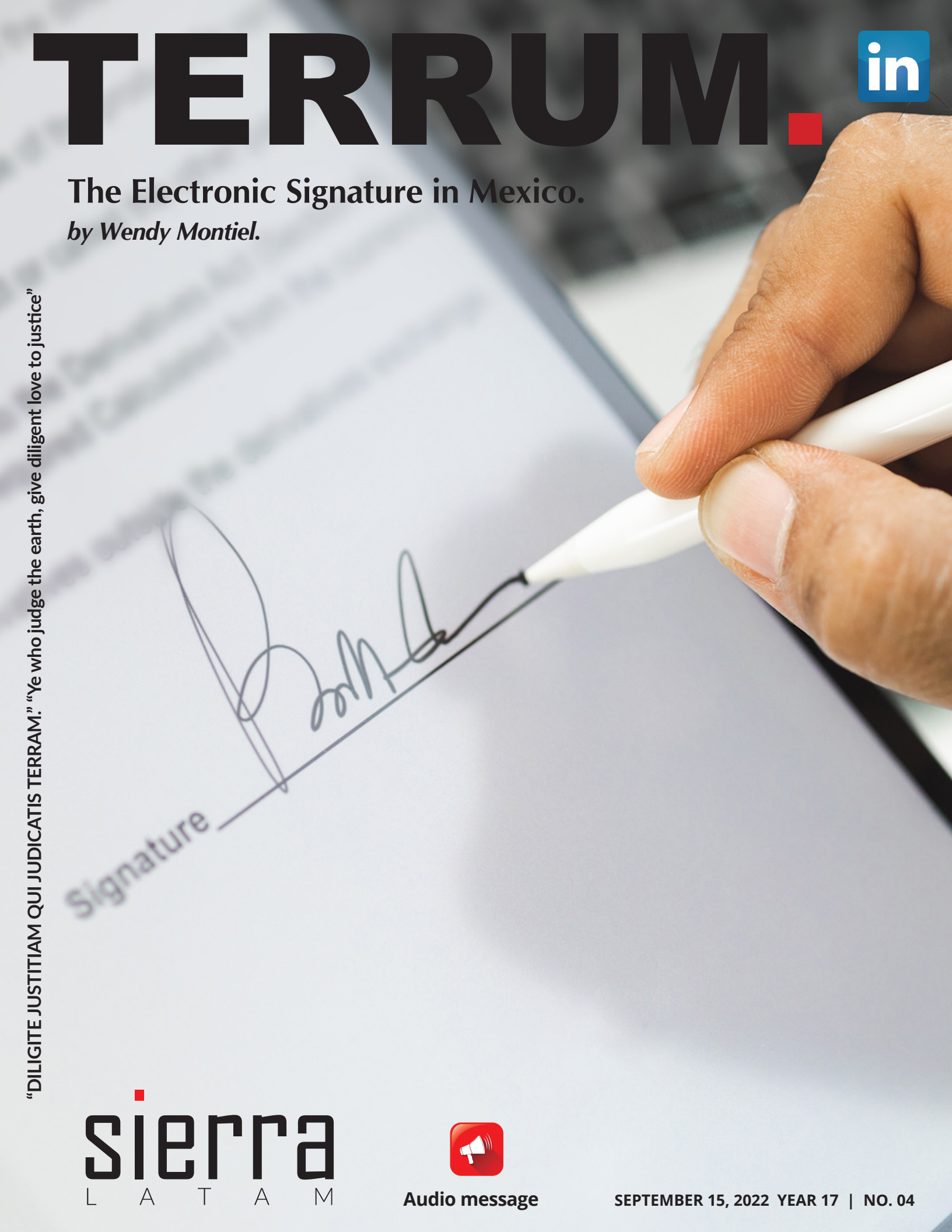
Carlos Sierra

TERRUM.

The Electronic Signature in Mexico.

by Wendy Montiel.



"DILIGITE JUSTITIAM QUI JUDICATIS TERRAM." "Ye who judge the earth, give diligent love to justice"

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Audio message

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The Electronic Signature in Mexico.

by Wendy Montiel.

Modernity constantly represents new challenges to updating the law. One of those challenges is the use of electronic means to express the will of individuals, allowing them to enter into legal acts in a secure manner, without the need of printed documents or the necessity to be located in the same geographical space. Around the world, the use of different electronic tools has been standardized to express said wiliness and consent at the time of incurring obligations, for example, the use of electronic signature to sign agreements, amendments, assignments, etc.

"However, one of the most frequent problems that lawyers in Mexico face in practice is that this standardization is not present in our country..."

However, one of the most frequent problems that lawyers in Mexico face in practice is that this standardization is not present in our country due to our legal system is harshly formalist that in many cases provokes unnecessary delays in every procedure before the Mexican state. This issue may have some possible historical[1], sociological[2] and legal[3] explanations.

For these reasons, the accepted practice by Mexican judges and attorneys for the expression of people's will is through their physical signature in a printed document, which we commonly call "original document" (originals) and only these originals are the ones that make full evidence for their enforcement of rights in a trial. Although this is a generalized practice in Mexico, the use of electronic means would allow for better advantages in terms of effectiveness, practicability, and harmonization with other legal systems around the world. This sets forth the following unavoidable questions: are electronic signatures legal in Mexico, and is it possible to electronically sign a document ensuring with legal certainty that can be used as full evidence in a trial?

To answer these questions, I will begin by briefly analyzing the provisions of Mexican law regarding electronic signatures. Article 89 of the Commercial Code defines an electronic signature as the electronic data associated with any technology to an electronic message that allows for the identification of the signer and indicates that the signer approves the information contained in the electronic message. The same article establishes that an electronic signature produces the same legal effects as the physical signature, being admissible as evidence in court. Likewise, Article 89 bis also establishes that messages contained in electronic media will have the same legal effects if they comply with the applicable legal standard.

Article 90 states that an electronic message is associated with the signatory if it was sent by that same signatory, using means of identification such as keys or passwords or if it was sent by an information system programmed by the signatory to operate automatically. Article 90 bis provides that two persons may agree, prior to the signing, on the use of a procedure to establish that an electronic message actually comes from the signatory.

In this regard, in 2017 a criterion[4] was published that establishes that for an electronic signature to be

1.- Due to our legal system has an origin in the Germanic Roman legal system, our institutions and legal figures are different from other countries with a legal system based on the common law.
2.- Mexico has important problems of a culture of dishonesty among the people in general, making very common unlawful acts such as corruption and fraud that in order to prevent them, the law seeks to protect the expression of people's will.
3.- The law establishes several requirements that must be satisfied prior to the admission of any claim or petition, and if they are not fulfilled, then the claim or petition will be dismissed. One of these requirements is the undoubted certainty that the document is legitimately signed.
4.- Digital registration: 2014545, thesis I.3°.C.264 C (10ª.), civil matter, Collegiate Courts, available in: https://sjf2.scjn.gob.mx/detalle/tesis/2014545 .

considered reliable it must meet the following requirements: a) the signature creation data must correspond exclusively to the signatory; b) the signature creation data must have been, at the time of signing, under the exclusive control of the signatory; c) it must be possible to detect any alteration of the electronic signature made after the time of signing; and, d) with respect to the integrity of the information of a data message it must be possible to detect any alteration made after the time of signing.

On the technical side, the Mexican Official Standard known as "NOM-151"[5] establishes the requirements that must be observed for the conservation of electronic messages and digitalization of documents. The technical procedure is addressed by certifying companies that through algorithms can certify that an electronic message is associated with a signer, which means that these companies verify the reliability of the signatures.

On the other hand, the only mandatory precedent for judges and magistrates which have analyzed the use of an electronic mechanism to express their will is through jurisprudence[6] that resolved that: the use of the "PIN" by people in electronic banking terminals only can be considered an electronic signature, if the bank can prove in a trial that the identification procedures that were used during the transaction comply with the requirements for the verification reliability of electronic signatures, that is, the data of creation of the message correspond exclusively to the signatory without signals of alteration of the system by any external agent.

Taking all of the above elements into consideration, we can conclude that in Mexico, it is legal to use electronic signatures that allow people to express their will, only for commercial transactions, due the commercial code theoretically regulates the procedure for their existence and use, by establishing the meaning of electronic signature, the moment in which an act can be considered electronically signed and even the moment in which the other party receives the signer's consent.

However, the problem of the use of electronic signatures in Mexico does not seem to be a theoretical obstacle; on the contrary, it is a practical problem. In reality, there are several products on the market that claim to be accredited in accordance with NOM-151 as certifying companies, which through technical compliance with the law, certify that the electronic messages used by the signer to express his or her will do indeed belong to him or her.

However, in Mexico the use of these products is very uncommon, there are no judicial precedents that declare which of these certifying products will be considered valid in a trial to prove that a document was electronically signed by both parties and therefore, make full evidence as a base document of their actions. On the contrary, based on the jurisprudence referred to above, we can also conclude that in a trial the party that claims that a document was signed electronically, must demonstrate that the method used for its signature is indeed an electronic signature, and must prove through technical means that the method used in the system to sign complies with the legal requirements to verify its reliability.

Although this scenario seems discouraging, it is the opinion of the author that it is only a matter of time before our supreme court provides a precedent, or the legislative power enacts a law that clarifies which companies are certified, and thus can provide the service of signing legal acts with electronic signatures that make full evidence in a trial. This will also help as it will make the legalization of electronic signatures extended for civilian matters.

5.- Mexican offical standard "NOM-151-SCFI-2016" available in: https://dof.gob.mx/nota_detalle.php?codigo=5478024&fecha=30/03/2017#gsc.tab=0

6.- Digital registration: 2019919, jurisprudence 1ª./J.16/2019 (10ª.), civil, First Court of the Mexican Supreme Court of Justice, available: https://sjf2.scjn.gob.mx/detalle/tesis/2019919

AMLO's agreement on National Guard is a blow to the Constitution: experts said.

After President Andres Manuel Lopez Obrador announced on the morning of August 8th that by means of an agreement he will cede control of the National Guard to the Secretary of National Defense (SEDENA), security and political experts pointed out that such decision violates the Constitution. Daniel Gómez-Tagle explained that the National Guard cannot be sent to the SEDENA by agreement, since for this to happen the Congressmen must reform at least four laws. The Constitution is clear in its Article 21, whereby it establishes that "The Federation will have a civilian police institution called National Guard, [...] which will be attached to the secretariat of the public security branch [...]." Therefore, a decree is not enough to send the National Guard to SEDENA, it requires a constitutional reform. Jorge Álvarez, coordinator of Movimiento Ciudadano in the Chamber of Deputies, declared: "There is no room for half-measures in the face of constitutional coups. If a public servant is incapable of defending the Constitution, then he has nothing to do in public service." *www.forbes.com.mx/es-un-golpe-a-la-constitucion-el-acuerdo-de-amlo-sobre-guardia-nacional-expertos/ 08/08/2022.*

Banxico raises interest rate for the tenth time in 14 months, leaving it at 8.5%.

The Bank of Mexico (BANXICO) decided on August 11, to raise interest rates for the tenth consecutive time in order to control the highest inflation in the Mexican economy in the last two decades. This is the second highest interest rate level since December 2005, when it stood at 8.75 percent. The interest rate increase is the tenth consecutive increase since July 2021, when it stood at 4 percent. The Board of Governors evaluated the major challenges for the conduct of the monetary policy in light of the tightening of global financial conditions, the environment of heightened uncertainty, the accumulated inflationary pressures from the pandemic and the geopolitical conflict, and the possibility of greater effects on inflation. *www.forbes.com.mx/banxico-sube-por-decima-vez-la-tasa-de-interes-en-14-meses-la-deja-en-8-5/ 11/08/2022.*

CFE borrows $1.7 billion dollars to finance green projects.

Deutsche Bank granted a US$1.75 billion project finance loan to the Federal Electricity Commission (CFE), which is committed to allocate an amount to finance the eligible projects and use unallocated funds to refinance indebtedness. The projects eligible for these resources are not yet detailed, but there is a solar plant being built in Puerto Peñasco, which may be eligible for financing since it is of great magnitude and may be the largest in Latin America. *www.energy21.com.mx/mercados/2022/08/19/cfe-se-endeuda-con-17-mil-mdd-para-financiar-proyectos-verdes 19/08/2022.*

Mexico Needs US$3.9 Billion To Prevent Water Crisis.

The growing global water crisis must be addressed in Mexico to guarantee water supply for its population and for its industry. Considering the national drought that has consumed the northern region of Mexico, in particular the state of Nuevo Leon, experts say Mexico needs to invest US$3.9 billion dollars annually for the following fifty years. While it is not an issue that surged with the López Obrador administration, it is an issue that has been losing priority on the political agenda. *www.mexicobusiness.news/infrastructure/news/mexico-needs-us39-billion-prevent-water-crisis?tag=article 24/08/2022.*

New State Company “Litio Para Mexico” sees light of day.

The Ministry of Energy (SENER) published a decree that founded Litio Para Mexico (LitioMx), a state-owned lithium company, following a decree that Mining Law reform initiated in April 2022. The responsibilities of this decentralized organism will be to oversee managing the extraction, transformation, and transportation of lithium and its derivatives. Article 2 of said decree mentions “LitioMx’s main objective is the exploration, exploitation, and harnessing of lithium located on national territory, as well as the management and control of the mineral’s value chain.” As a new company, LitioMx now also has the responsibility of developing and executing projects that involve engineering, research, and geological studies. *www.mexicobusiness.news/mining/news/new-state-company-litio-para-mexico-sees-light-day?tag=article 25/08/2022.*

In this month extract was prepared by P. Arandia, R. Nerio, J. García, A. Pérez, P. Nava, J. Mora.

TERRUM.

WENDY MONTIEL

Attorney at Law: Admitted to practice law in 2019. Ms. Wendy Montiel, of Mexican nationality obtained his law degree at Universidad Nacional Autonoma de Mexico, Mexico. She also completed a "Administrative Law Diploma" at Universidad Nacional Autonoma de Mexico.

LANGUAGES: Spanish and English.
PRACTICE AREAS: Administrative Law

e-mail: wmontiel@asyv.com

sierra
LATAM

Prol. Reforma No. 1190 25th Floor,
Santa Fe México D.F. 05349
t. (52.55) 52.92.78.14
f. (52.55) 52.92.78.06
www.asyv.com / www.asyv.aero

www.linkedin.com/company/asyv

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