In deciding whether or not the rule of illegality also strikes down the arbitration clause, it is necessary to bear in mind the powerful commercial reasons for upholding arbitration clauses unless it is clear that this would offend the policy of the illegality rule. These are, first, the desirability of giving effect to the right of the parties to choose a tribunal to resolve their disputes and secondly, the practical advantages of one-stop adjudication, or in other words, the inconvenience of having one issue resolved by the Court and then, contingently on the outcome of that decision, further issues decided by the arbitrator. As the German Federal Supreme Court (Bundesgerichtshof) said in its landmark decision of Feb. 27, 1970:

“There is every reason to presume that reasonable parties will wish to have the relationships created by their contract and the claims arising therefrom, irrespective of whether their contract is effective or not, decided by the same tribunal and not by two different tribunals . . . Experience shows that as soon as a dispute of any kind arises from a contract, objections are very often also raised against its validity . . .”

As against these considerations, is there anything in the policy of the rule which is alleged to invalidate the retrocession agreements which requires that the arbitration clause should also be invalid? I have already expressed my doubts as to whether the rule had any effect upon the initial validity of the agreements at all. I shall assume, however, that one was dealing with an insurance contract which was alleged to fall within the scope of the implied prohibition in the Insurance Companies Act, 1974. Is there anything in such a provision which would be undermined by allowing the issue of whether it applied to be determined by arbitration? Mr. Longmore submitted that as a matter of policy all questions of illegality were better determined by the Court than by arbitration. From my part, I cannot see why this should be so. In any case, Mr. Longmore had to concede that any such policy was not applied when it came to allowing arbitrators to decide whether a contract had been frustrated by supervening illegality. Since Heyman v. Darwins Ltd., there has been no doubt that they have jurisdiction to do so. As for the specific statutory provisions, Lord Justice Kerr in the Phoenix case wrung his hands over the conclusion to which he felt obliged to come and said that the invalidity of the substantive agreement itself could not be justified on any grounds of public policy. In those circumstances, it seems to me unnecessary to carry the effect of the prohibition even further and hold that it also invalidates an agreement to arbitrate the question of whether it applies.
Referring Principles:

XIII.2.4 - Principle of separability of the arbitration clause